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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 318 and 319

[Docket No. APHIS–2010–0082]

RIN 0579–AD71

Establishing a Performance Standard for Authorizing the Importation and Interstate Movement of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our regulations governing the importation of fruits and vegetables by broadening our existing performance standard to provide for approval of all new fruits and vegetables for importation into the United States using a notice-based process. We are also removing the region- or commodity-specific phytosanitary requirements currently found in these regulations. Likewise, we are making an equivalent revision of the performance standard in our regulations governing the interstate movement of fruits and vegetables from Hawaii and the U.S. territories (Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) and removing the commodity-specific phytosanitary requirements from those regulations. This action will allow for the approval of requests to authorize the importation or interstate movement of new fruits and vegetables in a manner that enables a more flexible and responsive regulatory approach to evolving pest situations in both the United States and exporting countries. It will not, however, alter the science-based process in which the risk associated with importation or interstate movement of a given fruit or vegetable is evaluated or the manner in which risks associated with the importation or interstate movement of a fruit or vegetable are mitigated.

DATES: Effective October 15, 2018.

FOR FURTHER INFORMATION CONTACT: Regarding the commodity import request evaluation process, contact Mr. Benjamin J. Kaczmarski, Assistant Director, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2127.

Regarding import conditions for particular commodities, contact Mr. Tony Román, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2242.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–83, referred to below as the regulations or the fruits and vegetables regulations), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

The regulations in 7 CFR part 318, ''State of Hawaii and Territories Quarantine Notices'' (referred to below as the Hawaii and territories regulations), prohibit or restrict the interstate movement of fruits, vegetables, and other products from Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam to the continental United States to prevent the spread of plant pests and noxious weeds that occur in Hawaii and the territories.

Under our current process for authorizing importation of fruits or vegetables under the fruits and vegetables regulations or interstate movement under the Hawaii and territories regulations, when APHIS receives a request from a country's national plant protection organization (NPPO) or a State department of agriculture to allow importation or interstate movement of a fruit or vegetable whose importation or interstate movement is currently not authorized, that NPPO or State department of agriculture must first gather and submit information to APHIS concerning that fruit or vegetable. In the case of imports, a description of the required information is contained in 7 CFR 319.5(d). This information, in addition to our own research, allows APHIS to conduct a pest risk analysis.

The pest risk analysis usually contains two main components: (1) A pest risk assessment (PRA), pest list, or other pest risk document to determine what pests of quarantine significance are associated with the proposed fruit or vegetable and which of those are likely to follow the import or interstate movement pathway, and (2) a risk management document (RMD), to identify phytosanitary measures that could be applied to the fruit or vegetable and evaluate the potential effectiveness of those measures. When the PRA, pest list, or other pest risk document is complete, if quarantine pests are associated with the fruit or vegetable in the country, State, or other region of origin,[1] APHIS then evaluates whether the risk posed by each quarantine pest can be mitigated by one or more of the designated phytosanitary measures of the fruits and vegetables regulations or the designated phytosanitary measures of the Hawaii and territories regulations. If the designated phytosanitary measures alone are not sufficient to mitigate the risk posed by the importation or interstate movement of the commodity, any further action on approving the fruit or vegetable for importation or interstate movement is undertaken using the rulemaking process, which entails publishing a proposed and final rule. The pest risk analysis is made available to the public for review and comment at the time of the publication of the proposed rule.

However, if APHIS determines in an RMD that the risk posed by each identified quarantine pest associated with the fruit or vegetable in the country, State, or other region of origin can be mitigated by one or more of the designated phytosanitary measures listed in § 319.56–4(b) of the fruits and vegetables regulations or § 318.13–4(b) of the Hawaii and territories regulations (these measures are referred to elsewhere in this document as designated phytosanitary measures or designated phytosanitary measures of

[1] Pest risk assessments can consider a country, part of a country, all or parts of several countries, a State or territory, part of a State or territory, or all or parts of several States or territories.

the fruits and vegetables regulations), the findings are communicated using the notice-based process.

Under the notice-based process, APHIS publishes in the **Federal Register**, a notice announcing the availability of the pest risk analysis for a minimum of 60 days public comment. Each pest risk analysis made available for public comment through a notice specifies which of the designated phytosanitary measures APHIS would require to be applied. APHIS evaluates comments received in response to the notice of availability of the pest risk analysis. In the event that APHIS receives no comments, or in the event that commenters do not provide APHIS with analysis or data that indicate that the conclusions of the pest risk analysis are incorrect and that changes to the pest risk analysis are necessary, APHIS then publishes another notice in the **Federal Register** announcing that the Administrator has determined that, based on the information available, the application of one or more of the designated phytosanitary measures (as specified in a given pest risk analysis) is sufficient to mitigate the risk that quarantine pests could be introduced or disseminated within the United States via the importation or interstate movement of the fruit or vegetable. APHIS then authorizes the importation or interstate movement of the particular fruit or vegetable, subject to the conditions described in the pest risk analysis, on the date specified in the **Federal Register** notice.

In the event that commenters provide APHIS with information that shows that changes to the pest risk analysis are necessary, and if the changes made affect the conclusions of the analysis (*e.g.,* that the application of the identified phytosanitary measures will not be sufficient to mitigate the risk posed by the identified pests), APHIS proceeds as follows:

- If additional phytosanitary measures beyond the designated phytosanitary measures are determined to be necessary to mitigate the risk posed by the particular fruit or vegetable, any further action on the fruit or vegetable follows the rulemaking process.
- If additional risk mitigation measures beyond those evaluated in the pest risk analysis are determined to be necessary, but the added measures only include one or more of the designated phytosanitary measures of the fruits and vegetables regulations or the designated phytosanitary measures of the Hawaii and territories regulations, APHIS may publish another notice announcing that the Administrator has determined that the application of one or more of the designated phytosanitary requirements will be sufficient to mitigate the risk that quarantine pests could be disseminated within the United States via the importation or interstate movement of the fruit or vegetable. The notice also explains the additional mitigation measures required for the importation or interstate movement of the fruit or vegetable to be authorized and how APHIS made its determination. APHIS then begins allowing the importation or interstate movement of the particular fruit or vegetable, subject to the conditions described in the revised pest risk analysis, beginning on the date specified in the **Federal Register** notice. Alternatively, if APHIS believes that the revisions to the pest risk analysis are substantial, and there may be continued uncertainty as to whether the designated measures are sufficient to mitigate the risk posed by importation of the fruit or vegetable, APHIS may elect to make the revised pest risk analysis available for public comment via a notice in the **Federal Register**, or may make any further action on approving the commodity for importation subject to rulemaking.

When commodities are approved for importation or interstate movement, either through rulemaking or the notice-based process, all permits issued list the commodity-specific importation requirements as determined by the pest risk analyses. Those requirements are also listed in Fruits and Vegetables Import Requirements (FAVIR) database,[2] in the case of imported fruits and vegetables, as well as the appropriate manual, in the case of fruits and vegetables that are moved interstate from Hawaii and the U.S. territories. In order to ensure producer compliance with the listed procedures, an APHIS inspector or an official authorized by APHIS monitors any treatments (*e.g.,* cold treatment, fumigation, irradiation) that are required. Upon arrival, consignments are inspected to ensure compliance with any particular shipping requirements, such as arrangement of fruits or vegetables on pallets or pest-exclusionary packaging, as well as for the presence of any pests of concern. In the event that a pest is discovered upon inspection at the port of first arrival, APHIS works with the inspectors and, in the case of imports, the NPPO of the exporting country, in order to investigate and, if necessary, re-evaluate shipments of the fruit or vegetable in question from that country or State.

On September 9, 2014, we published in the **Federal Register** (79 FR 53346–53352, Docket No. APHIS–2010–0082) a proposal[3] to amend the regulations by expanding the use of the notice-based process to all decisions related to the importation and interstate movement of new fruits and vegetables. We also proposed to remove the remaining region- or commodity-specific phytosanitary requirements currently found in §§ 319.56–13, 319.56–20 through 319.56–70, 318.13–16, and 318.13–20 through 318.13–26. Since that time, § 319.56–71 through § 319.56–83 have been added to the regulations. This rule will remove those commodity-specific sections as well.

We solicited comments concerning our proposal for 60 days ending November 10, 2014. We reopened and extended the deadline for comments until January 29, 2015, in a document published in the **Federal Register** on December 4, 2014 (79 FR 71973, Docket No. APHIS–2014–0082) and reopened and extended the deadline for comments a second time ending March 10, 2015, in a document published in the **Federal Register** on February 6, 2015 (80 FR 6665, Docket No. APHIS–2010–0082). We received 22 comments on the proposed rule by that date. They were from representatives of State and foreign governments, industry organizations, importers and exporters, distributors, and private citizens. Two comments were supportive. The remainder of the comments are discussed below by topic.

Comments on the Comment Period

Several commenters requested that we extend the comment period for the proposed rule. As stated previously, we extended the comment period twice. Along with the initial comment period on the proposed rule, these extensions gave the public 180 days in which to review the proposal and submit comments.

In addition to the comment period extension, several commenters said that APHIS should issue an additional notice to clarify the scope and application of the proposed rule.

One commenter observed that, in 2006 when we proposed a notice-based process for a limited number of fruit and vegetable import requests, APHIS provided four public field hearings to ensure adequate interested-party input. The commenter said that similar efforts

[2] You may search FAVIR at *http://www.aphis.usda.gov/favir/.*

[3] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0082.*

were warranted in this case as well. Two commenters suggested that APHIS convene a stakeholder working group in association with the extension of the comment period in order to review the proposed rule. The commenters requested that special attention be paid to addressing significant barriers that impact trade within certain countries. The commenters argued that this working group would allow stakeholders to provide greater input for the proposed action.

While we did not issue an informational notice as suggested by the first commenters or convene a working group, we did host a webinar open to the public. This briefing provided an overview of the proposed changes and gave stakeholders an opportunity to learn more about the rule and to ask questions. Additionally, APHIS published an explanatory questions and answers (Q&A) document on the APHIS website.[4] Unlike our 2006 action, which represented a new rulemaking procedure, we did not hold public meetings in association with the proposed rule because the noticed-based process has been successfully employed since that time and the proposed action was merely an expansion of the existing program.

General Comments

Several commenters stated that the proposed rule did not make clear which administrative review steps would be eliminated if APHIS adopted a notice-based process.

Since notices are not considered rulemaking documents, we anticipate that the primary administrative time-savings will be a result of procedural steps that apply to rulemaking in the Federal Government, such as the development and publication of a proposed rule or final rule. The notice-based process is an informal adjudication process in that the Code of Federal Regulations (7 CFR parts 318 and 319) sets out general mitigation measures and criteria that will be applied for the interstate movement or importation of fruits and vegetables into the United States. For each interstate movement or import request, the agency will conduct a risk assessment applicable to the specific commodity/place of origin and adjudicate the matter through the publication of a notice announcing the availability of the risk analysis and the solicitation of comments. The final notice published in the **Federal Register** constitutes a final agency action which may be subject to challenge in court under the Administrative Procedure Act.

Another commenter stated that since the proposed changes would include a broad list of most or all available risk mitigation measures, which is far beyond currently established treatments, inspections, and certifications, APHIS should explain how efficacy and performance will be measured within each commodity import request in order to evaluate whether the notice-based process will enhance trade.

The commenter's characterization of the proposed designated measures as being beyond established treatments is incorrect. Any phytosanitary treatment required must be among those that appear in the Plant Protection and Quarantine (PPQ) treatment manual. Any additions to the listed treatments in the treatment manual are done so only after we provide notice via a **Federal Register** notice and evaluate any comments received on that notice. Mitigations apart from phytosanitary treatments will continue to be recognized as parts of systems approaches via FAVIR, which will include information on all other required mitigations.

One commenter cited the 2010–2015 APHIS Strategic Plan's characterization of the Agency's mission to ''Protect the health and value of U.S. agricultural, natural and other resources.'' The commenter claimed that the proposal was in contradiction with that statement and requested clarification on how the action aligns with the APHIS mission, particularly as it relates to benefits to U.S. agricultural resources.

This rule does not alter the way in which APHIS carries out its mission to protect the health and value of U.S. agricultural, natural, and other resources. Our risk-based decisionmaking will not change as a result of this rule, nor will the level of phytosanitary security provided by the mitigation measures we will assign to address identified risks. U.S. consumers and businesses will benefit from more timely access to fruits and vegetables, and the more timely approval of the interstate movement of fruits and vegetables from Hawaii and the U.S. territories will be beneficial to U.S. producers.

Comments on Alternatives and Additions to the Proposed Action

One commenter suggested that, as an alternative approach, APHIS should consider import requests for each commodity in a way that encompasses at least three different perspectives: Pests and diseases, economic impact, and possible environmental impact.

The process for developing PRAs and determining mitigation measures would remain the same, giving the public opportunity to review, evaluate, and comment. Additionally, the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*) will still apply. As such, for each additional fruit or vegetable approved for importation, APHIS will make available to the public documentation related to our analysis of the potential environmental effects of such new imports. This documentation will likely be made available at the same time and via the same **Federal Register** notice as the risk analysis for the proposed new import. Finally, while the notices published using the notice-based approach will not contain economic analyses, we will certainly continue to consider the potential economic consequences of pest introduction in the pest risk analysis. Similarly, we will document our consideration of trade volume and other economic factors. We commit to inclusion of an evaluation of the economic impacts of those actions that would have been deemed ''economically significant'' under Executive Order 12866 prior to the effective date of this final rule.

Several commenters said that APHIS should consider maintaining a dual track approach to considering import requests. The commenters suggested that requests that depend on a systems approach for risk mitigation be reviewed by APHIS so that APHIS could then make a determination as to whether a notice-based or rulemaking-based decision was appropriate based on a set of criteria that evaluate relative level of risk, the probability of success of the mitigation measures, and the economic impact of the associated pests in the event that an introduction took place. The commenters concluded that APHIS should then make the rationale for that determination available for public comment.

Under the expanded notice-based process, the development of pest risk analyses and determination of mitigation measures would remain the same, giving the public opportunity to review, evaluate, and comment. This action will not alter our science-based

[4] You may view the Q&A document as well as slides from the webinar on the internet at *http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/planthealth/sa_import/sa_permits/sa_plant_plant_products/sa_fruits_vegetables/ct_q56-streamlining-questions-answers/!ut/p/a0/04_Sj9CPykssy0xPLMnMz0vMAfGjzOK9_D2MDJ0MjDzd3V2dDDz93HwCzL29jAx8TfULsh0VAY_1WkE!/.*

process for approval. If a risk analysis is conducted, the first step of which is typically a PRA or pest list, stakeholders will continue to have 30 days to consult on draft PRAs or pest lists before APHIS initiates the notice-based process. Once APHIS and the foreign NPPO have reached agreement on the PRA, the exporting country will notify APHIS about the mitigation measures they will be implementing. APHIS will then develop an RMD which includes specific requirements for addressing the pests of concern highlighted in the PRA or pest list. Market access requests developed via the notice-based process involving a systems approach will not be any less effective than rulemaking and will not compromise phytosanitary security.

Another commenter recommended that APHIS apply the expanded notice-based approach only to the importation of fruits and vegetables authorized after the regulations are finalized. The commenter added that market access requests currently under review should remain subject to the existing rulemaking process as transferring those requests from the existing rulemaking process into the new notice-based process could result in possible lost opportunities for the industry to review and provide comment. A second commenter wanted to know if the notice-based process would apply to pending decisions where draft PRAs have already been issued for public comment or only to new requests.

We disagree with the first commenter's suggestion. As stated in the proposed rule, initial notices in the **Federal Register** will be available for review and comment for a minimum of 60 days, which is identical to the comment period we typically set out for proposed rules. We also have the option of extending that comment period if necessary. This provides ample time for stakeholder review and engagement. As to the second commenter's question: This rule will be applied to all pending requests. If an importation or interstate movement request has already been submitted and the results of our pest risk analysis lead us to conclude that the commodity can be safely imported or moved interstate under one or more designated measures, then we will follow the notice-based approach. The final notice published in the **Federal Register** constitutes a final agency action which may be subject to challenge in court under the Administrative Procedure Act.

One commenter stated that APHIS should provide annual reports to the House and Senate Committees on Agriculture detailing import requests petitions addressed and granted each calendar year under the notice-based process. The commenter stated that these reports should be provided either annually or bi-annually.

While APHIS does not supply such reports currently, if either committee were to request documentation along these lines, we would supply it.

Comments on Notice-Based Process

One commenter asked if rulemaking would still be an option after this final rule became effective, and, if so, what the threshold would be for initiating rulemaking.

As stated in the proposed rule, we are removing the region- or commodity-specific phytosanitary requirements currently found in the regulations concerning importation or interstate movement from Hawaii and the Territories. The rulemaking process regarding importation or interstate movement of commodities will be replaced by the notice-based process.

Two commenters asked if the notice-based process would apply only to amendments of existing importation and interstate movement requirements or to all decisions related to the importation and interstate movement of fruits and vegetables.

The notice-based process will apply to all decisions related to the importation and interstate movement of fruits and vegetables, both to changes in requirements for those already allowed under the regulations and new requests for importation or interstate movement.

One commenter stated that it is unclear how the process will work if the new approval of a commodity or a change in requirement involves a phytosanitary measure that is listed in the proposed list of designated phytosanitary measures, but is not aligned to some other subpart elsewhere in the APHIS regulations.

Under the revised regulations, all phytosanitary measures pertaining to the importation of fruits and vegetables would be removed from the regulations. As stated previously, importation and interstate movement requirements would be found in FAVIR, in the case of imported fruits and vegetables, as well as the appropriate manual, in the case of fruits and vegetables that are moved interstate from Hawaii and the U.S. territories. Treatments would continue to be listed in the PPQ Treatment Manual and new treatments would continue to be approved in accordance with 7 CFR part 305.

The same commenter asked for clarification regarding reference to treatments within the CFR. As an example of this scenario, the commenter wondered whether the acceptance of a new phytosanitary treatment depends on the availability of this treatment option under the treatments listed in 7 CFR part 305.

Section 305.3 of the regulations sets forth a notice-based process for adding, revising, and removing treatments contained in the PPQ Treatment Manual. Under those regulations, APHIS will publish in the **Federal Register** a notice describing our reasons for adding, revising, or removing a treatment schedule and provide for public comment on the action. After the close of the comment period APHIS will publish a notice announcing our final determination and, if appropriate, make available the final treatment schedule if any changes were made as a result of public comments.

One commenter suggested that communication regarding import requests in the form of notices might not receive the same careful attention from industry representatives as is currently given to proposals issued under the traditional rulemaking process.

We disagree. Stakeholders and other interested parties have reason to attend to any potential changes in their industries or other areas of interest. We will continue to provide our draft PRAs on the APHIS website for review and comment before publication of an initial notice. We will also continue to provide alerts via the PPQ Stakeholder Registry and issue press releases. Finally, the initial notice will include a comment period of at least 60 days. These actions provide the public ample opportunity to submit opinions and information on any given action.

Another commenter said that statements by APHIS personnel made in the webinar described previously appeared to indicate that the notice-based process will be of use for revisions to existing regulations that are minor in nature. The commenter also cited the questions and answers document as supporting this impression. The commenter was therefore puzzled by the broad scope of the process as described in the proposal.

We proposed to use the notice-based approach for all commodity import requests. Any reference to the time it takes APHIS to address minor changes to the regulations under traditional rulemaking was intended to serve as an example of how even a straightforward alteration to the regulations may end up taking a very long time under the current system. More complicated rulemakings are typically even more time-consuming. It is the success of our more limited notice-based process that

indicates that this broad process may be successfully implemented.

One commenter stated that we should expand upon our explanation of which measure out of the previous list of designated measures APHIS no longer finds sufficient to mitigate the phytosanitary risk posed by importation or interstate movement and how this will affect existing approved measures.

We believe the commenter misunderstood our characterization of the action as it was set out in the proposed rule. None of the five designated phytosanitary measures that had been previously approved for use with the notice-based process were determined to be inadequate to mitigate the pest risks for which they have been used, we instead proposed to expand and reorganize the categories of designated measures in conjunction with an expanded notice-based process.

Another commenter asked how APHIS intends to handle importation situations that include a disease or pest not previously dealt with in connection with the commodity under consideration for importation or interstate movement.

The same commenter wanted to know how APHIS will address a situation where a substantial importation volume of a given commodity is expected when the commodity originates in an area where one or more pests and diseases of quarantine significance exist. The commenter observed that high volumes of an export put pressure on both the exporter to adhere to the required systems approach, and on inspections in the exporting country and the United States.

Systems approaches allow for flexibility in modifying mitigation requirements when evolving pest situations both in the United States and in exporting countries occur. As stated previously, the scientific basis for the application of mitigations will not change. A novel or high import volume situation such as the one described by the commenter would be thoroughly analyzed in the PRA and RMD prior to the approval of any importation or interstate movement. APHIS considers that market access requests through notice-based process involving a systems approach will not be any less effective than rulemaking and will not compromise phytosanitary security.

One commenter wanted to know when the proposed systems approach would be described under the notice-based process in order to allow for stakeholder input. As described in the proposed rule, the process for developing PRAs and determining mitigation measures will remain the same, giving the public opportunity to review, evaluate, and comment. PPQ will continue to make the draft PRAs, pest lists, or other pest risk documents available for review and comment by stakeholders upon completion. After incorporating any changes to the draft PRA, APHIS will then publish in the **Federal Register**, a notice announcing the availability of the pest risk analysis for a minimum of 60 days public comment. Each pest risk analysis made available for public comment through a notice specifies which of the designated phytosanitary measures APHIS would require to be applied, giving interested parties a chance to specifically comment on those measures. As previously mentioned, the final notice published in the **Federal Register** constitutes a final agency action which may be subject to challenge in court under the Administrative Procedure Act.

The same commenter stated that the operational workplans developed for use by APHIS and the NPPO of the exporting country are documents that can be changed quickly if the need arises. The commenter said that operational workplans are therefore not legally binding documents, particularly as compared to the weight and authority of traditional rulemaking. The commenter asked what the consequences would be if an exporting country were to violate the terms of the operational workplan.

Contrary to the commenter's assertion, operational workplans are binding documents. Every operational workplan includes a detailed description of the objectives, proposed activities, and expected results and benefits of the importation of a specific commodity and the related roles responsibilities, and resources contributed by each signatory. Penalties for violations of the terms of an operational workplan vary depending upon the violation in question, but can include such things as temporary or permanent ban on the importation of the commodity from the violating country.

The same commenter observed that the proposed rule did not address the way in which APHIS intends to handle or incorporate treatment of pest free areas under the expanded notice-based process.

The requirements regarding pest free area recognition are found in § 319.56–5 of the regulations and remain unchanged by this rule.

The same commenter asked what the principle source of information regarding a given commodity would be under the expanded notice-based system. The commenter hypothesized that this information would be kept in FAVIR and asked if that database would be updated and kept current with the issuance of final notices regarding imports.

As stated in the proposed rule, fruits or vegetables approved for import under this approach will be listed in FAVIR, which is available on the APHIS website. Similarly, approved fruits and vegetables from Hawaii and the territories and their corresponding movement requirements will be listed in APHIS' Hawaii and Puerto Rico/U.S. Virgin Islands manuals, which are available for viewing and download on APHIS' website. All information in these sources will be updated as new commodities are approved for import or interstate movement.

The same commenter said that we did not specify when a preclearance program in the exporting country would be required. The commenter observed that preclearance is an important aspect of import requests, made more so as systems approaches become more complex.

Under some circumstances, we find that inspection prior to exportation is a necessary part of mitigating pest risk and the exporting country would need to inspect the commodity. Such an inspection requirement would be one of the mitigations included in the pest risk analysis and determination of need would be made on a case-by-case basis.

Comments on Pest Risk Analyses

One commenter observed that the PRA is simply a list of the pests and diseases present in the country requesting access to the U.S. market, while the more important issue for U.S. growers concerns the mitigation measures that will be required to address those pests and diseases. The commenter stated that this information should be made available in detail at the same time as the draft PRA is released for comment. The commenter also stated that, even if the RMD were to be released simultaneous to the draft PRA, it is fairly general in nature and does not provide details about the proposed systems approach.

As the commenter noted, mitigation measures for the pests of concern identified in the PRA are addressed in the RMD that is made available with the initial notice. This document is then subject to public comment for at least 60 days. As stated previously, we will continue to provide our draft PRAs on the APHIS website for review and comment before publication of an initial notice. Comments submitted during the 30 day review period for the draft PRA will be considered and may result in changes to the final PRA. The PRA also

informs the process of country consultation, which occurs after development of the PRA. The RMD is drafted after this consultation has concluded. Generally, the measures included in the RMD are those that have been certified as effective, standardized, and proven via use on similar or identical pest complexes. Information on the specific steps necessary to meet the requirements of the systems approaches are located in the operational workplan established between APHIS and the exporting country. Copies of the operational workplan may be requested from APHIS.

The same commenter said that the removal of the PRA from the APHIS website after the close of the comment period makes no sense to stakeholders and industry observers. The commenter suggested that all PRAs remain available on the APHIS website for all interested parties to access.

The PRA to which the commenter refers is a draft document. We post all draft PRAs on the APHIS website for comment for 30 days prior to finalizing the PRA and RMD and subsequently publishing any rule or notice concerning those PRAs. After the close of the comment period we remove the PRA from the APHIS website in order to make any necessary changes. Subsequent versions of the PRA are made available for review and comment in association with the **Federal Register** notice on *Regulations.gov.* The draft PRA and a summary of any comments we received are preserved and are available upon request.

The same commenter noted that it is impossible to determine the priority assigned by APHIS to any specific import request, and thus the PRA that addresses that request, from the information available on the APHIS website. The commenter asked that APHIS provide some indication of the order in which the PRAs are being considered.

APHIS handles market access requests in the order that they are received. However, issues such as the need for additional information from the requesting country may delay a given request, at which point we often move on to the next request while awaiting necessary information.

Another commenter said that we should make the data underlying PRAs and RMDs more readily available to stakeholders. The commenter suggested that, where proprietary data issues occur, data summaries or other forms of explanation should be provided to stakeholders.

We disagree. PRAs and RMDs represent a synthesis of research, knowledge, and experience. As such, they offer the most complete picture of the pest and disease situation in any potential production area as well as the best representation of the measures APHIS believes will mitigate any phytosanitary risks. We do note that we include references in the completed documents, which interested parties may examine if they so choose.

Two commenters asked if details such as the credibility of the foreign NPPO, infrastructure of programs, and facilities being employed would be made available. The commenters particularly cited the State of Florida as having requested on many occasions to have the opportunity to work more closely with APHIS to lend expertise and increase their level of knowledge regarding import programs. The commenters concluded that it is not acceptable for the State of Florida to concur with a list of phytosanitary measures without knowing firsthand what is being done to assure compliance.

PPQ and the National Plant Board work together to utilize our respective Federal and State authorities, assets, and expertise to safeguard plant health and enable safe trade. While it is not appropriate from a policy standpoint nor practicable from a scheduling standpoint for individual States to directly participate in such activities on a regular basis, we do note that representatives from the State of Florida accompanied APHIS on a site visit to Peru in November 2014 in order to examine the cold treatment program for citrus from that country. In past years, representatives of other States such as California have been included in similar visits.

One commenter said that we should develop procedures for facilitating stakeholder consultation into the process prior to publication of the draft PRA, including a defined period for review and public comment on pest and disease lists.

With respect to allowing the public to comment on pest and disease lists during the drafting phase of the pest risk analyses, such a process would have a serious adverse impact on the timely preparation of these documents. We believe a process in which an analysis is prepared, reviewed, and brought to a point where wider circulation and publication for comment is appropriate yields constructive comments that can be considered before any analysis is finalized. Therefore, we do not plan to take comments on pest and disease lists while they are under development.

The same commenter suggested we include regulated non-quarantine pests and other pests of concern in the PRA in addition to pests of quarantine significance.

The pests described by the commenter are currently included in every PRA prepared by APHIS.

Another commenter observed that the expanded notice-based process will not provide time efficiencies in the pest risk analysis development process, which is responsible for long delays in the processing of pending import applications for fruit and vegetables. The commenter suggested that APHIS consider this part of the approval process with the goal of identifying options to create further efficiencies.

In 2011, APHIS began a business process improvement initiative to identify and ameliorate inefficiencies in the manner in which we evaluate and respond to import applications for fruits and vegetables. While this initiative does not pertain solely to pest risk analyses, we have been working on an ongoing basis to improve the pest risk analysis development process since the initiative began.

One commenter expressed concern that the time reduction associated with the notice-based process may negatively impact the scientific scrutiny needed for the assurance of safety against potential exotic pests and diseases. The commenter urged APHIS to ensure that any time reduction does not also include a less thorough review of the scientific and technical review process.

We agree with the commenter's point that APHIS should ensure that any time reduction does not result in a less thorough review. As stated in the proposed rule, we will continue our specific reviews following market access requests as we have always done and provide the public opportunity to review and comment on the documents produced as a result of those reviews. The amount of time we devote to developing these pest risk analyses will not change. The shortened time period discussed in the proposed rule was in reference to that portion of the rulemaking process that begins after the pest risk analysis is finalized.

Another commenter stated that the proposed expansion of the notice-based process increases the types of measures that may be used as part of approved systems approaches. The commenter questioned whether the additional measures, either alone or in concert, would maintain the efficacy of the more limited notice-based system currently in use. The commenter asked that APHIS clarify how a given performance standard would be set and where

stakeholders would look in order to understand how the efficacy of these standards was measured. The commenter concluded that, while the RMD is supposedly where some of this information will be located, such documents do not necessarily include all of the data required for stakeholders to evaluate efficacy.

The documentation provided in support of an acceptable level of phytosanitary risk reduction will not change under the new process. The RMDs used for noticed-based process are identical to those used in traditional rulemaking. For new treatments we will also utilize a Treatment Evaluation Document, which specifically addresses the efficacy of those treatments with which we have less experience. We would note, however, that most treatments and mitigations required by APHIS are not novel. Various types of treatments (*e.g.,* fumigation, heat treatment, and irradiation) and mitigations (*e.g.,* pest-exclusionary structures, use of clean boxes for transit, and waxing) are effective against a wide variety of pests and diseases.

One commenter stated that we should consider limiting consignments of fruits and vegetables into States that have crops that are highly susceptible to infestation by pests and diseases from countries which do not have equivalent plant pest agencies. The commenter also stated that pest and risk information should be supplied to regulatory officials in those vulnerable States and regions.

We will continue to consider limiting distribution of imports on a case-by-case basis when the findings of pest risk analysis indicate that such an action might be necessary and if it is operationally feasible. Limited distribution is specifically cited as an example of a safeguarding and movement mitigation that may be applied. We provide our expertise via analysis in the form of pest risk assessments and other risk documentation, which is available to all interested parties via publication of material in the **Federal Register** as well as through PPQ's stakeholder registry.

Comments on Other Supporting Analyses

Several commenters asked if economic impact studies and determinations of significance or economic significance would remain part of the streamlined process.

Our determination as to whether a new agricultural commodity can be safely imported is based on the findings of the pest risk analysis, not on economic factors. However, we will continue to consider the potential economic consequences of pest introduction in the PRA. Similarly, we will document our consideration of trade volume and other economic factors.

One commenter said that the proposal appeared to create disparity in the consideration of the importation of fruits and vegetables versus other commodities, such as meat, citing a lack of interagency review and economic analysis as two such examples. The commenter stated that the import review process for all commodities should currently be of equivalent depth and rigor. Finally, the commenter concluded that the rulemaking process across all of APHIS' activities, not only those concerning the importation of fruits and vegetables, must be similarly time-consuming and therefore all in need of streamlining so that importations of all commodities may be treated equivalently.

We disagree with the commenter that market access requests for fruits and vegetables would be subject to less rigor and interagency review under the proposed rule than market access requests for other agricultural commodities, live animals, or animal products. As we stated previously in this document, we will continue to conduct PRAs, and these PRAs will continue to evaluate the potential economic consequences of pest introduction associated with the importation of the fruit or vegetable.

We agree with the commenter, however, regarding the need to evaluate and, if possible, streamline our processes regarding the importation of other agricultural commodities, live animals and animal products. Indeed, there is an ongoing APHIS initiative to do precisely that. The initiative has yielded a final rule [5] (83 FR 11845–11867, Docket No. APHIS–2008–0011) to restructure our plants for planting regulations to make them less cumbersome to change, and we are currently evaluating our regulations regarding the importation of live animals and animal products to identify how they could potentially be streamlined.

Another commenter said that it is crucial to maintain a review of specific varieties of fruits and vegetables in connection with the origin of the commodity in order to properly analyze the risks associated with exporting the commodity to the United States. The commenter stated that each region and crop variety poses different risks and should be reviewed separately in order to identify proper phytosanitary mitigation measures and receive relevant public comment.

We agree with the commenter. Our proposal was not to eliminate review of specific varieties of fruits and vegetables in connection with those varieties' country or region of origin, it was merely to remove those specific references from the regulations. We will continue our specific reviews following market access requests as we have always done and provide the public opportunity to review and comment on the documents produced as a result of those reviews. However, the requirements for the importation of specific commodities will no longer be found in the regulations themselves. The requirements will continue to be located in the FAVIR database or APHIS' Hawaii and Puerto Rico/U.S. Virgin Islands manuals.

One commenter cited the World Trade Organization's (WTO) Article 5, ''Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection,'' which states: ''In assessing the risk to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of sanitary or phytosanitary protection from such risk, Members shall take into account as relevant economic factors: the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing Member; and the relative cost-effectiveness of alternative approaches to limiting risks.'' The commenter argued that the elimination of the economic impact analysis is in conflict with the WTO mandate, as it will impact APHIS' ability to consider such consequences. The commenter concluded that, given the rapid changes to global fruit and vegetable production patterns, it is not reasonable for APHIS to make a blanket determination that the future economic impact of unspecified foreign imports entering the United States will always be of little significance.

We disagree that our actions are in conflict with WTO Article 5. As stated previously, we will continue to consider the potential economic consequences of pest introduction in the PRAs. This shift to a fully notice-based system will not alter that approach.

[5] To view the final rule, its supporting documents, or the comments that we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0011.*

Comments on Phytosanitary Security

One commenter expressed concern regarding the varying capabilities of countries seeking to export fruit and vegetables to the United States to meet the proposed expanded mitigation measures APHIS may recommend. The commenter recommended that APHIS proceed cautiously on approving new market access from countries with regulatory agencies that have questionable capacity in meeting the scientifically based import requirements needed to ensure the phytosanitary security of U.S. produce.

Several commenters noted that the more steps that are included in a systems approach, the more chance that exists for error in its application. One of the commenters suggested that, therefore, particular attention should be paid to the way in which systems approaches are designed, executed, and enforced.

We disagree with the commenters that the number of steps in a systems approach is necessarily correlated to the likelihood of error in its application. Most mitigation measures that are included in systems approaches, such as packinghouse inspections, follow generally applicable standard operating procedures that typically do not vary significantly from systems approach to systems approach or country to country. In our experience, a systems approach that consists solely of such routine measures is unlikely to encounter errors in its application.

Rather, in our experience, the likelihood of error in the application of mitigation measures most often occurs in those relatively rare instances where the application of a mitigation measure in the systems approach does vary from country to country or site to site, with the chance for error increasing relative to the degree to which those measures differ from more routine measures. In such instances, to address this possibility for error, we exercise a higher degree of APHIS oversight to implement those particular mitigation measures. We also are more likely to conduct a follow-up site visit in the exporting country to monitor the implementation of the operational workplan.

The same commenter stated that it is impossible to test systems approaches designed to address complex pest and disease situations, some of which are being used for the first time, until a considerable volume of fruits or vegetables are imported under the requirements.

Many of these systems are already utilized by U.S. domestic producers to meet requirements required by our trading partners when exporting commodities from the United States. Further, as stated above, very few if any of the elements of the systems approaches will be novel; their effects are well known to APHIS and backed by years of research, knowledge, and experience.

Another commenter said that part of the reduction in the overall timeframe for consideration of import requests comes from the elimination of the Office of Management and Budget's (OMB's) ability to review APHIS rules. The commenter asked how APHIS will ensure that adequate resources are being devoted to mitigation measures in exporting countries or that the appropriate standards for approval of import requests are being achieved if OMB is precluded from undertaking a review of APHIS' actions.

As stated previously, the standards set by APHIS are phytosanitary in nature and, as such, are solely based on sound science. APHIS generally reviews its operational workplans and importation agreements on a yearly basis to ensure that exporting countries are able to continue to meet those requirements. In addition, APHIS will continue to apprise OMB of all notice-based import or interstate movement actions.

Comments on Stakeholder Engagement

One commenter stated that the domestic industry must be provided sufficient time for review and evaluation of any importation request and questioned whether the reduced timeframe afforded by the proposed streamlining process would provide adequate time for APHIS to properly conduct a pest risk analysis. The commenter also noted the absence of OMB review from the streamlined process.

Another commenter proposed that the expanded notice-based process would create a need for increased communication with U.S. stakeholders, specifically when those stakeholders are potentially impacted by specific commodities imported subject to phytosanitary mitigations. The commenter supposed that there would be an increased need for extended public comment periods as well as greater opportunity for stakeholders to evaluate the risk assessment process, including the data supporting inclusion of a given action within the required systems approach.

Another commenter questioned whether 60 days is sufficient time for the industry and other stakeholders to adequately review the science behind the PRA and risk mitigation document. The commenter argued that, depending upon the time of year that the notice is provided, the ability to gather adequate stakeholders with the technical expertise to provide useful input on APHIS' documents may be limited. The commenter asked whether APHIS intends to formally notify the industry upon receipt of a market access request and the beginning of the pest risk analysis development process. If not, the commenter wanted to know if an extension beyond the 60-day review period will be possible. A second commenter stated that stakeholders should be provided opportunities for comment and consultation prior to publication of the draft PRA.

In addition to the draft PRA review period of 30 days, the notices would provide for a comment period of at least 60 days, which would give interested parties a total of 90 days to review and comment on various aspects of the proposed action. While we will not be issuing notification when we first receive a market access request, as the pest risk analysis development process can be quite lengthy depending on the country, the pest situation, and the commodity, the notice-based process does not preclude us from extending the comment period when necessary. During the comment period for the initial notice, stakeholders will have further opportunity to comment on any aspect of the PRA they deem necessary. We have no plans to incorporate stakeholder review and consultation into the process prior to posting the draft PRA. The time savings and regulatory flexibility we anticipate as a result of this change will be realized only through shortening of the rule development process. We will continue to prepare scientific documentation with the same rigor as we have always utilized. In addition to the economic considerations required to be included in the PRA, APHIS will continue to apprise OMB of all notice-based import or interstate movement actions. Further, if the information that will be disseminated in a pest risk analysis is determined to be ''influential'' or ''highly influential'' as those terms are used in the Office of Management and Budget's ''Final Information Quality Bulletin for Peer Review,'' (see 70 FR 2664–2667, published January 14, 2005), then a peer review will be conducted in accordance with USDA's peer review guidance (see *http://www.ocio.usda.gov/document/usdas-peer-review-guidelines*).

The same commenter requested clarification of the current criteria for stakeholder notification in the event that a phytosanitary mitigation measure

is no longer sufficient. The commenter also wanted to know how APHIS reaches such a conclusion via evaluation or review of technical data.

Interception of even one target quarantine pest for a commodity (usually those pests rated high or medium risk in the PRA) at a port of entry triggers an immediate review of the risk mitigations for that commodity. Other factors that may trigger review are an increase in the pest population in the exporting country and reports of a new pest in the exporting country. The procedures for adding or removing measures would be the same regardless of whether or not the fruit or vegetable in question was approved prior to the implementation of the proposed process.

Regarding our current process for notifying stakeholders in the event that we change the risk mitigations for a certain commodity, we issue a Federal Order alerting the general public to the changes in the mitigation measures; this Federal Order is issued through the APHIS Stakeholder Registry, among other means. Federal Orders constitute final agency action under the Administrative Procedure Act and may be subject to challenge in court. A Federal Order is usually accompanied by a letter to State plant regulatory officials regarding its issuance. As soon as possible, we update FAVIR and contact existing permit holders regarding the change. If the change in the mitigation structure will be permanent in nature, we initiate rulemaking to codify that change. The new process will be an initial and final notice regarding any permanent change to established mitigations.

Another commenter wanted to know what the process would be in the event that one or more of the designated phytosanitary measures is found insufficient to mitigate the phytosanitary risk associated with a given commodity or the pest risk analysis requires amendments as a result of stakeholder consultation.

Any necessary changes to the PRA based on stakeholder input would be made either at the end of the 30 day comment period specific to the PRA (prior to the publication of the initial notice) or following the close of the comment period on the initial **Federal Register** notice. Changes to the risk mitigation document would be made following the close of the comment period on the initial **Federal Register** notice. If information is provided during that time that leads us to conclude that the proposed mitigation measures are insufficient to mitigate the phytosanitary risk posed by the pests of concern, we would have the option of adding additional requirements to mitigate that risk or not finalizing the proposed action. We would notify stakeholders of our decision via **Federal Register** notice as well as other methods such as the PPQ Stakeholder Registry. Likewise, if the mitigation measures assigned to an already approved fruit or vegetable are found to be no longer sufficient, we will take measures appropriate to addressing the risk and communicate them through the same channels. In an emergency situation a Federal Order may be issued to alter the conditions of movement or halt it completely.

One commenter requested that APHIS provide more opportunity for stakeholders to provide input regarding import requests. The commenter argued that, in cases where exporting countries are less sophisticated in their agricultural practices than the United States, U.S. industry expertise would prove vital in designing an effective systems approach.

We disagree with the commenter's suggestion. If, based on the findings of our pest risk analysis, we determine that the fruit or vegetable cannot be imported safely, then we would not propose to allow for its importation. Our analyses have always included not only the efficacy of any required treatments or handling methods, but the ability of the exporting country to meet those standards. As stated previously, after initial approval for importation, we examine each program periodically to ensure that the NPPO and foreign exporters are operating according to established standards. The opportunity for public input, which is at least 60 days, is ample time in which stakeholders may address any concerns, questions, or additional necessary information to APHIS.

Comments on Trade Issues

One commenter expressed concern about a potential trade imbalance due to the requirement for cost recovery associated with preclearance and verification inspections through trust fund arrangements. The commenter stated that this obligation creates high administrative cost for U.S. importers and creates an imbalance in relation with trading partners, such as the European Union, that do not engage in cost recovery for phytosanitary inspections undertaken in the United States.

APHIS employs trust fund agreements only for countries that operate under preclearance programs that require APHIS personnel to be stationed in the country. Only a few countries have such programs, and the programs themselves pertain only to a few commodities exported to the United States from those countries. For these reasons, we believe that the commenter overstated the trade imbalances associated with the use of trust fund agreements and cost recovery.

It is worth noting, moreover, that the United States generally does not require such programs, but enters into them typically at the request of the exporting country or an export group from that country. Countries or export groups that request such programs do so based on a belief that the time and cost savings associated with preclearance inspections, rather than inspection at the port of first arrival into the United States, will justify the costs associated with the preclearance inspections. In instances where concern has been raised about the costs of the preclearance program, APHIS has worked with the NPPO to explore ways to minimize those costs.

Another commenter asked what assurances domestic producers have that facilitating our import approval process will prompt a similar response from foreign countries. The commenter also noted that a review of imports and exports of fruits and vegetables in recent years reveals that while imports into the United States continue to grow, exports of U.S. fruits and vegetables lag at a considerable pace. The commenter stated that this result is in direct opposition to assurances made regarding the United States concurrence with the WTO Sanitary and Phytosanitary (SPS) Agreement.

USDA actively and vigorously pursues foreign market access for U.S. products. These efforts have yielded a significant increase in U.S. exports of agricultural products in recent years; indeed, between 2006 and 2014, U.S. agricultural exports more than doubled. Under the SPS Agreement, signatory countries may set the level of phytosanitary protection that they consider appropriate, as long as there is a scientific justification. The level of phytosanitary protection often has direct bearing on how long it takes to approve a market access request. In some instances, USDA has successfully worked with foreign governments to set new terms for market access, thereby facilitating the import approval process for U.S. products.

The same commenter asked that APHIS provide the number of staff hours currently dedicated to fruit and vegetable importation issues and compare that to the number of staff hours that have been dedicated to working on new export opportunities for the U.S. fruit and vegetable industry.

We cannot provide such an accounting given that a number of APHIS staff members work on multiple import and export requests simultaneously. Without clear benefit to associated with keeping such a record, to do so would be time-consuming and overly burdensome. Streamlining our administrative processes will allow the agency to concentrate its expertise on more complex tasks. As stated previously, we also view this rule as a measure for improving the timeliness of our action on import requests, and of our emphasis on science as a basis for decisionmaking while maintaining the fullest practicable opportunity for all interested parties to participate in the process.

The same commenter stated that APHIS indicated during the December webinar that approximately 34 requests for imports into the United States have been handled under the notice-based process since its inception in 2007. The commenter said that APHIS should provide information on how much progress has been made with respect to exports from the United States in that time.

As noted above, U.S. agricultural exports more than doubled between 2006 and 2014.

Another commenter observed that during the webinar, APHIS indicated that U.S. agricultural export interests would benefit due to future reciprocity from trading partners. The commenter said that domestic fruit and vegetable exporters currently face plant quarantine barriers in foreign markets that appear to have little scientific basis, but there is no basis for the assumption that foreign markets will follow the U.S. lead in facilitating the importation process for U.S. commodities. The commenter inquired if APHIS has undertaken any studies to determine whether this claim involving foreign market reciprocity is correct or if APHIS has received assurances from trading partners that they will provide reciprocal access.

APHIS has not performed any studies analyzing the trade reciprocity factor. As stated previously, we are obligated to follow the principles and procedures of the SPS Agreement, including the obligation to base our regulations on science. Other signatories of the SPS Agreement are obligated to do so as well.

Miscellaneous Changes

We note that the proposed rule made reference to the fruit and vegetables manual PPQ maintained related to the importation of fruits and vegetables into the United States. Since the publication of the proposed rule, we have expanded the scope and detail of FAVIR, which rendered the fruit and vegetables manual unnecessarily duplicative. We have therefore discontinued that manual and removed references to it from this rule.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with that one change.

Executive Orders 12866, 13563, 13771 and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. APHIS considers this rule to be a deregulatory action under Executive Order 13771 as the action will allow the public faster access to fruits and vegetables not previously approved for importation or movement from Hawaii and U.S. territories. This will benefit importers by allowing more timely access to U.S. markets. Quicker approval of requests to import fruits and vegetables will also benefit consumers. Details are provided in the economic analysis prepared for this rule.

The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides a final regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the *Regulations.gov* website (see footnote 3 in this document for a link to *Regulations.gov*) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Requirements for the importation of fruits and vegetables include risk mitigation measures such as treatments, inspections, and certifications. A fruit or vegetable is not allowed to be imported until APHIS has completed the rulemaking process or the notice-based process to approve entry of the fruit or vegetable, based on specific phytosanitary measures. This rule will establish a single performance standard that, when met, will allow notice-based approval of fruits and vegetables for importation into the United States. The region- and commodity-specific phytosanitary requirements currently in the regulations will be removed and replaced with this single performance standard. The rule will also establish an equivalent single performance standard that will govern the interstate movement of fruits and vegetables from Hawaii and U.S. territories.

The rule will benefit both APHIS in its operations and U.S. businesses and consumers. APHIS will be able to use its resources more efficiently and the public will have quicker access to fruits and vegetables newly approved for importation or movement from Hawaii and U.S. territories.

APHIS has already established a notice-based process for allowing the importation or movement from Hawaii and U.S. territories of certain fruits and vegetables, subject to one or more specified phytosanitary measures. For fruits and vegetables for which the risks are not adequately mitigated by these specified measures and thereby do not qualify under the current notice-based process, the rulemaking process can range from 18 months to over 3 years. The time needed for approval under the notice-based process ranges from 6 to 12 months, that is, 6 months to 2.5 years sooner.

Consumers and businesses will benefit from more timely access to fruits and vegetables for which entry or movement approval currently requires rulemaking. While certain businesses will face increased competition at an earlier time for the subject fruits and vegetables, if they are produced domestically, overall economic impacts of the rule will be positive. The rule will not alter the manner in which the risks associated with a fruit or vegetable import or interstate movement request are evaluated and mitigated. Principal industries that could be affected by the rule, fruit and vegetable farms and fruit and vegetable importers, are largely composed of small entities.

As a measure of the net benefit of the rule to U.S. businesses and consumers, we estimate net welfare gains that could have been realized for a set of past import actions (11 import rules allowing 8 commodities from 7 countries or regions, in various combinations) if the quicker, notice-based process for acquiring market access had been possible. The rules were in preparation or promulgated over the 7 year period, 2012 through 2018. The 7 year sum of annual net welfare gains is estimated to range from about $13.7 million to $47.5

million, yielding annual average net welfare gains from these import actions of $2.0 million to $6.8 million.

Net welfare gains that could have been realized under this rule for this set of import actions range from about $1 million to $17 million (calculated as the low-range annual net welfare gain multiplied by half year and the high-range annual net welfare gain multiplied by 2.5 years). These estimates are derived based on the time period and commodities specified, and are considered representative of future welfare gains that will be attributable to the rule. Net welfare gains actually realized will depend on the particular commodities that acquire market access, their source countries, and market conditions at that time.

Interpreting these gains as cost savings accrued by using the quicker notice-based process rather than having to wait for rule promulgation, and in accordance with guidance on complying with Executive Order 13771, the primary cost savings estimate for this rule is $562,500. This value is the mid-point estimate of cost savings annualized in perpetuity using a 7 percent discount rate.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Executive Order 13175

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

APHIS has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, APHIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

National Environmental Policy Act

The majority of the regulatory changes in this document are nonsubstantive, and would therefore have no effects on the environment. However, this rule will allow APHIS to approve certain new fruits and vegetables for importation into the United States without undertaking rulemaking. Despite the fact that those fruits and vegetable imports will no longer be contingent on the completion of rulemaking, the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*) will still apply. As such, for each additional fruit or vegetable approved for importation, APHIS will make available to the public documentation related to our analysis of the potential environmental effects of such new imports. This documentation will likely be made available at the same time and via the same **Federal Register** notice as the risk analysis for the proposed new import.

Paperwork Reduction Act

In accordance with section 3507 (d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), some of the information collection requirements included in this final rule are approved by OMB under control number 0579–0346. In addition, on January 29, 2018, APHIS published a 60-day notice in the **Federal Register** (83 FR 4023–4024, Docket No. APHIS–2017–0108), to reinstate OMB control number 0579–0049 which includes burden activities implemented by this rule. In accordance with the procedure for reinstating an information collection, USDA will be publishing a 30-day notice in the **Federal Register**. Once OMB control number 0579–0049 is approved, as fruits and vegetables are approved for importation or interstate movement based on this rule, their associated burden activities and burden will be added to the information collection via the submission of a quarterly report to OMB.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the EGovernment Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

List of Subjects

7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR parts 318 and 319 as follows:

PART 318—STATE OF HAWAII AND TERRITORIES QUARANTINE NOTICES

■ 1. The authority citation for part 318 continues to read as follows:

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

§ 318.13–2 [Amended]

■ 2. Section 318.13–2 is amended by removing the definition for ''Approved growing media''.

■ 3. Section 318.13–4 is revised to read as follows:

§ 318.13–4 Authorization of certain fruits and vegetables for interstate movement.

(a) *Determination by the Administrator.* No fruit or vegetable is authorized for interstate movement from Hawaii or the territories unless the Administrator has determined that the risk posed by each quarantine pest associated with the fruit or vegetable can be reasonably mitigated by the application of one or more phytosanitary measures designated by the Administrator.

(b) *Designated phytosanitary measures.* (1) The fruits and vegetables are subject to phytosanitary treatments, which could include, but are not limited to, pest control treatments in the field or growing site, and post-harvest treatments.

(2) The fruits and vegetables are subject to growing area pest mitigations, which could include, but are not limited to, detection surveys, trapping requirements, pest exclusionary structures, and field inspections.

(3) The fruits and vegetables are subject to safeguarding and movement mitigations, which could include, but are not limited to, safeguarded transport, box labeling, limited

distribution, insect-proof boxes, and importation as commercial consignments only.

(4) The fruits and vegetables are subject to administrative mitigations, which could include, but are not limited to, registered fields or orchards, registered growing sites, registered packinghouses, inspection in the State of origin by an inspector, and operational workplan monitoring.

(5) The fruits and vegetables are subject to any other measures deemed appropriate by the Administrator.

(c) *Authorized fruits and vegetables*—(1) *Comprehensive list.* The name and origin of all fruits and vegetables authorized for interstate movement under this section, as well as the applicable requirements for their movement, may be found on the internet at *https://www.aphis.usda.gov/aphis/ourfocus/planthealth/complete-list-of-electronic-manuals.*

(2) *Fruits and vegetables authorized for interstate movement prior to October 15, 2018.* Fruits and vegetables that were authorized for interstate movement under this subpart as of October 15, 2018 may continue to be moved interstate under the same requirements that applied before October 15, 2018, except as provided in paragraph (c)(4) of this section.

(3) *Other fruits and vegetables.* Fruits and vegetables not already authorized for interstate movement as described in paragraph (c)(2) of this section may be authorized for interstate movement only after:

(i) APHIS has analyzed the pest risk posed by the interstate movement of a fruit or vegetable and has determined that the risk posed by each quarantine pest associated with the fruit or vegetable can be reasonably mitigated by the application of one or more phytosanitary measures;

(ii) APHIS has made its pest risk analysis and determination available for public comment for at least 60 days through a notice published in the **Federal Register**; and

(iii) The Administrator has announced his or her decision in a subsequent **Federal Register** notice to begin allowing interstate movement of the fruit or vegetable subject to the phytosanitary measures specified in the notice.

(4) *Changes to phytosanitary measures.* (i) If the Administrator determines that the phytosanitary measures required for a fruit or vegetable that has been authorized interstate movement under this subpart are no longer sufficient to reasonably mitigate the pest risk posed by the fruit or vegetable, APHIS will prohibit or further restrict interstate movement of the fruit or vegetable. APHIS will also publish a notice in the **Federal Register** advising the public of its finding. The notice will specify the amended interstate movement requirements, provide an effective date for the change, and invite public comment on the subject.

(ii) If the Administrator determines that any of the phytosanitary measures required for a fruit or vegetable that has been authorized interstate movement under this subpart are no longer necessary to reasonably mitigate the pest risk posed by the fruit or vegetable, APHIS will make new pest risk documentation available for public comment, in accordance with paragraph (c)(3) of this section, prior to allowing interstate movement of the fruit or vegetable subject to the phytosanitary measures specified in the notice.

(Approved by the Office of Management and Budget under control number 0579–0346)

§ 318.13–13 [Amended]

■ 4. Section 318.13–13 is amended by removing the last sentence.

§ 318.13–16 [Removed]

■ 5. Section 318.13–16 is removed.

§ 318.13–17 [Redesignated as § 318.13–16]

■ 6. Section 318.13–17 is redesignated as § 318.13–16.

§ 318.13–16 [Amended]

■ 7. In newly redesignated § 318.13–16, paragraph (a)(1) is amended by removing the word ''under'' and adding the words ''in accordance with'' in its place.

§§ 318.13–18 through 318.13–22 [Removed]

■ 8. Sections 318.13–18 through 318.13–22 are removed.

§ 318.13–23 [Redesignated as § 318.13–17]

■ 9. Section 318.13–23 is redesignated as § 318.13–17.

§§ 318.13–24 through 318.13–26 [Removed]

■ 10. Sections 318.13–24 through § 318.13–26 are removed.

PART 319—FOREIGN QUARANTINE NOTICES

■ 11. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Subpart—Citrus Fruit [Removed]

■ 12. Subpart—Citrus Fruit, consisting of § 319.28, is removed.

§ 319.56–2 [Amended]

■ 13. Section 319.56–2 is amended by removing the definitions for ''Above ground parts,'' ''Cucurbits'', ''Field'', ''Place of production'', ''Production site'', and ''West Indies''.

■ 14. Section 319.56–4 is revised to read as follows:

§ 319.56–4 Authorization of certain fruits and vegetables for importation.

(a) *Determination by the Administrator.* No fruit or vegetable is authorized importation into the United States unless the Administrator has determined that the risk posed by each quarantine pest associated with the fruit or vegetable can be reasonably mitigated by the application of one or more phytosanitary measures designated by the Administrator and the fruit or vegetable is imported into the United States in accordance with, and as stipulated in, the permit issued by the Administrator.

(b) *Designated phytosanitary measures.* (1) The fruits and vegetables are subject to phytosanitary treatments, which could include, but are not limited to, pest control treatments in the field or growing site, and post-harvest treatments.

(2) The fruits and vegetables are subject to growing area pest mitigations, which could include, but are not limited to detection surveys, trapping requirements, pest exclusionary structures, and field inspections.

(3) The fruits and vegetables are subject to safeguarding and movement mitigations, which could include, but are not limited to, safeguarded transport, box labeling, limited distribution, insect-proof boxes, and importation as commercial consignments only.

(4) The fruits and vegetables are subject to administrative mitigations, which could include, but are not limited to, registered fields or orchards, registered growing sites, registered packinghouses, inspection in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and operational workplan monitoring.

(5) The fruits and vegetables are subject to any other measures deemed appropriate by the Administrator.

(c) *Authorized fruits and vegetables*—(1) *Comprehensive list.* The name and origin of all fruits and vegetables authorized importation under this section, as well as the applicable

requirements for their importation, may be found on the internet at *https://epermits.aphis.usda.gov/manual.*

(2) *Fruits and vegetables authorized importation prior to October 15, 2018.* Fruits and vegetables that were authorized importation under this subpart either directly by permit or by specific regulation as of October 15, 2018 may continue to be imported into the United States under the same requirements that applied before October 15, 2018, except as provided in paragraph (c)(4) of this section.

(3) *Other fruits and vegetables.* Fruits and vegetables not already authorized for importation as described in paragraph (c)(2) of this section may be authorized importation only after:

(i) APHIS has analyzed the pest risk posed by the importation of a fruit or vegetable from a specified foreign region and has determined that the risk posed by each quarantine pest associated with the fruit or vegetable can be reasonably mitigated by the application of one or more phytosanitary measures;

(ii) APHIS has made its pest risk analysis and determination available for public comment for at least 60 days through a notice published in the **Federal Register**; and

(iii) The Administrator has announced his or her decision in a subsequent **Federal Register** notice to authorize the importation of the fruit or vegetable subject to the phytosanitary measures specified in the notice.

(4) *Changes to phytosanitary measures.* (i) If the Administrator determines that the phytosanitary measures required for a fruit or vegetable that has been authorized importation under this subpart are no longer sufficient to reasonably mitigate the pest risk posed by the fruit or vegetable, APHIS will prohibit or further restrict importation of the fruit or vegetable. APHIS will also publish a notice in the **Federal Register** advising the public of its finding. The notice will specify the amended importation requirements, provide an effective date for the change, and will invite public comment on the subject.

(ii) If the Administrator determines that any of the phytosanitary measures required for a fruit or vegetable that has been authorized importation under this subpart are no longer necessary to reasonably mitigate the pest risk posed by the fruit or vegetable, APHIS will make new pest risk documentation available for public comment, in accordance with paragraph (c)(3) of this section, prior to allowing importation of the fruit or vegetable subject to the phytosanitary measures specified in the notice.

(Approved by the Office of Management and Budget under control number 0579–0049)

§§ 319.56–13 through 319.56–83 [Removed]

■ 15. Sections 319.56–13 through 319.56–83 are removed.

Done in Washington, DC, this 10th day of September 2018.

Greg Ibach,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2018–19984 Filed 9–13–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0328; Airspace Docket No. 18–ASO–7]

RIN 2120–AA66

Amendment of Class D Airspace and Class E Airspace, and Revocation of Class E Airspace: New Smyrna Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on August 23, 2018, amending Class D airspace and Class E airspace extending upward from 700 feet or more above the surface at New Smyrna Beach Municipal Airport, New Smyrna Beach, FL. The longitude coordinate symbols for Massey Ranch Airpark listed in Class E airspace areas extending upward from 700 feet were typed as degrees, minutes, minutes instead of degrees, minutes, and seconds. Also, a parenthesis was excluded from the airport's geographic coordinates.

DATES: Effective 0901 UTC, November 8, 2018. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Av., College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (83 FR 42585, August 23, 2018) for Doc. No. FAA–2018–0328, amending Class D airspace, and Class E airspace extending upward from 700 feet or more above the surface at New Smyrna Beach Municipal Airport, New Smyrna Beach, FL. Subsequent to publication, the FAA found that the symbols of the longitude coordinate for Massey Ranch Airpark, listed in the description under Class E airspace extending upward from 700 feet or more above the surface, was printed incorrectly. Also, a parenthesis was omitted from the geographic coordinates of New Smyrna Beach Municipal Airport. This action corrects these errors.

Class D and E airspace designations are published in paragraphs 5000 and 6005, respectively, of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR part 71.1. The E airspace designations listed in this document will be published subsequently in the Order.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, in the **Federal Register** of August 23, 2018 (83 FR 42585) FR Doc. 2018–18035, Amendment of D Airspace and Class E Airspace, and Revocation of Class E Airspace; New Smyrna Beach, FL, is corrected as follows:

§ 71.1 [Amended]

ASO FL E5 New Smyrna Beach, FL [Corrected]

■ On page 42586, column 3 line 53, remove Lat. 29°03′21″ N, long. 80°56′56″ W) and add in its place (Lat. 29°03′21″ N, long. 80°56′56″ W).

■ On page 42586, column 3 line 55, remove (Lat. 28°58′44″ N, long. 80°55′29′ W) and add in its place (Lat. 28°58′44″ N, long. 80°55′29″ W)

Issued in College Park, Georgia, on September 6, 2018.

Ken Brissenden,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2018–19978 Filed 9–13–18; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

RIN 3084–AA98

16 CFR Part 310

Telemarketing Sales Rule Fees

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the ''Commission'') is amending its Telemarketing Sales Rule (''TSR'') by updating the fees charged to entities accessing the National Do Not Call Registry (the ''Registry'') as required by the Do-Not-Call Registry Fee Extension Act of 2007.

DATES: This final rule (the revised fees) will become effective October 1, 2018.

ADDRESSES: Copies of this document are available on the internet at the Commission's website: *https://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Ami Joy Dziekan, (202) 326–2648, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Room CC–9225, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: To comply with the Do-Not-Call Registry Fee Extension Act of 2007 (Pub. L. 110–188, 122 Stat. 635) (''Act''), the Commission is amending the TSR by updating the fees entities are charged for accessing the Registry as follows: The revised rule increases the annual fee for access to the Registry for each area code of data from $62 to $63 per area code; and increases the maximum amount that will be charged to any single entity for accessing area codes of data from $17,021 to $17,406. Entities may add area codes during the second six months of their annual subscription; the fee for those additional area codes of data increases from $31 to $32.

These increases are in accordance with the Act, which specifies that beginning after fiscal year 2009, the dollar amounts charged shall be increased by an amount equal to the amounts specified in the Act, multiplied by the percentage (if any) by which the average of the monthly consumer price index (for all urban consumers published by the Department of Labor) (''CPI'') for the most recently ended 12-month period ending on June 30 exceeds the CPI for the 12-month period ending June 30, 2008. The Act also states that any increase shall be rounded to the nearest dollar and that there shall be no increase in the dollar amounts if the change in the CPI since the last fee increase is less than one percent. For fiscal year 2009, the Act specified that the original annual fee for access to the Registry for each area code of data was $54 per area code, or $27 per area code of data during the second six months of an entity's annual subscription period, and that the maximum amount that would be charged to any single entity for accessing area codes of data would be $14,850.

The determination whether a fee change is required and the amount of the fee change involves a two-step process. First, to determine whether a fee change is required, we measure the change in the CPI from the time of the previous increase in fees. There was an increase in the fees for fiscal year 2018. Accordingly, we calculated the change in the CPI since last year, and the increase was 2.25 percent. Because this change is over the one percent threshold, the fees will change for fiscal year 2019.

Second, to determine how much the fees should increase this fiscal year, we use the calculation specified by the Act set forth above: The percentage change in the baseline CPI applied to the original fees for fiscal year 2009. The average value of the CPI for July 1, 2007 to June 30, 2008 was 211.702; the average value for July 1, 2017 to June 30, 2018 was 248.126, an increase of 17.21 percent. Applying the 17.21 percent increase to the base amount from fiscal year 2009, leads to a $63 fee for access to a single area code of data for a full year for fiscal year 2019, an increase of $1 from last year. The actual amount is $63.29, but when rounded, pursuant to the Act, $63 is the appropriate fee. The fee for accessing an additional area code for a half year increases from $31 to $32 (rounded from $31.65). The maximum amount charged increases to $17,406 (rounded from $17,405.69).

Administrative Procedure Act; Regulatory Flexibility Act; Paperwork Reduction Act. The revisions to the Fee Rule are technical in nature and merely incorporate statutory changes to the TSR. These statutory changes have been adopted without change or interpretation, making public comment unnecessary. Therefore, the Commission has determined that the notice and comment requirements of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b). For this reason, the requirements of the Regulatory Flexibility Act also do not apply. *See* 5 U.S.C. 603, 604.

Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3521, the Office of Management and Budget (''OMB'') approved the information collection requirements in the Amended TSR and assigned the following existing OMB Control Number: 3084–0169. The amendments outlined in this Final Rule pertain only to the fee provision (§ 310.8) of the Amended TSR and will not establish or alter any record keeping, reporting, or third-party disclosure requirements elsewhere in the Amended TSR.

List of Subjects in 16 CFR Part 310

Advertising, Consumer protection, Reporting and recordkeeping requirements, Telephone, Trade practices.

Accordingly, the Federal Trade Commission amends part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108; 15 U.S.C. 6151–6155.

■ 2. In § 310.8, revise paragraphs (c) and (d) to read as follows:

§ 310.8 Fee for access to the National Do Not Call Registry.

* * * * *

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is $63 for each area code of data accessed, up to a maximum of $17,406; *provided,* however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further,* that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. No person may participate in any arrangement to share the cost of accessing the National Do Not Call Registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in paragraph (c) of this section, each person excepted under paragraph (c) from paying the annual fee, and each person excepted from paying an annual fee under § 310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee (''the annual period''). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first

pay $63 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first pay $32 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2018–20048 Filed 9–13–18; 8:45 am]

BILLING CODE 6750–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the benefit payments regulation for valuation dates in October 2018 and interest assumptions under the asset allocation regulation for valuation dates in the fourth quarter of 2018. The interest assumptions are used for valuing and paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Melissa Rifkin (*rifkin.melissa@PBGC.gov*), Attorney, Regulatory Affairs Division, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, 202–326–4400, ext. 6563. (TTY users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4400, ext. 6563.)

SUPPLEMENTARY INFORMATION: PBGC's regulations on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) and Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulations are also published on PBGC's website (*http://www.pbgc.gov*).

The interest assumptions in appendix B to part 4044 are used to value benefits for allocation purposes under ERISA section 4044. PBGC uses the interest assumptions in appendix B to part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for October 2018 and updates the asset allocation interest assumptions for the fourth quarter (October through December) of 2018.

The fourth quarter 2018 interest assumptions under the allocation regulation will be 2.84 percent for the first 20 years following the valuation date and 2.76 percent thereafter. In comparison with the interest assumptions in effect for the third quarter of 2018, these interest assumptions represent a decrease of 5 years in the select period (the period during which the select rate (the initial rate) applies), an increase of 0.31 percent in the select rate, and an increase of 0.12 percent in the ultimate rate (the final rate).

The October 2018 interest assumptions under the benefit payments regulation will be 1.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for September 2018, these interest assumptions represent no change in the immediate rate and no changes in i1, i2, or i3.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits under plans with valuation dates during October 2018, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 300 is added at the end of the table to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
300	10–1–18	11–1–18	1.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 300 is added at the end of the table to read as follows:

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
300	10–1–18	11–1–18	1.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, an entry for ''October–December 2018'' is added at the end of the table to read as follows:

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
October–December 2018	0.0284	1–20	0.0276	>20	N/A	N/A

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2018–19835 Filed 9–13–18; 8:45 am]

BILLING CODE 7709–02–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4231

RIN 1212–AB31

Mergers and Transfers Between Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: PBGC is issuing a final rule amending its regulation on Mergers and Transfers Between Multiemployer Plans to implement procedures and information requirements for a request for a facilitated merger. This final rule also reorganizes and updates provisions in the existing regulation.

DATES: This rule is effective October 15, 2018.

FOR FURTHER INFORMATION CONTACT: Theresa B. Anderson (*anderson.theresa@pbgc.gov*), Deputy Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington DC 20005–4026; 202–326–4400, ext. 6353. (TTY users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4400, extension 6353.)

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This final rule is needed to implement statutory changes under the Multiemployer Pension Reform Act of 2014 (MPRA) affecting mergers of multiemployer plans under title IV of the Employee Retirement Income Security Act of 1974 (ERISA) and to update PBGC's existing regulatory requirements applicable to mergers and transfers between multiemployer plans. On June 6, 2016, PBGC published a proposed rule to amend its regulation on Mergers and Transfers Between Multiemployer Plans (81 FR 36229). In this final rule, PBGC adopts its proposed changes implementing MPRA, with some modifications in response to public comments, and some of its proposed changes updating and reorganizing the existing regulation. To allow more consideration of the concerns raised by the public comments, PBGC is not adopting its proposed changes to provisions of the existing regulation related to plan solvency.

PBGC's legal authority for this action is based on section 4002(b)(3) of ERISA, which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA, and section 4231 of ERISA, which sets forth the statutory requirements for mergers and transfers between multiemployer plans.

Major Provisions of the Regulatory Action

This final rule makes one major and numerous minor changes to PBGC's regulation on Mergers and Transfers

Between Multiemployer Plans. The major change is the addition of procedures and information requirements for a voluntary request for a facilitated merger to implement MPRA's changes to section 4231 of ERISA. This final rule also reorganizes and updates existing provisions of PBGC's regulation. The changes to part 4231 and the related public comments are discussed below.

Background

In General

The Pension Benefit Guaranty Corporation (PBGC) is a Federal corporation created under title IV of Employee Retirement Income Security Act of 1974 (ERISA) to guarantee the payment of pension benefits under private-sector defined benefit pension plans.

PBGC administers two insurance programs—one for single-employer pension plans, and one for multiemployer pension plans. This final rule applies only to the multiemployer program.

Under section 4231(b) of ERISA, mergers of two or more multiemployer plans and transfers of assets and liabilities between multiemployer plans must comply with four requirements:

(1) The plan sponsor must notify PBGC at least 120 days before the effective date of the merger or transfer;

(2) No participant's or beneficiary's accrued benefit may be lower immediately after the effective date of the merger or transfer than the benefit immediately before that date;

(3) The benefits of participants and beneficiaries must not be reasonably expected to be subject to suspension as a result of plan insolvency under section 4245 of ERISA; and

(4) An actuarial valuation of the assets and liabilities of each of the affected plans must have been performed during the plan year preceding the effective date of the merger or transfer, based upon the most recent data available as of the day before the start of that plan year, or as prescribed by PBGC's regulation.

Section 4231(a) of ERISA grants PBGC authority to vary these requirements by regulation. Part 4231 of PBGC's regulations implements and interprets these requirements by providing a procedure under which plan sponsors must notify PBGC of any merger or transfer between multiemployer plans and may request a compliance determination from PBGC.

Under section 4261 of ERISA, PBGC provides financial assistance to multiemployer plans that are or will be insolvent under section 4245 of ERISA. Generally, a plan is insolvent when it is unable to pay benefits when due during the plan year. PBGC provides financial assistance to an insolvent plan in the form of a loan sufficient to pay its participants' and beneficiaries' guaranteed benefits.

In a few cases before the enactment of MPRA, PBGC provided financial assistance (within the meaning of section 4261 of ERISA) to facilitate the merger of a soon-to-be insolvent multiemployer plan into a larger, more financially secure multiemployer plan. The financial assistance provided was a single payment that generally covered the cost of guaranteed benefits under the failing plan. In exchange, the larger, more financially secure plan assumed responsibility for paying the full plan benefits of the participants and beneficiaries in the failing plan with which it merged. As a result, the participants and beneficiaries in the failing plan received more than they would have in the absence of a facilitated merger from a financially secure plan that was more likely to remain ongoing. In addition, the financial assistance provided was generally less than PBGC's valuation of the present value of future financial assistance to the failing plan.

Multiemployer Pension Reform Act of 2014

MPRA was enacted in December 2014 and contains several statutory reforms to assist financially troubled multiemployer plans and to improve the financial condition of PBGC's multiemployer insurance program. Sections 121 and 122 of MPRA provide that PBGC may assist financially troubled multiemployer plans under certain conditions.[1] This rule is necessitated by section 121 of MPRA.

Section 121 of MPRA authorizes PBGC to facilitate multiemployer plan mergers. Facilitation includes various forms of technical assistance as well as financial assistance (within the meaning of section 4261) if certain statutory conditions are met. The decision to facilitate a merger is within PBGC's discretion. Furthermore, before PBGC may exercise this discretion, it must first determine—in consultation with the Participant and Plan Sponsor Advocate[2]—that the merger is in the interests of the participants and beneficiaries of at least one of the plans and is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans.

As added by MPRA, section 4231(e)(1) of ERISA provides that, upon request by the plan sponsors, PBGC may take such actions as it deems appropriate to promote and facilitate the merger of two or more multiemployer plans. Facilitation may include training, technical assistance, mediation, communication with stakeholders, and support with related requests to other government agencies.

Under section 4231(e)(2), PBGC may also provide financial assistance (within the meaning of section 4261) to facilitate a merger that it determines is necessary to enable one or more of the plans involved to avoid or postpone insolvency, if the following statutory conditions are satisfied:

- *Critical and declining status.* Under section 4231(e)(2)(A) of ERISA, one or more of the plans involved in the merger must be in critical and declining status as defined in section 305(b)(6). Generally, a plan is in critical and declining status if it is in critical status under any subparagraph of section 305(b)(2) and is projected to become insolvent within 15–20 years.
- *Long-term loss and plan solvency.* Under section 4231(e)(2)(B), PBGC must reasonably expect that—
- Financial assistance will reduce PBGC's expected long-term loss with respect to the plans involved; and
- Financial assistance is necessary for the merged plan to become or remain solvent.
- *Certification.* Under section 4231(e)(2)(C), PBGC must certify to Congress that its ability to meet existing financial assistance obligations to other plans will not be impaired by the financial assistance.
- *Source of funding.* Under section 4231(e)(2)(D), financial assistance must be paid exclusively from the PBGC fund for basic benefits guaranteed for multiemployer plans.

In addition, section 4231(e)(2) requires that, not later than 14 days after the provision of financial assistance, PBGC provide notice of the financial assistance to the Committee on

[1] Section 122 of MPRA amended section 4233 of ERISA to provide a new statutory framework for partitions. PBGC issued an interim final rule under section 4233 of ERISA on June 19, 2015 (80 FR 35220), and a final rule on December 23, 2015 (80 FR 79687).

[2] The Participant and Plan Sponsor Advocate position was created in 2012 by the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141 (126 Stat. 405 (2012)). *See* section 4004 of ERISA for the rules governing this position. PBGC is not defining the Participant and Plan Sponsor Advocate's consultative role in determining how the merger affects the interests of the participants and beneficiaries of the plans involved but believes that role should evolve based on experience in implementing this rule.

Education and the Workforce of the House of Representatives; the Committee on Ways and Means of the House of Representatives; the Committee on Finance of the Senate; and the Committee on Health, Education, Labor, and Pensions of the Senate.

RFI and Proposed Rule

On February 18, 2015, PBGC published in the **Federal Register** (80 FR 8712) a request for information (RFI) to solicit information on issues PBGC should consider for a proposed rule; PBGC received 20 comments in response to the RFI.[3] In general, commenters expressed strong support for MPRA's changes to the merger rules under section 4231 of ERISA, and urged PBGC to issue timely guidance to the public on the types of information, documents, data, and actuarial projections needed for a request to be complete.

On June 6, 2016, PBGC published (81 FR 36229) a proposed rule to amend PBGC's regulation on Mergers and Transfers Between Multiemployer Plans (29 CFR part 4231) to implement MPRA's changes to section 4231 of ERISA.[4] PBGC also proposed to reorganize and update provisions of the existing regulation to reflect other changes in law.

PBGC provided a 60-day comment period for the proposed rule and received 10 comments from: Employers contributing to multiemployer plans; a union; and associations representing multiemployer plans, pension practitioners, and employers contributing to multiemployer plans. With some modifications in response to public comments it received, PBGC adopts in this final rule its proposed changes implementing MPRA. PBGC also adopts some of its proposed changes updating and reorganizing the existing regulation. To allow more consideration of public comments, PBGC is not adopting its proposed changes to provisions of the existing regulation related to plan solvency. The comments, PBGC's responses to the comments, and the changes adopted in this final rule are discussed below.

Overview

This final rule makes one major and numerous minor changes to PBGC's regulation on Mergers and Transfers Between Multiemployer Plans. The major change is the addition of procedures and information requirements for a voluntary request for a facilitated merger under section 4231(e) of ERISA, added by MPRA. This final rule also reorganizes and updates existing provisions of PBGC's regulation. The changes and the related public comments are discussed below.

Under this final rule, like the proposed, part 4231 provides guidance on: (1) The process for submitting a notice of merger or transfer, and a request for a compliance determination or facilitated merger; (2) the information required in such notices and requests; (3) the notification process for PBGC decisions on requests for facilitated mergers; and (4) the scope of PBGC's jurisdiction over a merged plan that has received financial assistance. This final rule reorganizes part 4231 by dividing it into subparts. Subpart A contains the general merger and transfer rules. Subpart B provides guidance on procedures and information requirements for facilitated mergers, including those involving financial assistance.

Section 4231 of ERISA and part 4231 do not address the requirements of title I of ERISA (other than section 406(a) and (b)(2), in the event of a compliance determination). In most instances, implementation of the mergers and transfers addressed in this final rule, including facilitated mergers, will involve conduct that is also subject to the fiduciary responsibility standards of part 4 of subtitle B of title I of ERISA. Among other things, these standards, which are enforced by the Department of Labor (DOL), require that a fiduciary with respect to a plan act prudently, solely in the interest of the participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan. The fact that a merger or transfer, including a facilitated merger, may satisfy title IV of ERISA and the regulations thereunder is not determinative of whether it satisfies the requirements of part 4 of subtitle B of title I of ERISA (other than section 406(a) and (b)(2), in the event of a compliance determination).

Discussion of Comments

Plan Solvency Demonstrations

Most comments to PBGC's proposed rule addressed PBGC's proposed changes to provisions in its existing regulation—in particular, changes to the safe harbor solvency tests and to which plans must satisfy the more rigorous test for ''significantly affected plans.'' PBGC's regulation provides ''plan solvency'' tests under § 4231.6 that operate as regulatory safe harbors under section 4231(b)(3) of ERISA. Section 4231(b)(3) of ERISA prohibits a merger or transfer unless ''the benefits of participants and beneficiaries are not reasonably expected to be subject to suspension under section 4245.'' Section 4245, in turn, provides that an insolvent plan must suspend benefits that are above the level guaranteed by PBGC to the extent the plan has insufficient assets to pay such benefits. PBGC's experience suggests that its proposed changes to the ''plan solvency'' tests would result in a more reliable demonstration that benefits are not reasonably expected to be subject to suspension under section 4245 of ERISA because of insolvency.

For a plan that is not a significantly affected plan, § 4231.6(a) provides two alternative ''plan solvency'' tests. PBGC proposed to change the test in § 4231.6(a)(1) by increasing the multiple by which plan assets after the transaction must equal or exceed benefit payments for the plan year before the transaction from ''five times the benefit payments'' to ''ten times the benefit payments.'' PBGC also proposed to change the test in § 4231.6(a)(2) by increasing the number of years after the transaction for which assets, contributions, and investment earnings must cover expenses and benefit payments from ''five plan years'' to ''ten plan years.''[5]

PBGC proposed similar changes to the ''plan solvency'' test in § 4231.6(b) for significantly affected plans. PBGC proposed to change the requirement in § 4231.6(b)(1) that contributions satisfy the minimum funding requirement for the first ''five plan years'' after the transaction to the first ''ten plan years.'' PBGC also proposed to change the requirement in § 4231.6(b)(2) that assets cover the total benefit payments for the first ''five plan years'' after the transaction to ''ten plan years.'' Finally, PBGC proposed to change the amortization period in § 4231.6(b)(4)(i) from 25 to 15 years to reflect the amortization period generally applicable to changes in funding of multiemployer plans under PPA.[6]

PBGC also proposed to change which plans would be subject to the more rigorous test for significantly affected plans. PBGC proposed to amend the definition of ''significantly affected plan'' in § 4231.2 to include a plan in endangered or critical status, as defined

[3] The RFI and comments are accessible at *http://www.pbgc.gov/prac/pg/other/guidance/multiemployer-notices.html.*

[4] The proposed rule and comments are accessible at *https://www.pbgc.gov/prac/pg/other/guidance/pending-proposed-rules.*

[5] PBGC also proposed to transpose § 4231.6(a)(1) and (2).

[6] *See* section 304(b) of ERISA.

in section 305(b) of ERISA,[7] that engages in a transfer (other than a de minimis transfer). In PBGC's view, endangered and critical status plans generally present a greater risk of insolvency, and when these plans engage in non-de minimis transfers their risk of insolvency may increase.

Eight commenters responded to PBGC's proposed changes to the ''plan solvency'' tests and to the definition of a ''significantly affected plan.'' The commenters stated, in part, that PBGC's proposed changes to the ''plan solvency'' tests would make mergers and transfers more difficult or prohibit them, would substantially expand burden for plan sponsors, and would restrict options for plans. For example, commenters stated that two critical and declining status plans engaging in a merger, resulting in a merged plan projected to become insolvent in more than five but less than 10 years, would likely satisfy the applicable ''plan solvency'' test in § 4231.6(a) of the existing regulation but not the proposed regulation. In addition, commenters stated that a critical status plan engaging in a transfer would be unlikely to satisfy PBGC's proposed changes to the ''plan solvency'' test for a significantly affected plan—specifically, the requirement in § 4231.6(b)(1) that contributions satisfy the minimum funding requirement for 10 plan years after the transaction.

These commenters also considered PBGC's proposed change to the definition of a ''significantly affected plan'' unduly restrictive. Some commenters agreed with PBGC's assessment of the heightened risk of insolvency associated with transfers by endangered and critical status plans. But commenters suggested that PBGC could address this risk directly by requiring that the transaction postpone the date when the plan is projected to become insolvent.

In addition, these commenters stated that PBGC's proposed change to the definition of a ''significantly affected plan'' would prohibit transfers permitted under PBGC's existing regulation, even if the transfers would be beneficial for the plans and their participants. For example, a critical and declining status plan engaging in a non-de minimis transfer of accrued benefits and less than 15% of its assets would not be a significantly affected plan under PBGC's existing regulation and would likely satisfy the applicable ''plan solvency'' test in § 4231.6(a). But under PBGC's proposed changes, a critical and declining status plan that engages in a non-de minimis transfer would be a significantly affected plan and would not satisfy the applicable ''plan solvency'' test in § 4231.6(b). According to commenters, such a transfer from a critical and declining status plan could postpone the date the plan is projected to become insolvent and would effectively eliminate the risk of loss associated with the transferred benefits.

Moreover, four commenters stated that PBGC should otherwise update the solvency test for significantly affected plans. According to one commenter, the solvency test in § 4231.6(b) of the existing regulation is very difficult to demonstrate for most significantly affected plans. These commenters agreed that the requirement in § 4231.6(b)(3)—that contributions cover benefit payments in the first plan year after the transaction—could not be demonstrated for most mature plans, including plans that are well funded and projected to remain solvent indefinitely.

Four commenters also requested guidance on how an enrolled actuary may ''otherwise demonstrate'' solvency. PBGC's existing regulation provides that an enrolled actuary may ''otherwise demonstrate'' under § 4231.3(a)(3)(ii) that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA. This option is an alternative to the applicable ''plan solvency'' test under § 4231.6. Three of these commenters requested this guidance even if PBGC doesn't adopt its proposed changes. PBGC is considering these comments and whether to propose guidance on how an enrolled actuary may ''otherwise demonstrate'' solvency.

Seven commenters advocated for PBGC to change its existing regulation to provide a means for plans facing insolvency to satisfy the solvency requirement under section 4231(b)(3) of ERISA. According to commenters, PBGC could exercise its regulatory authority under section 4231(a) of ERISA to allow these plans to engage in transactions that may be beneficial. For example, as two commenters stated, a critical and declining status plan that cannot show that it will avoid insolvency with benefit suspensions under section 305(e)(9) of ERISA may be able to make that showing after it engages in a transfer (or the transfer might lessen the amount of benefit suspensions needed to avoid insolvency). A critical and declining status plan (which, among other criteria, is projected to become insolvent) may not, however, satisfy the solvency requirement under section 4231(b)(3) of ERISA and PBGC's regulation for a transfer. Even so, as one commenter stated, most plans can satisfy the solvency test in PBGC's regulation for plans that are not significantly affected—that assets equal or exceed five times the benefit payments—including many plans that are projected to be insolvent several years in the future.

PBGC continues to consider these comments to its proposed changes and to provisions of the existing regulation interpreting the solvency requirement under section 4231(b)(3) of ERISA. To allow more consideration of the concerns raised by the public comments, PBGC will not adopt its proposed changes to the ''plan solvency'' tests under § 4231.6 and to the definition of a ''significantly affected plan'' under § 4231.2. PBGC may eventually re-propose changes to provisions in the existing regulation interpreting the solvency requirement under section 4231(b)(3) of ERISA in consideration of these comments.

In addition, PBGC proposed to amend § 4231.3 to provide that plan sponsors may engage in informal consultations with PBGC to discuss proposed mergers and transfers. Two commenters supported this change. One of the commenters stated that having access to PBGC for informal consultation will be extremely helpful and may result in a more efficient process. Thus, PBGC is adopting its proposed voluntary option for assistance in this final rule.

Facilitated Mergers

PBGC proposed new rules to implement the facilitated merger provisions added by MPRA. Two commenters requested examples of the types of facilitation, other than financial assistance, that PBGC might approve for a facilitated merger. Section 4231(e)(1) of ERISA provides examples of facilitation that PBGC may provide if it makes a determination, in consultation with the Participant and Plan Sponsor Advocate, about the interests of the participants and beneficiaries. One example of facilitation is ''communication with stakeholders.'' In that regard, PBGC could, for example, participate in meetings or a town hall to discuss or answer questions about a potential merger with stakeholders.

The other comments to the facilitated merger provisions in PBGC's proposed rule addressed mergers facilitated with financial assistance (financial assistance mergers). In the preamble of the proposed rule, PBGC discussed the amount of financial assistance it generally expects to be available for

[7] ''Endangered'' and ''critical'' are plan categories established by the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780 (2006) (PPA)).

financial assistance mergers. PBGC stated that, while it imposes no additional limitations on the amount of financial assistance available, MPRA requires PBGC to certify that its ability to meet existing financial obligations to other plans will *not* be impaired by the financial assistance provided for a merger or partition.[8] In addition, PBGC stated that it anticipates that the amount of financial assistance available to a critical and declining status plan for a financial assistance merger generally will not exceed the amount available to that plan for a partition (and could be less). This is because the funds available for financial assistance mergers under section 4231(e), partitions under section 4233, and financial assistance to insolvent plans under 4261, are derived from the same source—the revolving fund for basic benefits guaranteed under section 4022A (the multiemployer revolving fund). Finally, although PBGC will decide the structure of financial assistance on a case-by-case basis, PBGC stated that it expects that in most cases the financial assistance it provides in a facilitated merger will be in the form of periodic payments.

One commenter requested a more complete discussion of PBGC's rationale for linking the amount of financial assistance available to a critical and declining status plan for a financial assistance merger to the amount available to that plan for a partition. The commenter noted that the financial assistance available to a plan for a partition ''relates only to a portion of the plan's liabilities.'' The commenter suggested that it would be more appropriate to limit financial assistance to an amount generally less than the present value of the amount of future financial assistance to the critical and declining status plan.

This comment overlooks a statutory condition on PBGC's provision of financial assistance for a merger. While MPRA requires PBGC to reasonably expect that the financial assistance provided for a merger will reduce PBGC's expected long-term loss with respect to the plans involved,[9] MPRA also requires that the financial assistance provided for a merger not impair PBGC's ability to meet existing financial obligations to *other* plans.

Since publication of the proposed rule, PBGC has provided its interpretation of the statutory condition that the financial assistance provided for a merger will not impair PBGC's ability to meet existing financial obligations to other plans.[10] Looking at the statute as a whole, PBGC interprets this condition to require that the financial assistance provided for a merger not materially advance the date when PBGC's multiemployer insurance fund is projected to become insolvent. This interpretation is based on PBGC's current understanding of the universe of potentially eligible multiemployer plans, and the financial condition of the multiemployer insurance program, which can change over time.

Although application of the non-impairment condition may result in limiting financial assistance for a merger to the amount available for a partition, there may be situations where it does not. Therefore, PBGC will rely on the non-impairment test described above. PBGC's analysis of the non-impairment condition is highly fact-specific. PBGC encourages plans to engage in informal consultation with PBGC to help determine how much financial assistance would be permitted by the statute.

Under §§ 4231.12 through 4231.16, PBGC proposed information requirements for a request for a facilitated merger. PBGC requires the information proposed so that it could determine whether the statutory conditions are satisfied. One commenter stated that a plan would incur considerable cost to provide the information PBGC requires for a financial assistance merger ''solely for purposes of showing PBGC that the financial assistance is no more than the cost of a hypothetical partition.'' Financial assistance mergers, unlike partitions, seek assistance to continue to pay plan benefits. Accordingly, the commenter suggested that plans shouldn't have to provide the same substantiation as with partition, unless the request is coupled with a request to the Department of the Treasury (Treasury) for approval of benefit suspensions.

In consideration of this comment, PBGC will not adopt its proposed information requirements about the maximum benefit suspensions permissible under section 305(e)(9) of ERISA, which are required for partition. Thus, PBGC will not adopt its proposed requirement under § 4231.15 that each critical and declining status plan provide a projection of benefit disbursements reflecting maximum benefit suspensions. Also, PBGC will not adopt its proposed requirement under § 4231.16 to include with participant census data the monthly benefit reduced by the maximum benefit suspension. If the amount of financial assistance requested for a merger is at the margins of satisfying the statutory condition that PBGC's ability to meet existing financial obligations to other plans will not be impaired, PBGC may request this information to help the critical and declining status plan(s) determine whether a partition is more likely to satisfy this statutory condition.

Under § 4231.15, PBGC proposed guidance on the required demonstration that financial assistance is necessary for the merged plan to become or remain solvent. One commenter stated that requiring a merged plan to project solvency for a minimum of 20–30 years for a financial assistance merger is inconsistent with MPRA's purpose. The commenter suggested that the demonstration should be that the plans will postpone insolvency with the financial assistance merger. While PBGC may exercise its discretion to approve a financial assistance merger that it determines necessary to allow one or more of the plans to avoid or postpone insolvency,[11] section 4231(e)(2)(B)(ii) of ERISA requires that PBGC reasonably expect that the financial assistance is necessary for the *merged plan* to become or remain *solvent.* PBGC interprets the requirement that the merged plan become or remain solvent to mean that solvency must be demonstrated for the merged plan over a period, not that insolvency is postponed.

PBGC proposed differentiated solvency demonstrations based on the financial health of the merged plan, allowing flexibility for healthier merged plans. Under § 4231.15, the type of projection required depends on whether the merged plan would be in critical status under section 305(b) of ERISA immediately after the merger (without taking the proposed financial assistance into account), as reasonably determined by the actuary. For example, if a critical and declining status plan merges into an endangered status plan, and the actuary anticipates that the merged plan would be in critical status under section 305(b)(2) of ERISA immediately after the merger without financial assistance, then the merged plan would be in critical status for purposes of the projections. Alternatively, if the actuary

[8] *See* sections 4231(e)(2)(C) and 4233(b)(4) of ERISA. PBGC may approve a partition of an eligible multiemployer plan under section 4233 of ERISA to provide for a transfer of liabilities from an original plan to a successor plan that is created by a partition order. PBGC provides financial assistance to pay for the guaranteed benefits under the successor plan.

[9] Section 4231(e)(2)(B)(i) of ERISA.

[10] *See* ''Partition FAQs for Practitioners,'' accessible at *https://www.pbgc.gov/prac/pg/mpra/partition-faqs-for-practitioners#impairment.*

[11] *See* section 4231(e)(2) of ERISA.

anticipates that the merged plan would not satisfy the criteria for critical status under section 305(b)(2) of ERISA immediately after the merger, then the merged plan would not be in critical status for purposes of the projections (even if the merged plan could elect to be in critical status).

PBGC proposed that the plan's enrolled actuary may use any reasonable estimation method for determining the expected funded status of the merged plan. The preamble of the proposed rule also suggested that the funded status of the merged plan could be determined based on the combined data and projections underlying the status certifications of each of the plans for the plan year immediately preceding the merger (including any selected updates in the data based on the experience of the plans in the immediately preceding plan year). PBGC requested comments on this issue. Two commenters responded in favor of each approach. One commenter suggested that PBGC should take care to allow the enrolled actuary to make reasonable adjustments to the data and projections from the most recent status certifications if the above alternative is included in the final regulations. PBGC agrees with these comments. Because the use of status certifications for the preceding year is intended to provide a simpler and cost-effective alternative, PBGC will allow, but not require, reasonable adjustments to be made. Thus, § 4231.15 of this final rule adopts the option, supported by commenters, for the enrolled actuary to base the determination on the combined data and projections underlying the status certifications of each of the plans for the plan year immediately preceding the merger, including any selected updates in the data based on the experience of the plans in the immediately preceding plan year (reasonable adjustments are permitted but not required).

To encourage the merger of critical and declining status plans into financially stable plans, PBGC proposed a solvency demonstration based on the circumstances and challenges specific to the merged plan. For a merged plan that would not be in critical status and for which solvency could be demonstrated for 20 years without taking financial assistance into account (or with less than the full amount taken into account), PBGC proposed a demonstration that financial assistance is necessary to mitigate the adverse effects of the merger on the merged plan's ability to remain solvent. In the preamble of the proposed rule, PBGC provided as examples that the merger might have an impact on the plan's funding requirements, increase the ratio of inactive to active participants, or decrease the funded percentage of the healthy plan in a manner that can be demonstrated to adversely affect the merged plan's ability to remain solvent long-term. PBGC requested comments on this issue.

One commenter stated that, ''the solvency measure should be that the merger does not increase the risk of insolvency for the merged plan.'' If the merger would have no effect on the merged plan's ability to remain solvent, financial assistance would not be necessary for the merged plan to become or remain solvent as required by the statute.

Two commenters were concerned that a financially stable plan for which solvency is projected after the merger (without taking financial assistance into account) would not be able to show adverse effects of the merger on the merged plan's ability to remain solvent. One of these commenters provided the example of a financially stable plan that would have a lower funded percentage after the merger but for which solvency would still be projected. The commenter stated that the financially stable plan would likely not agree to that merger without financial assistance, because the merger would increase the plan's risk of insolvency if there were adverse plan experience in the future. The commenters suggested that the demonstration focus on the merger's impact on metrics such as the financially stable plan's ability to satisfy funding requirements or its funded percentage. The commenters also suggested permitting consideration of unfavorable future experience. One of these commenters suggested that PBGC provide that the demonstration may be based on stress testing over a long-term period (which could consider unfavorable future experience).

To demonstrate that financial assistance is necessary for the merged plan to become or remain solvent, the enrolled actuary must show that the merger has adverse effects on the merged plan's ability to remain solvent. If no adverse effect on solvency can be demonstrated, financial assistance is not necessary. In response to the above comments, PBGC will allow this demonstration to consider unfavorable future experience. Thus, PBGC will add in this final rule that the demonstration that financial assistance is necessary to mitigate the adverse effects of the merger on the merged plan's ability to remain solvent may be based on stress testing over a long-term period (and may reflect reasonable future adverse experience), using a reasonable method in accordance with generally accepted actuarial standards.

For example, one possible demonstration that financial assistance is necessary to mitigate the adverse effects of the merger on the merged plan's ability to remain solvent could be based on a projection of the merged plan's insolvency within 30 years using an investment return assumption no less than one-half of a standard deviation less than the best estimate assumption, and using a current set of capital market assumptions from a recognized investment consultant and the plans' current asset allocation.

This demonstration may also be based on stochastic modeling. For example, while not a threshold, a possible demonstration may be based on stochastic modeling showing that the merged plan's probability of insolvency within 30 years of the merger exceeds 65% without the requested financial assistance.

Interaction Between Benefit Suspension and Merger

Plans in critical and declining status may suspend benefits under section 305(e)(9) of ERISA under certain conditions. Treasury has interpretative jurisdiction over the subject matter in section 305. In the preamble of the proposed rule, PBGC suggested that plan sponsors must carefully consider how the various requirements under sections 305(e)(9) and 4231 would apply.

For example, a critical and declining status plan could merge into a large, well-funded multiemployer plan. In such a case, to the extent any of the benefits previously provided by the critical and declining status plan had been subject to suspension under section 305(e)(9) or become subject to suspension concurrently with the merger, the plan sponsor of the merged plan would become responsible for making the annual determinations necessary for continued benefit suspensions under section 305(e)(9) and the implementing regulations. Under section 305(e)(9)(C)(ii) of ERISA, benefits may continue to be suspended for a plan year only if the plan sponsor determines, in a written record to be maintained throughout the period of the benefit suspension, that although all reasonable measures to avoid insolvency have been and continue to be taken, the plan is still projected to become insolvent unless benefits are suspended.[12] PBGC suggested that,

[12] The required projection under Treasury's regulation is that ''[t]he plan would not be projected

Continued

absent these determinations, restoration of the suspended benefits would be required.

Four commenters stated that it is contrary to MPRA's remedial intent to restore suspended benefits following a merger if the merged plan could not demonstrate that continued suspensions are required to avoid insolvency. The commenters urged PBGC to work with Treasury to issue guidance so that the statute is not interpreted to require restoration under these circumstances. In addition, the commenters stated that critical and declining status plans that suspend benefits would be significantly more likely to attract merger partners, who may view benefit suspensions as a necessary condition to merger. Commenters suggested that, for purposes of the annual determination required for suspensions, Treasury could permit a separate accounting of assets and liabilities attributable to the ''plan'' that suspended benefits before the merger. The suspended benefits would be restored only if the annual determination couldn't be made for this notional plan. These comments are beyond the scope of this final rule and should be addressed to Treasury, which has jurisdiction over section 305 of ERISA.

One of these commenters stated that section 4231(b)(2) of ERISA isn't implicated if the benefit suspensions under section 305(e)(9) of ERISA occur before a merger. Section 4231(b)(2) of ERISA requires that no accrued benefit is lower immediately after a merger or transfer than the benefit immediately before the transaction. This requirement would, however, prohibit a merger or transfer that is contemporaneous with benefit suspensions. To allow this transaction, PBGC adds in this final rule under § 4231.4 that it may waive this requirement to the extent the accrued benefit is suspended under section 305(e)(9) of ERISA contemporaneously with a merger or transfer.

Section-by-Section Discussion

Subpart A—General Provisions

Section 4231.1

Section 4231.1 describes the purpose and scope of part 4231, which is to prescribe notice requirements for mergers and transfers of assets or liabilities among multiemployer plans and to interpret other requirements under section 4231 of ERISA. In this final rule, PBGC adopts the minor changes it proposed to § 4231.1.[13]

Section 4231.2

Section 4231.2 defines terms for purposes of part 4231. In this final rule, like the proposed, PBGC amends the existing regulation by adding new definitions, and by moving existing definitions elsewhere in the regulation to § 4231.2. For example, this final rule moves the existing definition of ''effective date'' from § 4231.8(a) to § 4231.2.[14] In response to comments and pending further consideration, PBGC will not adopt its proposed change to the existing definition of a ''significantly affected plan'' (see above, ''Discussion of Comments'').

Section 4231.3

Section 4231.3 provides guidance on the statutory requirements for mergers and transfers. PBGC proposed to clearly provide that plan sponsors may engage in informal consultations with PBGC to discuss proposed mergers and transfers. Two commenters supported this change. PBGC agrees with those comments. Thus, PBGC is adopting its proposed voluntary option for assistance in this final rule.[15]

Section 4231.4

PBGC did not propose any changes to § 4231.4 of the existing regulation. That section provides guidance on the requirement under section 4231(b)(2) of ERISA that no participant's or beneficiary's accrued benefit may be lower immediately after the effective date of a merger or transfer than the benefit immediately before that date.

In this final rule, PBGC maintains this existing guidance without change in a new paragraph (a). To allow a merger or transfer that is coupled with benefit suspensions under section 305(e)(9) of ERISA, PBGC provides in a new paragraph (b) that it may waive the requirement under section 4231(b)(2) of ERISA to the extent the participant's or beneficiary's accrued benefit is suspended under section 305(e)(9) of ERISA contemporaneously with a merger or transfer (see above, ''Discussion of Comments''). Section 4231.4(b) also provides that, if PBGC grants this waiver, the plan provision described under § 4231.4(a) may exclude accrued benefits only to the extent those benefits are suspended under section 305(e)(9) of ERISA contemporaneously with the merger or transfer.

Section 4231.5

Section 4231.5 provides guidance on the actuarial valuation requirement under section 4231(b)(4) of ERISA. Under § 4231.5(a) of the existing regulation, a plan that is not a significantly affected plan (or that is a significantly affected plan only because the transaction involves a plan terminated by mass withdrawal under section 4041A(a)(2) of ERISA) satisfies this requirement if an actuarial valuation has been performed for the plan based on the plan's assets and liabilities as of a date not more than three years before the date on which the notice of the merger or transfer is filed. Under § 4231.5(b) of the existing regulation, a significantly affected plan (other than a plan that is a significantly affected plan only because the transaction involves a plan terminated by mass withdrawal) must have an actuarial valuation performed for the plan year preceding the proposed effective date of the merger or transfer.

Multiemployer plans are now generally required to perform actuarial valuations not less frequently than once every year.[16] Thus, PBGC proposed to amend § 4231.5 to require, as section 4231(b)(4) of ERISA states, that each plan involved in a merger or transfer have an actuarial valuation performed for the plan year preceding the proposed effective date of the merger or transfer. PBGC also proposed to provide that if

to avoid insolvency . . . if no suspension of benefits were applied under the plan.'' 26 CFR 1.432(e)(9)–1(c)(4)(i)(B).

[13] PBGC proposed to remove the reference in § 4231.1(a) of the existing regulation to the OMB control number 1212–0022 under which information collection in part 4231 has been approved. PBGC also proposed to reorganize § 4231.1 and to refer in paragraph (b) of this section to the additional requirements and procedures in subpart B of part 4231 for a request for a facilitated merger.

[14] This final rule, like the proposed, also changes § 4231.2 of the existing regulation to add the following to the terms defined in § 4001.2 of PBGC's regulations: Annuity, guaranteed benefit, normal retirement age, and plan sponsor. In addition, this final rule, like the proposed, adds in § 4231.2 definitions for the following terms: Advocate, critical and declining status, critical status, facilitated merger, financial assistance, financial assistance merger, insolvent, and merged plan. Furthermore, this final rule, like the proposed, adds in § 4231.2 the terms ''de minimis merger,'' and ''de minimis transfer'' and refers to their existing definitions in § 4231.7(b) and (c), respectively. Finally, this final rule, like the proposed, moves the definition of ''certified change of collective bargaining representative'' from § 4231.2 of the existing regulation to § 4231.3(c).

[15] This final rule also incorporates by reference in § 4231.3(a)(1) the waiver to the preservation of accrued benefits added under a new § 4231.4(b) in the event of a contemporaneous suspension of benefits under section 305(e)(9) of ERISA. In addition, this final rule, like the proposed, moves the definition of ''certified change of collective bargaining representative'' from § 4231.2 of the existing regulation to § 4231.3(c). Finally, this final rule, like the proposed, changes § 4231.3 to conform references to other sections of part 4231 to the reorganization of this final rule.

[16] *See* section 304(c)(7) of ERISA.

the valuation is not complete as of the date the plan sponsors file the notice of merger or transfer, the plan sponsors may provide the most recent actuarial valuation performed for the plans with the notice, and the required valuations when complete. PBGC received no comments on these proposed changes and adopts them in this final rule.[17]

Section 4231.6

Section 4231.6 provides guidance on ''plan solvency'' tests that operate as safe harbors under section 4231(b)(3) of ERISA. PBGC proposed changes to the tests in § 4231.6(a) and (b) (see above, ''Discussion of Comments''). Pending further consideration, PBGC is not adopting in this final rule the major changes it proposed to the tests in § 4231.6(a) and (b) (see above, ''Discussion of Comments''). In this final rule, PBGC is adopting the minor changes it proposed to the tests in § 4231.6(a) and (b); PBGC received no comments about these minor changes.[18]

Section 4231.6(c) provides rules for determinations about the requirements set forth under § 4231.6. PBGC proposed to amend § 4231.6(c)(1) by requiring withdrawal liability payments to be listed separately from contributions. PBGC received no comments on its proposed change to § 4231.6(c)(1) and adopts this change in this final rule.

Section 4231.7

PBGC did not propose any changes to § 4231.7 of the existing regulation. That section continues to set forth special rules for de minimis mergers and transfers.

Section 4231.8

Section 4231.8 provides guidance on the requirement under section 4231(b)(1) of ERISA that the plan sponsor notify PBGC of a merger or transfer, and on requests for compliance determinations under section 4231(c). In general, a notice of a merger or transfer must be filed well in advance of the transaction's effective date (or not less than 45 days in advance in the case of a merger for which a compliance determination is not requested). Section 4231.8(f) permits PBGC to waive the timing of the notice requirements under certain circumstances.

In the case of a facilitated merger, PBGC proposed to amend § 4231.8(a) to require that notice of a proposed facilitated merger be filed not less than 270 days before the proposed effective date of a facilitated merger. PBGC received no comments on its proposed changes to § 4231.8 and adopts them in this final rule.[19]

Section 4231.9

Section 4231.9 of this final rule, like the proposed, generally retains the information requirements under § 4231.8(e) of the existing regulation, with minor modifications. For example, the de minimis exception under § 4231.8(e)(6) of the existing regulation does not apply to a request for a financial assistance merger. PBGC received no comments on its proposed changes to § 4231.9 and adopts them in this final rule.[20]

Section 4231.10

Section 4231.10 of this final rule, like the proposed, describes the additional information required for a request for a compliance determination.[21] In addition to some minor changes, PBGC proposed to amend this section to make clear that a request for a compliance determination must be filed contemporaneously with a notice of merger or transfer.[22] PBGC received no comments on its proposed changes to § 4231.10 and adopts them in this final rule.

Section 4231.11

Section 4231.11 of this final rule, like the proposed, describes the requirements for actuarial calculations and assumptions.[23] PBGC proposed to conform these requirements to section 304(c)(3) of ERISA, to specify that calculations must be performed by an enrolled actuary, and to expand the bases upon which PBGC may require updated calculations. PBGC received no comments on its proposed changes under § 4231.11 and adopts them in this final rule.

Subpart B—Additional Rules for Facilitated Mergers

Section 4231.12

Section 4231.12 of this final rule, like the proposed, provides general guidance on a request for a facilitated merger. A request for a facilitated merger, including a financial assistance merger, must satisfy the requirements of section 4231(b) of ERISA and the general provisions of subpart A of the regulation, in addition to section 4231(e) of ERISA and the additional rules for facilitated mergers of subpart B. The procedures set forth in this final rule represent the exclusive means by which PBGC will approve a request for a facilitated merger, including a financial assistance merger. Any financial assistance provided by PBGC will be limited by section 4261 of ERISA and based on the guaranteed benefits of the plans involved in the merger that are in critical and declining status.

Section 4231.12 of this final rule, like the proposed, states that a request must include the information required for a notice of merger or transfer (§ 4231.9) and request for compliance determination (§ 4231.10), as well as a detailed narrative description with supporting documentation demonstrating that the proposed merger is in the interests of participants and beneficiaries of at least one of the plans, and is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans. The narrative description and supporting documentation should reflect, among other things, any material efficiencies expected as a result of the merger and the basis for those expectations.

In addition, a request for a financial assistance merger must contain information about the plans (§ 4231.13), information about the proposed financial assistance merger (§ 4231.14), actuarial and financial information

[17] This final rule, like the proposed, also reorganizes § 4231.5 of the existing regulation by removing its division into paragraphs (a) and (b).

[18] For example, PBGC proposed to update a statutory reference in § 4231.6(b)(1) of the existing regulation.

[19] PBGC also proposed to clarify that a request for a compliance determination or facilitated merger must be filed within the timing specified in § 4231.8(a) for a notice. In addition, PBGC proposed to clarify that a request for a compliance determination or facilitated merger, like a notice, is not considered filed until all the required information is submitted. PBGC also proposed to clarify that the waiver provided in § 4231.8(f) of the existing regulation relates to the timing requirements in § 4231.8(a). Furthermore, PBGC proposed to move the definition of ''effective date'' from § 4231.8(a)(1) of the existing regulation to § 4231.2, and to move the information requirements contained in § 4231.8(e) of the existing regulation to § 4231.9. Finally, PBGC proposed to reorganize § 4231.8 of the existing regulation, to conform references to other sections of part 4231 to the reorganization of this final rule, and to add that the guidance on who must file is applicable to a request for a facilitated merger.

[20] PBGC also proposed to add that the statement required in § 4231.8(e)(5)(i) of the existing regulation about the plan's satisfaction of the applicable solvency test must include the supporting data, calculations, assumptions, and methods.

[21] PBGC proposed to move these requirements from § 4231.9 of the existing regulation, except certain information requirements.

[22] PBGC also proposed to delete the ''place of filing'' provision under § 4231.9(a)(1) of the existing regulation. Section 4231.8(e) of this final rule, like the proposed, provides guidance about where to file. In addition, PBGC proposed to delete certain information requirements under § 4231.9(b) of the existing regulation because those requirements are contained in § 4231.9(e) of this final rule. Finally, PBGC proposed to conform references to other sections of part 4231 to the reorganization of this final rule.

[23] PBGC proposed to move these requirements from § 4231.10 of the existing regulation.

(§ 4231.15), and participant census data (§ 4231.16). This final rule, like the proposed, provides that PBGC may require additional information to determine whether the requirements of section 4231(e) of ERISA are met or to enable it to facilitate the merger. As with the proposed, this final rule also imposes an affirmative obligation on plan sponsors to promptly notify PBGC in writing if a plan sponsor discovers that any material fact or representation contained in or relating to the request for a facilitated merger, or in any supporting documents, is no longer accurate, or has been omitted.

PBGC received no comments on its proposed § 4231.12 and adopts it in this final rule.

Section 4231.13

Section 4231.13 of this final rule, like the proposed, provides guidance on the various categories of plan-related information required for a request for a financial assistance merger, such as trust agreements, plan documents, summary plan descriptions, summaries of material modifications, and rehabilitation or funding improvement plans. PBGC expects that most, if not all, of the information required under this section should be readily available and accessible by plan sponsors. PBGC received no comments on its proposed § 4231.13 and adopts it in this final rule.

Section 4231.14

Section 4231.14 of this final rule, like the proposed, sets forth information requirements relating to the proposed structure of a financial assistance merger. The information required includes a detailed description of the financial assistance merger, including any larger integrated transaction of which the proposed merger is a part (including, but not limited to, an application for suspension of benefits under section 305(e)(9)(G) of ERISA), and the estimated total amount of financial assistance the plan sponsors request for each year. It also requires a narrative description of the events that led to the sponsors' decision to request a financial assistance merger, and the significant risks and assumptions relating to the proposed financial assistance merger and the projections provided. PBGC received no comments on its proposed § 4231.14 and adopts it in this final rule.

Section 4231.15

Section 4231.15 of this final rule, like the proposed, identifies the actuarial and financial information required for a request for a financial assistance merger. Section 4231.15(a) and (b) of this final rule, like the proposed, relate to plan actuarial reports and actuarial certifications, which should ordinarily be within the possession of the plan sponsors or plan actuaries. Section 4231.15(c)–(e) of this final rule, like the proposed, requires the submission of certain actuarial and financial information specific to the proposed financial assistance merger, which are necessary for PBGC to evaluate the solvency requirements under section 4231(e)(2) of ERISA. PBGC adopts its proposed § 4231.15 in this final rule with the modifications discussed below, which respond to comments it received (see above, ''Discussion of Comments'').

Section 4231.15 of this final rule, like the proposed, provides that each critical and declining status plan must demonstrate that its projected date of insolvency without the merger is sooner than the projected date of insolvency of the merged plan. The plan(s) may take the proposed financial assistance into account in this demonstration.

Section 4231.15 of this final rule, like the proposed, also provides guidance on the required demonstration that financial assistance is necessary for the merged plan to become or remain solvent. The type of projection required depends on whether the merged plan would be in critical status under section 305(b) of ERISA immediately following the merger (without taking the proposed financial assistance into account), as reasonably determined by the actuary. This final rule adds the option, supported by commenters, for the enrolled actuary to base the determination of whether the merged plan would be in critical status on the combined data and projections underlying the status certifications of each of the plans for the plan year immediately preceding the merger, including any selected updates in the data based on the experience of the plans in the immediately preceding plan year (reasonable adjustments are permitted but not required) (see above, ''Discussion of Comments''). This final rule also clarifies that the statement of whether the merged plan would be in critical status must be certified by an enrolled actuary.

Under § 4231.15 of this final rule, like the proposed, if the merged plan would be in critical status under section 305(b) of ERISA (without taking the proposed financial assistance into account), the plans must demonstrate that financial assistance is necessary for the merged plan to ''avoid insolvency'' under section 305(e)(9)(D)(iv) of ERISA and the regulations thereunder (excluding stochastic projections). This solvency standard is consistent with the ''emergence'' test under section 305(e)(4)(B) of ERISA, which requires a plan in critical status to show that it is not projected to become insolvent for any of the 30 succeeding plan years.

If the merged plan would *not* be in critical status under section 305(b) of ERISA (without taking the proposed financial assistance into account), under § 4231.15 of this final rule, like the proposed, the plans must demonstrate that the merged plan is *not* projected to become insolvent during the 20 years beginning after the proposed effective date of the merger with the proposed financial assistance. In this final rule, like the proposed, if this demonstration can be satisfied without taking the proposed financial assistance into account, or if the amount of financial assistance requested exceeds the amount that satisfies this demonstration, the plan sponsors must demonstrate that financial assistance is necessary to mitigate the adverse effects of the merger on the merged plan's ability to remain solvent. In response to comments, PBGC adds in this final rule that the demonstration that financial assistance is necessary to mitigate the adverse effects of the merger on the merged plan's ability to remain solvent may be based on stress testing over a long-term period (and may reflect reasonable future adverse experience), using a reasonable method in accordance with generally accepted actuarial standards (see above, ''Discussion of Comments'').

In response to a comment, PBGC will not adopt in this final rule its proposed requirement that each critical and declining status plan provide a projection of benefit disbursements reflecting maximum benefit suspensions (see above, ''Discussion of Comments'').

Finally, to provide a cost-effective alternative, PBGC adds the option to estimate benefit disbursements to satisfy the requirement that each critical and declining status plan provide a projection of benefit disbursements reflecting reduced benefit disbursements at the PBGC-guarantee level. This final rule also clarifies that the projection of benefit disbursements must include the supporting data, calculations, assumptions, and, if applicable, a description of estimates used.

Section 4231.16

Under § 4231.16, PBGC proposed that a request for a financial assistance merger include certain types of participant census data. In response to a comment, PBGC will not adopt in this final rule its proposed requirement that this participant census data include the

monthly benefit reduced by the maximum benefit suspension permissible under section 305(e)(9) of ERISA (see above, ''Discussion of Comments''). Otherwise, in this final rule, PBGC adopts its proposed § 4231.16 with the clarification that the projections for which the census data must be provided include the projection in § 4231.15(d).

Section 4231.17

Section 4231.17 of this final rule, like the proposed, describes how PBGC will notify a plan sponsor(s) of PBGC's decision on a request for a facilitated merger. PBGC will approve or deny a request for a facilitated merger in writing and in accordance with the standards set forth in section 4231(e) of ERISA.[24] If PBGC denies a request, PBGC's written decision will state the reason(s) for the denial. If PBGC approves a request for a financial assistance merger, PBGC will provide a financial assistance agreement detailing the total amount and terms of the financial assistance as soon as practicable after notifying the plan sponsor(s) in writing of its approval. The decision to approve or deny a request for facilitated merger under section 4231(e) of ERISA is within PBGC's discretion and constitutes a final agency action not subject to PBGC's rules for reconsideration or administrative appeal. PBGC received no comments on its proposed § 4231.17 and adopts it in this final rule.

Section 4231.18

Section 4231.18 of this final rule, like the proposed, describes PBGC's jurisdiction over the merged plan resulting from a financial assistance merger. PBGC has determined that maintaining oversight is necessary to ensure compliance with financial assistance agreements, and proper stewardship of PBGC financial assistance. Based on the foregoing, § 4231.18(a) provides that PBGC will continue to have jurisdiction over the merged plan resulting from a financial assistance merger to carry out the purposes, terms, and conditions of the financial assistance merger, sections 4231 and 4261 of ERISA, and the regulations thereunder. Section 4231.18(b) states that PBGC may, upon notice to the plan sponsor, make changes to the financial assistance agreement(s) in response to changed circumstances consistent with sections 4231 and 4261 of ERISA and the regulations thereunder. PBGC received no comments on its proposed § 4231.18 and adopts it in this final rule.

Cost-Benefit Analysis

In general

Because this rulemaking relates to transfer payments, it is not subject to the requirements of Executive Order 13771. PBGC further notes that it results in no more than de minimis net costs. The rule has been determined to be ''significant'' under Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this final rule under E.O. 12866.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Executive Orders 12866 and 13563 require a comprehensive regulatory impact analysis to be performed for any economically significant regulatory action, defined as an action that would result in an annual effect of $100 million or more on the national economy or that would have other substantial impacts. It has been determined that this final rule is not economically significant. Thus, a comprehensive regulatory impact analysis is not required. But PBGC has examined the economic and policy implications of this rule and has concluded that the net effect of the action is to reduce costs in relation to benefits.

This final rule will enable plans to request a facilitated merger, including a request for financial assistance. Given the limits on PBGC's financial assistance for mergers and partitions imposed by the requirement that such assistance not impair PBGC's existing financial assistance obligations,[25] PBGC expects that fewer than 20 plans would be approved for either financial assistance merger or partition over the next three years (about six plans per year), and that the total financial assistance PBGC would provide under both provisions for basic benefits guaranteed for multiemployer plans would be less than $60 million per year.

Even with the limits on PBGC's resources for multiemployer plans, which are financed by insurance premiums, facilitated mergers under this final rule will help plans preserve retirement benefits for America's workers and retirees. In addition to receiving enough financial assistance to remain solvent, merged plans may gain efficiencies from lower administration and investment expenses. As a result, benefits in the merged plan would be more secure.

This final rule has new information requirements pertaining to financial assistance mergers, but the benefits of these facilitated mergers greatly outweigh the costs of the new filing requirements. PBGC estimates that the transfer impacts of this final rule will be about $65.19 million, and the net costs of the final rule will be about $184,500, as shown in the following table and as explained in more detail below.

Annual transfer amounts	Before final rule	After final rule	Net transfer
PBGC financial assistance	$0	$60 million	$60 million.
Benefits preserved above PBGC-guarantee	$0, assumes plan insolvent	$4.68 million	$4.68 million.
Reduced basic plan administrative expenses	($60,000)	($30,000)	$30,000.
Reduced investment management fees	($300,000)	($150,000)	$150,000.
Reduced valuation and actuarial fees	($300,000)	($150,000)	$150,000.
Reduced plan audit and Form 5500 expenses	($360,000)	($180,000)	$180,000.
Total transfer amounts	($1.02 million)	$64.17 million	$65.19 million.

[24] As noted above, section 4231(e)(1) of ERISA requires a determination by PBGC in consultation with the Participant and Plan Sponsor Advocate to approve a facilitated merger. Section 4231(e)(2) of ERISA sets forth four additional statutory conditions that must be satisfied before PBGC may approve a request for a financial assistance merger. PBGC will review each request for a facilitated merger, including a financial assistance merger, on a case-by-case basis in accordance with the statutory criteria in section 4231(e) of ERISA.

[25] *See* sections 4231(e)(2)(C) and 4233(b)(4) of ERISA. Under section 4231(e)(2) of ERISA, PBGC cannot provide financial assistance to facilitate a merger unless its expected long-term loss with respect to the plans involved will be reduced, and its ability to meet existing financial obligations to other plans will not be impaired by the financial assistance.

Annual transfer amounts	Before final rule	After final rule	Net transfer
Annual cost amounts	Before final rule	After final rule	Net cost
Filing requirements	[26] $43,550	$228,050	$184,500.

The ''net'' column shows the effect of this final rule (the ''after'' column minus the ''before'' column). The estimated net transfer amounts and net costs of this final rule are based on financial assistance mergers. The benefits preserved, reduced expenses, and costs are explained in more detail below.

In addition to preserving benefits and enabling administrative efficiencies, this final rule may provide qualitative benefits. First, the merged plan may be able to have additional investment diversification opportunities because of its larger pool of assets. Second, the employer contribution base generally expands and may be more diverse and, thus, less at risk to localized problems.

Benefits Preserved

This final rule preserves participants' benefits that would be reduced if the plan did not merge and became insolvent. When a multiemployer plan becomes insolvent, PBGC guarantees benefits up to the legal limit of $12,870 per year for an individual with 30 years of service. A PBGC study shows that, 54 percent of the time, participants facing a benefit reduction, in plans that have terminated and that are expected to become insolvent, are projected to lose 10 percent or more of their benefits.[27] In 2010, the average monthly benefit received by retirees in all multiemployer plans was $922.[28] PBGC estimates $1,200/participant per year in benefits preserved based on an estimate of $100/participant per month—10 percent of the $922 average monthly benefit (rounded). PBGC further estimates that about 50 percent of participants [29] in the merged plans, or about 650 participants [30] per plan, will have their benefits preserved for an estimated total of $4,680,000 per year ($1,200 × 650 participants × 6 plans).

Reduced Administrative and Investment Expenses

Merged plans may gain administrative and investment efficiencies, preserving assets to pay plan benefits. While expenses vary depending on plan size, PBGC estimates the following expenses would be reduced for each financial assistance merger:

- Basic administrative expenses (estimated $5,000)
- Investment management fees and expenses (estimated $25,000–$35,000)
- One plan valuation instead of two (estimated $10,500–$35,000)
- One plan audit and Form 5500 filing instead of two (estimated $15,000–$40,000)

Filing Requirements

Plan sponsors are required under section 4231(b)(1) of ERISA to file with PBGC notices of proposed merger or transfer. As discussed in this final rule, plan sponsors requesting financial assistance mergers must prepare and file additional information, including the compilation of merger information, plan information, actuarial and financial information, and participant census data information. As discussed further in the Paperwork Reduction Act section (see below), the cost to prepare the notices to PBGC, excluding financial assistance mergers, is $43,550. PBGC assumes that it will receive a total of six requests for financial assistance mergers, with a cost of $184,500.

Regulatory Flexibility Act

The Regulatory Flexibility Act [31] imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the Regulatory Flexibility Act requires that the agency present a final regulatory flexibility analysis at the time of the publication of the final rule describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

Small Entities

For purposes of the Regulatory Flexibility Act requirements with respect to this final rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is substantially the same criterion PBGC uses in other regulations [32] and is consistent with certain requirements in title I of ERISA [33] and the Internal Revenue Code (Code),[34] as well as the definition of a small entity that DOL has used for purposes of the Regulatory Flexibility Act.[35]

Thus, PBGC believes that assessing the impact of this final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration [36] under the Small Business Act. PBGC requested

[26] The collection of information under part 4231, before this final rule, is approved by OMB under control number 1212–0022.

[27] *See* ''PBGC's Multiemployer Guarantee'' (March 2015) at 7, Figure 6, accessible at *https://www.pbgc.gov/documents/2015-ME-Guarantee-Study-Final.pdf.* This PBGC study of its guarantee for multiemployer plans covered current plans, plans that are insolvent and receiving financial assistance, and plans that have terminated and which PBGC believes are likely to require future financial assistance (future plans).

[28] *See* ''Multiemployer Pension Plans: Report to Congress Required by the Pension Protection Act of 2006'' (Jan. 22, 2013) at 10, accessible at *https://www.pbgc.gov/documents/pbgc-report-multiemployer-pension-plans.pdf.* The average monthly benefit is determined by dividing benefits paid under all plans by the number of retired participants under all plans. The average is somewhat inflated because benefits paid during the year include lump sum payments (mostly de minimis lump sums of $5,000 or less). The average monthly benefit received in 2010 is higher in transportation industry plans ($1,324), where an annual benefit can reach $30,000 or more for a participant with 30 years of service, and in construction industry plans ($1,279); it is lower in retail trade and service industry plans ($620).

[29] *See* ''PBGC's Multiemployer Guarantee'' (March 2015) at 7, Figure 5, accessible at *https://www.pbgc.gov/documents/2015-ME-Guarantee-Study-Final.pdf.* Figure 5 shows that 49 percent of participants in future plans receive their full benefit, and 51 percent of participants in future plans face a benefit reduction.

[30] PBGC estimates that the average plan has 1,300 participants, based on PBGC's experience and participant data from plans that merged in 2014.

[31] 5 U.S.C. 601 *et seq.*

[32] *See, e.g.,* special rules for small plans under part 4007 (Payment of Premiums).

[33] *See, e.g.,* section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

[34] *See, e.g.,* section 430(g)(2)(B) of the Code, which permits single-employer plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

[35] *See, e.g.,* DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66637, 66644 (Oct. 27, 2011).

[36] *See,* 13 CFR 121.201.

comments on the appropriateness of the size standard used in evaluating the impact of its proposed rule on small entities. PBGC received no comments on this point.

Certification

Based on its definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this rule will not have a significant economic impact on a substantial number of small entities. Based on data for the most recent premium filings, PBGC estimates that only 38 plans of the approximately 1,400 plans covered by PBGC's multiemployer program are small plans. Furthermore, plans may, but are not required to, merge or request financial assistance to merge. As discussed above, plans that merge will obtain economic benefits from reduced expenses and preserved plan benefits. A facilitated merger can improve the plans' ability to remain solvent and to continue paying participants' benefits. Merger may be particularly useful for small plans due to economies of scale. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

Paperwork Reduction Act

PBGC is submitting the information collection requirements under part 4231 to OMB for review and approval under the Paperwork Reduction Act. The collection of information under part 4231 is currently approved under OMB control number 1212–0022 (expires September 30, 2020). 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.

Multiemployer plans requesting a merger or transfer are required to file a notice with PBGC with required information under part 4231. PBGC needs the information submitted by plans to provide a basis for determining whether a merger or transfer satisfies statutory requirements. Plans may also request a compliance determination by providing additional information to enable PBGC to make an explicit finding that the merger or transfer requirements have been satisfied.

PBGC's current approval for the collection of information under part 4231 is for an estimated 14 transactions each year for which plan sponsors submit notices and requests for a compliance determination. Changes in this final rule that affect mergers and transfers that are not subject to the new requirements for facilitated mergers are not expected to have an impact on the burden of the information collection. The current approved annual burden for the collection of information is 10 hours in-house and $42,800 for work done by outside contractors, including attorneys and actuaries.

Most of the information filing requirements under part 4231 are for financial assistance mergers. PBGC estimates that under this final rule there will be six requests for a financial assistance merger. The estimated annual burden is 60 hours in-house (10 hours per application) with an estimated dollar equivalent of $4,500, based on an assumed blended hourly rate of $75 for administrative, clerical, and supervisory time. The estimated annual cost burden is $180,000 ($30,000 per application) for work done by outside contractors, including attorneys and actuaries. This estimate is based on 450 contracted hours (six applications x 75 hours) and assumes an average hourly rate of $400.

The total annual burden for the collection of information under part 4231 to prepare the notices and comply with the additional requirements for financial assistance mergers is 70 hours and $222,800, as shown in the following table:

Respondents	Hour burden (hours)	Hour burden—equivalent cost	Cost burden
Current approved respondents: 14	10	$750	$42,800
Facilitated mergers: 6	60	4,500	180,000
Totals: 20 respondents	70	5,250	222,800

List of Subjects in 29 CFR Part 4231

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, PBGC is amending 29 CFR chapter XL by revising part 4231 to read as follows:

PART 4231—MERGERS AND TRANSFERS BETWEEN MULTIEMPLOYER PLANS

Subpart A—General Provisions

Sec.
4231.1 Purpose and scope.
4231.2 Definitions.
4231.3 Requirements for mergers and transfers.
4231.4 Preservation of accrued benefits.
4231.5 Valuation requirement.
4231.6 Plan solvency tests.
4231.7 De minimis mergers and transfers.
4231.8 Filing requirements; timing and method of filing.
4231.9 Notice of merger or transfer.
4231.10 Request for compliance determination.
4231.11 Actuarial calculations and assumptions.

Subpart B—Additional Rules for Facilitated Mergers

4231.12 Request for facilitated merger.
4231.13 Plan information for financial assistance merger.
4231.14 Description of financial assistance merger.
4231.15 Actuarial and financial information for financial assistance merger.
4231.16 Participant census data for financial assistance merger.
4231.17 PBGC action on a request for facilitated merger.
4231.18 Jurisdiction over financial assistance merger.

Authority: 29 U.S.C. 1302(b)(3)

PART 4231—MERGERS AND TRANSFERS BETWEEN MULTIEMPLOYER PLANS

Subpart A—General Provisions

§ 4231.1 Purpose and scope.

(a) *General*—(1) *Purpose.* The purpose of this part is to prescribe notice requirements under section 4231 of ERISA for mergers and transfers of assets or liabilities among multiemployer pension plans. This part also interprets the other requirements of section 4231 of ERISA and prescribes special rules for de minimis mergers and transfers.

(2) *Scope.* This part applies to mergers and transfers among multiemployer plans where all of the plans immediately before and immediately after the transaction are multiemployer plans covered by title IV of ERISA.

(b) *Additional requirements.* Subpart B of this part sets forth the additional

requirements for and procedures specific to a request for a facilitated merger.

§ 4231.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: *annuity, Code, EIN, ERISA, fair market value, guaranteed benefit, IRS, multiemployer plan, normal retirement age, PBGC, plan, plan sponsor, plan year,* and *PN.* In addition, the following terms are defined for purposes of this part:

Actuarial valuation means a valuation of assets and liabilities performed by an enrolled actuary using the actuarial assumptions used for purposes of determining the charges and credits to the funding standard account under section 304 of ERISA and section 431 of the Code.

Advocate means the Participant and Plan Sponsor Advocate under section 4004 of ERISA.

Critical and declining status has the same meaning as the term has under section 305(b)(6) of ERISA and section 432(b)(6) of the Code.

Critical status has the same meaning as the term has under section 305(b)(2) of ERISA and section 432(b)(2) of the Code, and includes ''critical and declining status'' as defined in section 305(b)(6) of ERISA and section 432(b)(6) of the Code.

De minimis merger is defined in § 4231.7(b).

De minimis transfer is defined in § 4231.7(c).

Effective date means, with respect to a merger or transfer, the earlier of—

(1) The date on which one plan assumes liability for benefits accrued under another plan involved in the transaction; or

(2) The date on which one plan transfers assets to another plan involved in the transaction.

Facilitated merger means a merger of two or more multiemployer plans facilitated by PBGC under section 4231(e) of ERISA, including a merger that is facilitated with financial assistance under section 4231(e)(2) of ERISA.

Fair market value of assets has the same meaning as the term has for minimum funding purposes under section 304 of ERISA and section 431 of the Code.

Financial assistance means periodic or lump sum financial assistance payments from PBGC under section 4261 of ERISA.

Financial assistance merger means a merger facilitated by PBGC for which PBGC provides financial assistance (within the meaning of section 4261 of ERISA) under section 4231(e)(2) of ERISA.

Insolvent has the same meaning as insolvent under section 4245(b) of ERISA.

Merged plan means a plan that is the result of the merger of two or more multiemployer plans.

Merger means the combining of two or more plans into a single plan. For example, a consolidation of two plans into a new plan is a merger.

Significantly affected plan means a plan that—

(1) Transfers assets that equal or exceed 15 percent of its assets before the transfer,

(2) Receives a transfer of unfunded accrued benefits that equal or exceed 15 percent of its assets before the transfer,

(3) Is created by a spinoff from another plan, or

(4) Engages in a merger or transfer (other than a de minimis merger or transfer) either—

(i) After such plan has terminated by mass withdrawal under section 4041A(a)(2) of ERISA, or

(ii) With another plan that has so terminated.

Transfer and *transfer of assets or liabilities* mean a diminution of assets or liabilities with respect to one plan and the acquisition of these assets or the assumption of these liabilities by another plan or plans (including a plan that did not exist prior to the transfer). However, the shifting of assets or liabilities pursuant to a written reciprocity agreement between two multiemployer plans in which one plan assumes liabilities of another plan is not a transfer of assets or liabilities. In addition, the shifting of assets between several funding media used for a single plan (such as between trusts, between annuity contracts, or between trusts and annuity contracts) is not a transfer of assets or liabilities.

Unfunded accrued benefits means the excess of the present value of a plan's accrued benefits over the plan's fair market value of assets, determined on the basis of the actuarial valuation required under § 4231.5.

§ 4231.3 Requirements for mergers and transfers.

(a) *General requirements.* A plan sponsor may not cause a multiemployer plan to merge with one or more multiemployer plans or transfer assets or liabilities to or from another multiemployer plan unless the merger or transfer satisfies all of the following requirements:

(1) No participant's or beneficiary's accrued benefit is lower immediately after the effective date of the merger or transfer than the benefit immediately before that date (except as provided under § 4231.4(b)).

(2) Actuarial valuations of the plans that existed before the merger or transfer have been performed in accordance with § 4231.5.

(3) For each plan that exists after the transaction, an enrolled actuary—

(i) Determines that the plan meets the applicable plan solvency requirement set forth in § 4231.6; or

(ii) Otherwise demonstrates that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA.

(4) The plan sponsor notifies PBGC of the merger or transfer in accordance with §§ 4231.8 and 4231.9.

(b) *Compliance determination.* If a plan sponsor requests a determination that a merger or transfer that may otherwise be prohibited by section 406(a) or (b)(2) of ERISA satisfies the requirements of section 4231 of ERISA, the plan sponsor must submit the information described in § 4231.10 in addition to the information required by § 4231.9. PBGC may request additional information if necessary to determine whether a merger or transfer complies with the requirements of section 4231 and subpart A of this part. Plan sponsors are not required to request a compliance determination. Under section 4231(c) of ERISA, if PBGC determines that the merger or transfer complies with section 4231 of ERISA and subpart A of this part, the merger or transfer will not constitute a violation of the prohibited transaction provisions of section 406(a) and (b)(2) of ERISA.

(c) *Certified change in bargaining representative.* Transfers of assets and liabilities pursuant to a change of collective bargaining representative certified under the Labor-Management Relations Act of 1947 or the Railway Labor Act, as amended, are governed by section 4235 of ERISA. Plan sponsors involved in such transfers are not required to comply with subpart A of this part. However, under section 4235(f)(1) of ERISA, the plan sponsors of the plans involved in the transfer may agree to a transfer that complies with sections 4231 and 4234 of ERISA. Plan sponsors that elect to comply with sections 4231 and 4234 of ERISA must comply with the rules in subpart A of this part.

(d) *Informal consultation.* A plan sponsor may contact PBGC on an informal basis to discuss a potential merger or transfer.

§ 4231.4 Preservation of accrued benefits.

(a) *General.* Section 4231(b)(2) of ERISA and § 4231.3(a)(1) require that no participant's or beneficiary's accrued benefit may be lower immediately after

the effective date of the merger or transfer than the benefit immediately before the merger or transfer. Except as provided in paragraph (b) of this section, a plan that assumes an obligation to pay benefits for a group of participants satisfies this requirement only if the plan contains a provision preserving all accrued benefits. The determination of what is an accrued benefit must be made in accordance with section 411 of the Code and the regulations thereunder.

(b) *Waiver.* PBGC may waive the requirement of paragraph (a) of this section, § 4231.3(a)(1), and section 4231(b)(2) of ERISA to the extent the accrued benefit is suspended under section 305(e)(9) of ERISA contemporaneously with the merger or transfer. If waived, the plan provision described under paragraph (a) of this section may exclude accrued benefits only to the extent those benefits are suspended under section 305(e)(9) of ERISA contemporaneously with the merger or transfer.

§ 4231.5 Valuation requirement.

The actuarial valuation requirement under section 4231(b)(4) of ERISA and § 4231.3(a)(2) is satisfied if an actuarial valuation has been performed for the plan based on the plan's assets and liabilities as of a date not earlier than the first day of the last plan year ending before the proposed effective date of the transaction. If the actuarial valuation required under this section is not complete when the notice of merger or transfer is filed, the plan sponsor may provide the most recent actuarial valuation for the plan with the notice, and the actuarial valuation required under this section when complete. For a significantly affected plan involved in a transfer (other than a plan that is a significantly affected plan only because the transfer involves a plan that has terminated by mass withdrawal under section 4041A(a)(2) of ERISA), the valuation must separately identify assets, contributions, and liabilities being transferred and must be based on the actuarial assumptions and methods that are expected to be used for the plan for the first plan year beginning after the transfer.

§ 4231.6 Plan solvency tests.

(a) *General.* For a plan that is not a significantly affected plan, the plan solvency requirement of section 4231(b)(3) of ERISA and § 4231.3(a)(3)(i) is satisfied if—

(1) The plan's expected fair market value of assets immediately after the merger or transfer equals or exceeds five times the benefit payments for the last plan year ending before the proposed effective date of the merger or transfer; or

(2) In each of the first five plan years beginning on or after the proposed effective date of the merger or transfer, the plan's expected fair market value of assets as of the beginning of the plan year plus expected contributions and investment earnings equal or exceed expected expenses and benefit payments for the plan year.

(b) *Significantly affected plans.* The plan solvency requirement of section 4231(b)(3) of ERISA and § 4231.3(a)(3)(i) is satisfied for a significantly affected plan if all of the following requirements are met:

(1) Expected contributions equal or exceed the estimated amount necessary to satisfy the minimum funding requirement of section 431 of the Code for the five plan years beginning on or after the proposed effective date of the transaction.

(2) The plan's expected fair market value of assets immediately after the transaction equals or exceeds the total amount of expected benefit payments for the first five plan years beginning on or after the proposed effective date of the transaction.

(3) Expected contributions for the first plan year beginning on or after the proposed effective date of the transaction equal or exceed expected benefit payments for that plan year.

(4) Expected contributions for the amortization period equal or exceed the unfunded accrued benefits plus expected normal costs for the period. The enrolled actuary may select as the amortization period either—

(i) The first 25 plan years beginning on or after the proposed effective date of the transaction, or

(ii) The amortization period for the resulting base when the combined charge base and the combined credit base are offset under section 431(b)(5) of the Code.

(c) *Rules for determinations.* In determining whether a transaction satisfies the plan solvency requirements set forth in this section, the following rules apply:

(1) Expected contributions after a merger or transfer must be determined by assuming that contributions for each plan year will equal contributions for the last full plan year ending before the date on which the notice of merger or transfer is filed with PBGC. If expected contributions include withdrawal liability payments, such payments must be shown separately. If the withdrawal liability payments are not the assessed amounts, or are not in accordance with the schedule of payments, or include future assessments, include the basis for such differences, with supporting data, calculations, assumptions, and methods. In addition, contributions must be adjusted to reflect—

(i) The merger or transfer;

(ii) Any change in the rate of employer contributions that has been negotiated (whether or not in effect); and

(iii) Any trend of changing contribution base units over the preceding five plan years or other period of time that can be demonstrated to be more appropriate.

(2) Expected normal costs must be determined under the funding method and assumptions expected to be used by the plan actuary for purposes of determining the minimum funding requirement under section 431 of the Code. If an aggregate funding method is used for the plan, normal costs must be determined under the entry age normal method.

(3) Expected benefit payments must be determined by assuming that current benefits remain in effect and that all scheduled increases in benefits occur.

(4) The plan's expected fair market value of assets immediately after the merger or transfer must be based on the most recent data available immediately before the date on which the notice is filed.

(5) Expected investment earnings must be determined using the same interest assumption to be used for determining the minimum funding requirement under section 431 of the Code.

(6) Expected expenses must be determined using expenses in the last plan year ending before the notice is filed, adjusted to reflect any anticipated changes.

(7) Expected plan assets for a plan year must be determined by adjusting the most current data on the plan's fair market value of assets to reflect expected contributions, investment earnings, benefit payments and expenses for each plan year between the date of the most current data and the beginning of the plan year for which expected assets are being determined.

§ 4231.7 De minimis mergers and transfers.

(a) *Special plan solvency rule.* The determination of whether a de minimis merger or transfer satisfies the plan solvency requirement in § 4231.6(a) may be made without regard to any other de minimis mergers or transfers that have occurred since the most recent actuarial valuation.

(b) *De minimis merger defined.* A merger is de minimis if the present

value of accrued benefits (whether or not vested) of one plan is less than 3 percent of the other plan's fair market value of assets.

(c) *De minimis transfer defined.* A transfer of assets or liabilities is de minimis if—

(1) The fair market value of assets transferred, if any, is less than 3 percent of the fair market value of assets of all of the transferor plan's assets;

(2) The present value of the accrued benefits transferred (whether or not vested) is less than 3 percent of the fair market value of assets of all of the transferee plan's assets; and

(3) The transferee plan is not a plan that has terminated under section 4041A(a)(2) of ERISA.

(d) *Value of assets and benefits.* For purposes of paragraphs (b) and (c) of this section, the value of plan assets and accrued benefits may be determined as of any date prior to the proposed effective date of the transaction, but not earlier than the date of the most recent actuarial valuation.

(e) *Aggregation required.* In determining whether a merger or transfer is de minimis, the assets and accrued benefits transferred in previous de minimis mergers and transfers within the same plan year must be aggregated as described in paragraphs (e)(1) and (2) of this section. For the purposes of those paragraphs, the value of plan assets may be determined as of the date during the plan year on which the total value of the plan's assets is the highest.

(1) A merger is not de minimis if the total present value of accrued benefits merged into a plan, when aggregated with all prior de minimis mergers of and transfers to that plan effective within the same plan year, equals or exceeds 3 percent of the value of the plan's assets.

(2) A transfer is not de minimis if, when aggregated with all previous de minimis mergers and transfers effective within the same plan year—

(i) The value of all assets transferred from a plan equals or exceeds 3 percent of the value of the plan's assets; or

(ii) The present value of all accrued benefits transferred to a plan equals or exceeds 3 percent of the plan's assets.

§ 4231.8 Filing requirements; timing and method of filing.

(a) *When to file.* Except as provided in paragraph (g) of this section, a notice of a proposed merger or transfer, and, if applicable, a request for a compliance determination or facilitated merger (which may be filed separately or combined), must be filed not less than the following number of days before the proposed effective date of the transaction—

(1) 270 days in the case of a facilitated merger under § 4231.12;

(2) 120 days in the case of a merger (other than a facilitated merger) for which a compliance determination under § 4231.10 is requested, or a transfer; or

(3) 45 days in the case of a merger for which a compliance determination under § 4231.10 is not requested.

(b) *Method of filing.* PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with PBGC under this part.

(c) *Computation of time.* PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

(d) *Who must file.* The plan sponsors of all plans involved in a merger or transfer, or the duly authorized representative(s) acting on behalf of the plan sponsors, must jointly file the notice required by subpart A of this part, and, if applicable, a request for a facilitated merger under § 4231.12.

(e) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(f) *Date of filing.* PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date a submission under this part was filed with PBGC. For purposes of paragraph (a) of this section, the notice, and, if applicable, a request for a compliance determination or facilitated merger, is not considered filed until all of the information required under this part has been submitted.

(g) *Waiver of timing of notice.* PBGC may waive the timing requirements of paragraph (a) of this section and section 4231(b)(1) of ERISA if—

(1) A plan sponsor demonstrates to the satisfaction of PBGC that failure to complete the merger or transfer in less than the applicable notice period set forth in paragraph (a) of this section will cause harm to participants or beneficiaries of the plans involved in the transaction;

(2) PBGC determines that the transaction complies with the requirements of section 4231 of ERISA; or

(3) PBGC completes its review of the transaction.

§ 4231.9 Notice of merger or transfer.

Each notice of proposed merger or transfer required under section 4231(b)(1) of ERISA and this subpart must contain the following information:

(a) For each plan involved in the merger or transfer—

(1) The name of the plan;

(2) The name, address and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any; and

(3) The plan sponsor's EIN and the plan's PN and, if different, the EIN or PN last filed with PBGC. If no EIN or PN has been assigned, the notice must so indicate.

(b) Whether the transaction being reported is a merger or transfer, whether it involves any plan that has terminated under section 4041A(a)(2) of ERISA, whether any significantly affected plan is involved in the transaction (and, if so, identifying each such plan), and whether it is a de minimis transaction as defined in § 4231.7 (and, if so, including an enrolled actuary's certification to that effect).

(c) The proposed effective date of the transaction.

(d) Except as provided under § 4231.4(b), a copy of each plan provision stating that no participant's or beneficiary's accrued benefit will be lower immediately after the effective date of the merger or transfer than the benefit immediately before that date.

(e) For each plan that exists after the transaction, one of the following statements, certified by an enrolled actuary:

(1) A statement that the plan satisfies the applicable plan solvency test set forth in § 4231.6, indicating which is the applicable test, and including the supporting data, calculations, assumptions, and methods.

(2) A statement of the basis on which the actuary has determined under § 4231.3(a)(3)(ii) that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA, including the supporting data, calculations, assumptions, and methods.

(f) For each plan that exists before a transaction (unless the transaction is de minimis and does not involve either a request for financial assistance, or any plan that has terminated under section 4041A(a)(2) of ERISA), a copy of the most recent actuarial valuation report that satisfies the requirements of § 4231.5.

(g) For each significantly affected plan that exists after the transaction, the following information used in making the plan solvency determination under § 4231.6(b):

(1) The present value of the accrued benefits and plan's fair market value of assets under the valuation required by § 4231.5, allocable to the plan after the transaction.

(2) The fair market value of assets in the plan after the transaction (determined in accordance with § 4231.6(c)(4)).

(3) The expected benefit payments for the plan for the first plan year beginning on or after the proposed effective date of the transaction (determined in accordance with § 4231.6(c)(3)).

(4) The contribution rates in effect for the plan for the first plan year beginning on or after the proposed effective date of the transaction.

(5) The expected contributions for the plan for the first plan year beginning on or after the proposed effective date of the transaction (determined in accordance with § 4231.6(c)(1)).

§ 4231.10 Request for compliance determination.

(a) *General.* The plan sponsor(s) of one or more plans involved in a merger or transfer, or the duly authorized representative(s) acting on behalf of the plan sponsor(s), may file a request for a determination that the transaction complies with the requirements of section 4231 of ERISA. If the plan sponsor(s) requests a compliance determination, the request must be filed with the notice of merger or transfer under § 4231.3(a)(4), and must contain the information described in paragraph (c) of this section, as applicable.

(b) *Single request permitted for all de minimis transactions.* A plan sponsor may submit a single request for a compliance determination covering all de minimis mergers or transfers that occur between one plan valuation and the next. However, the plan sponsor must still notify PBGC of each de minimis merger or transfer separately, in accordance with §§ 4231.8 and 4231.9. The single request for a compliance determination may be filed concurrently with any one of the notices of a de minimis merger or transfer.

(c) *Contents of request.* A request for a compliance determination concerning a merger or transfer that is not de minimis must contain—

(1) A copy of the merger or transfer agreement; and

(2) For each significantly affected plan, other than a plan that is a significantly affected plan only because the merger or transfer involves a plan that has terminated by mass withdrawal under section 4041A(a)(2) of ERISA, copies of all actuarial valuations performed within the 5 years preceding the date of filing the notice required under § 4231.3(a)(4).

§ 4231.11 Actuarial calculations and assumptions.

(a) *Most recent valuation.* All calculations required by this part must be based on the most recent actuarial valuation as of the date of filing the notice, updated to show any material changes.

(b) *Assumptions.* All calculations required by this part must be performed by an enrolled actuary based on methods and assumptions each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(c) *Updated calculations.* PBGC may require updated calculations and representations based on the actual effective date of a merger or transfer if that date is more than one year after the notice is filed, based on revised actuarial assumptions, or based on other good cause.

Subpart B—Additional Rules for Facilitated Mergers

§ 4231.12 Request for facilitated merger.

(a) *General.* (1) The plan sponsors of the plans involved in a proposed merger may request that PBGC facilitate the merger. Facilitation may include training, technical assistance, mediation, communication with stakeholders, and support with related requests to other government agencies. Facilitation may also include financial assistance to the merged plan. PBGC has discretion under section 4231(e) of ERISA to take such actions as it deems appropriate to facilitate the merger of two or more multiemployer plans if it determines, after consultation with the Advocate, that the proposed merger is in the interests of the participants and beneficiaries of at least one of the plans, and is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans involved in the proposed merger. For a facilitated merger, including a financial assistance merger, the requirements of section 4231(b) of ERISA and subpart A of this part must be satisfied in addition to the requirements of section 4231(e) of ERISA and this subpart. The procedures set forth in this subpart represent the exclusive means by which PBGC will approve a request for a facilitated merger under section 4231(e) of ERISA.

(2) *Financial assistance.* Subject to the requirements in section 4231(e) of ERISA and this subpart, in the case of a request for a financial assistance merger, PBGC may in its discretion provide financial assistance (within the meaning of section 4261 of ERISA). Such financial assistance will be with respect to the guaranteed benefits payable under the critical and declining status plan(s) involved in the facilitated merger.

(b) *Information requirements.* (1) A request for a facilitated merger, including a request for a financial assistance merger, must be filed with the notice of merger under § 4231.3(a)(4), and must contain the information described in § 4231.10, and a detailed narrative description with supporting documentation demonstrating that the proposed merger is in the interests of participants and beneficiaries of at least one of the plans, and is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans. If a financial assistance merger is requested, the narrative description and supporting documentation may consider the effect of financial assistance in making these demonstrations.

(2) If a financial assistance merger is requested, the request must contain the information required in §§ 4231.13 through 4231.16 in addition to the information required in paragraph (b)(1) of this section.

(3) PBGC may require the plan sponsors to submit additional information to determine whether the requirements of section 4231(e) of ERISA are met or to enable it to facilitate the merger.

(c) *Duty to amend and supplement.* During any time in which a request for a facilitated merger, including a request for a financial assistance merger, is pending final action by PBGC, the plan sponsors must promptly notify PBGC in writing of any material fact or representation contained in or relating to the request, or in any supporting documents, that is no longer accurate or was omitted.

§ 4231.13 Plan information for financial assistance merger.

A request for a financial assistance merger must include the following information for each plan involved in the merger:

(a) The most recent trust agreement, including all amendments adopted since the last restatement.

(b) The most recent plan document, including all amendments adopted since the last restatement.

(c) The most recent summary plan description (SPD), and all summaries of material modification issued since the most recent SPD.

(d) If applicable, the most recent rehabilitation plan (or funding improvement plan), including all subsequent amendments and updates, and the percentage of total contributions received under each schedule of the rehabilitation plan (or funding

improvement plan) for the most recent plan year available.

(e) A copy of the plan's most recent IRS determination letter.

(f) A copy of the plan's most recent Form 5500 (Annual Report Form) and all schedules and attachments (including the audited financial statement).

(g) A current listing of employers who have an obligation to contribute to the plan, and the approximate number of participants for whom each employer is currently making contributions.

(h) A schedule of withdrawal liability payments collected in each of the most recent five plan years.

(i) If applicable, a copy of the plan sponsor's application for suspension of benefits under section 305(e)(9)(G) of ERISA (including all attachments and exhibits).

§ 4231.14 Description of financial assistance merger.

A request for a financial assistance merger must include the following information about the proposed financial assistance merger:

(a) A detailed description of the proposed financial assistance merger, including any larger integrated transaction of which the merger is a part (including, but not limited to, an application for suspension of benefits under section 305(e)(9)(G) of ERISA).

(b) A narrative description of the events that led to the plan sponsors' decision to submit a request for a financial assistance merger.

(c) A narrative description of significant risks and assumptions relating to the proposed financial assistance merger and the projections provided in support of the request.

(d) A detailed description of the estimated total amount of financial assistance the plan sponsors request for each year, including the supporting data, calculations, assumptions, and a description of the methodology used to determine the estimated amounts.

§ 4231.15 Actuarial and financial information for financial assistance merger.

A request for a financial assistance merger must include the following actuarial and financial information for the plans involved in the merger:

(a) A copy of the actuarial valuation performed for each of the two plan years before the most recent actuarial valuation filed in accordance with § 4231.9(f).

(b) If applicable, a copy of the plan actuary's most recent annual actuarial certification under section 305(b)(3) of ERISA, including a detailed description of the assumptions used in the certification, and the basis under which they were determined. The description must include information about the assumptions used for the projection of future contributions, withdrawal liability payments, and investment returns, and any other assumption that may have a material effect on projections.

(c) A detailed statement certified by an enrolled actuary that the merger is necessary for one or more of the plans involved to avoid or postpone insolvency, including the basis for the conclusion, supporting data, calculations, assumptions, and a description of the methodology. This statement must demonstrate for each critical and declining status plan involved in the merger that the date the plan projects to become insolvent (without reflecting the merger) is earlier than the date the merged plan projects to become insolvent (the merged plan may reflect the proposed financial assistance). Include as an exhibit annual cash flow projections for each critical and declining status plan involved in the merger through the date the plan projects to become insolvent (using an open group valuation and without reflecting the merger). Annual cash flow projections must reflect the following information:

(1) Fair market value of assets as of the beginning of the year.

(2) Contributions and withdrawal liability payments.

(3) Benefit payments organized by participant type (*e.g.,* active, retiree, terminated vested).

(4) Administrative expenses.

(5) Fair market value of assets as of the end of the year.

(d) For each critical and declining status plan involved in the merger, a long-term projection (at least 50 to 90 years) of benefit disbursements by participant type (*e.g.,* active, retiree, terminated vested) (without reflecting the merger) reflecting reduced benefit disbursements at the PBGC-guarantee level (which may be estimated) beginning with the proposed effective date of the merger (using a closed group valuation and no accruals after the proposed effective date of the merger). Include the supporting data, calculations, assumptions, and, if applicable, a description of estimates used for this projection.

(e) A detailed statement certified by an enrolled actuary that financial assistance is necessary for the merged plan to become or remain solvent, including the basis for the conclusion, supporting data, calculations, assumptions, and a description of the methodology. Include as an exhibit annual cash flow projections for the merged plan with the proposed financial assistance (based on the actuarial assumptions and methods that will be used under the merged plan). Annual cash flow projections must reflect the information listed in paragraphs (c)(1) through (5) of this section. In addition, include as an exhibit a statement certified by an enrolled actuary of whether the merged plan would be in critical status for purposes of paragraph (e)(1) or (2) of this section, including the basis for the conclusion.

(1) If the merged plan would be in critical status immediately following the merger without the proposed financial assistance (as reasonably determined by the enrolled actuary or as set forth in this paragraph), the enrolled actuary's certified statement must demonstrate that the merged plan will avoid insolvency under section 305(e)(9)(D)(iv) of ERISA and the regulations thereunder (excluding stochastic projections) with the proposed financial assistance. The enrolled actuary may determine whether the merged plan would be in critical status based on the combined data and projections underlying the status certifications of each of the plans for the plan year immediately preceding the merger, including any selected updates in the data based on the experience of the plans in the immediately preceding plan year (reasonable adjustments are permitted but not required).

(2) If the merged plan would not be in critical status immediately following the merger without the proposed financial assistance (as reasonably determined by the enrolled actuary or as set forth in paragraph (e)(1) of this section), the enrolled actuary's certified statement must demonstrate that the merged plan is not projected to become insolvent during the 20 plan years beginning after the proposed effective date of the merger with the proposed financial assistance (using the methodologies set forth under section 305(b)(3)(B)(iv) of ERISA and the regulations thereunder). If such a demonstration is possible without the proposed financial assistance, or if the amount of financial assistance requested exceeds the amount needed to satisfy this demonstration, the enrolled actuary's certified statement must demonstrate that financial assistance is necessary to mitigate the adverse effects of the merger on the merged plan's ability to remain solvent. The demonstration that financial assistance is necessary to mitigate the adverse effects of the merger on the merged

plan's ability to remain solvent may be based on stress testing over a long-term period (and may reflect reasonable future adverse experience), using a reasonable method in accordance with generally accepted actuarial standards.

(f) If applicable, a copy of the plan actuary's certification under section 305(e)(9)(C)(i) of ERISA.

(g) The rules in § 4231.6(c) apply to the solvency projections described in paragraphs (c) and (e) of this section, unless section 305(e)(9)(D)(iv) of ERISA and the regulations thereunder apply and specify otherwise.

§ 4231.16 Participant census data for financial assistance merger.

A request for a financial assistance merger must include a copy of the census data used for the projections described in § 4231.15(c) through (e), including:

(a) Participant type (retiree, beneficiary, disabled, terminated vested, active, alternate payee).

(b) Gender.

(c) Date of birth.

(d) Credited service for guarantee calculation (*i.e.,* number of years of participation).

(e) Vested accrued monthly benefit.

(f) Monthly benefit guaranteed by PBGC.

(g) Benefit commencement date (for participants in pay status and others for which the reported benefit will not be payable at normal retirement age).

(h) For each participant in pay status—

(1) Form of payment, and

(2) Data relevant to the form of payment, including:

(i) For a joint-and-survivor benefit, the beneficiary's benefit amount and the beneficiary's date of birth;

(ii) For a Social Security level income benefit, the date of any change in the benefit amount, and the benefit amount after such change;

(iii) For a 5-year certain or 10-year certain benefit (or similar benefit), the relevant defined period; or

(iv) For a form of payment not otherwise described in this section, the data necessary for the valuation of the form of payment.

(i) If an actuarial increase for postponed retirement applies, or if the form of annuity is a Social Security level income benefit, the monthly vested benefit payable at normal retirement age in normal form of annuity.

§ 4231.17 PBGC action on a request for facilitated merger.

(a) *General.* PBGC may approve or deny a request for a facilitated merger, including a request for a financial assistance merger, at its discretion if the requirements of section 4231 of ERISA are satisfied. PBGC will notify the plan sponsor(s) in writing of its decision on a request. If PBGC denies the request, PBGC's written decision will state the reason(s) for the denial. If PBGC approves a request for a financial assistance merger, PBGC will provide a financial assistance agreement detailing the total amount and terms of the financial assistance as soon as practicable after notifying the plan sponsor(s) in writing of its approval.

(b) *Final agency action.* PBGC's decision to approve or deny a request for a facilitated merger, including a request for a financial assistance merger, is a final agency action for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

§ 4231.18 Jurisdiction over financial assistance merger.

(a) *General.* PBGC will retain jurisdiction over the merged plan resulting from a financial assistance merger to carry out the purposes, terms, and conditions of the financial assistance merger, the financial assistance agreement, sections 4231 and 4261 of ERISA, and the regulations thereunder.

(b) *Financial assistance agreement.* PBGC may, upon providing notice to the plan sponsor, make changes to the financial assistance agreement in response to changed circumstances consistent with sections 4231 and 4261 of ERISA and the regulations thereunder.

William Reeder,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2018–19988 Filed 9–13–18; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0871]

Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Tower Drawbridge across the Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow the community to participate in the Farm-to-Fork Dinner event. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from 12 noon through 10 p.m. on September 30, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0871, is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516; email *Carl.T.Hausner@uscg.mil.*

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge over the Sacramento River, mile 59.0, at Sacramento, CA. The drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw operates as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 12 noon through 10 p.m. on September 30, 2018, to allow the community to participate in the Farm-to-Fork Dinner event. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies with a 2-hour notification to the bridge owner and there are no immediate alternate routes for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 11, 2018.

Carl T. Hausner,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2018–20043 Filed 9–13–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1989–0011; FRL–9983–74—Region 3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Recticon/Allied Steel Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 3 announces the deletion of the Recticon/Allied Steel Corp Superfund Site (Site) located in East Coventry Twp, PA, from the National Priorities List (NPL). 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 Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection, have determined that all appropriate response actions under CERCLA, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This action is effective September 14, 2018.

ADDRESSES:

Docket: EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–1989–0011. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the site information repositories.

Locations, contacts, phone numbers and viewing hours are:

USEPA Region III Administrative Records Room, 1650 Arch Street—6th Floor, Philadelphia, PA 19103–2029, 215–814–3157. Business Hours: Monday through Friday, 8:00 a.m.–4:30 p.m.; by appointment only.

Local Repository, East Coventry Township Municipal Building, 855 Ellis Woods Road, Pottstown, PA 19464, 610–495–5443. Call for Business Hours.

FOR FURTHER INFORMATION CONTACT: Andrew Hass, Remedial Project Manager, U.S. Environmental Protection Agency, Region 3, 3HS21 1650 Arch Street, Philadelphia, PA 19103, (215) 814–2049, email: *hass.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Recticon/Allied Steel Corp Superfund Site, East Coventry Twp, PA. A Notice of Intent to Delete for this Site was published in the **Federal Register** (83 FR 33186–33191) on July 17, 2018.

The closing date for comments on the Notice of Intent to Delete was August 16, 2018. No adverse or site-specific public comments were received. As a result, a responsiveness summary was not prepared.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. 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. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

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

Dated: August 31, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

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.

Appendix B to Part 300—[Amended]

■ 2. Table 1 of appendix B to part 300 is amended by removing the listing under Pennsylvania for ''Recticon/Allied Steel Corp''.

[FR Doc. 2018–20039 Filed 9–13–18; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 83, No. 179
Friday, September 14, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Doc. No. AMS–SC–18–0017; SC18–929–3 PR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Proposed Amendment to Marketing Order 929 and Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This rulemaking proposes an amendment to Marketing Order No. 929, which regulates the handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The Cranberry Marketing Committee (Committee), recommended adding authority to accept contributions from domestic sources for research and development activities authorized under the marketing order and that would be free from any encumbrances as to their use by the donor.

DATES: The referendum will be conducted from October 29, 2018 through November 19, 2018. The representative period for the referendum is September 1, 2016 through August 31, 2017.

ADDRESSES: Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237.

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Marketing Specialist, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or email: *Geronimo.Quinones@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or email: *Richard.Lower@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposal is issued under Marketing Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. Part 929 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' Section 608c(17) of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorizes amendment of the order through this informal rulemaking action.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) amended section 608c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 8c(17) of the Act and additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendment proposed is not unduly complex and the nature of the proposed amendment is appropriate for utilizing the informal rulemaking process to amend the Order.

The proposed amendment was unanimously recommended by the Committee following deliberations at a public meeting held August 2017. The proposal would amend the Order by giving the Committee the authority to accept and expend voluntary contributions from domestic sources to fund research and development projects. All voluntary donations must be free from any restrictions on use by the donor, and the Committee would retain control over the use of all donated funds.

A proposed rule soliciting comments on the proposed amendment was issued on April 19, 2018, and published in the **Federal Register** on April 27, 2018 (83 FR 18460). One comment was received. AMS will conduct a producer and processor referendum to determine support for the proposed amendment. If appropriate, a final rule will then be issued to effectuate the amendment favored by producers and processors in the referendum.

The Committee's proposed amendment would amend the Order by authorizing the Committee to receive and expend voluntary contributions from domestic sources for research and development activities.

Proposal—Voluntary Contributions

This proposal would add a new section, § 929.43, Contributions, to the Order. If implemented, this section would authorize the Committee to accept voluntary financial contributions. Such contributions could only be accepted from domestic sources and must be free from any restrictions on their use by the donor. When received, the Committee would retain complete control of their use. The use of contributed funds would be limited to funding program activities authorized under § 929.45, Research and development.

Currently, program operations are solely financed through assessments collected from handlers regulated under the Order. Sources not subject to the Order have expressed an interest in supporting many of the research and development projects currently funded by the Order. However, without the ability to accept financial contributions, the Committee has had to decline these offers. This proposal would authorize the Committee to accept financial contributions. With the potential for additional funding, more research and development projects could be undertaken.

For the reasons stated above, it is proposed that § 929.43, Contributions, be added to authorize the Committee to accept voluntary financial contributions.

Final Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,100 cranberry growers in the regulated area and approximately 65 cranberry handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to industry and Committee data, the average grower price for cranberries during the 2016–17 crop year was $23.50 per barrel, and total sales were around 9.5 million barrels. The value of cranberries that crop year totaled $223,250,000 ($23.50 per barrel multiplied by 9.5 million barrels). Taking the total value of production for cranberries and dividing it by the total number of cranberry growers (1,100) provides an average return per grower of $202,955. Based on USDA's Market News reports, the average free on board (f.o.b.) price for cranberries was around $30.00 per barrel. Multiplying the f.o.b. price by total utilization of 9.5 million barrels results in an estimated handler-level cranberry value of $285 million. Dividing this figure by the number of handlers (65) yields an estimated average annual handler receipt of $4.3 million, which is below the SBA threshold for small agricultural service firms. Therefore, the majority of growers and handlers of cranberries may be classified as small entities.

The amendment proposed by the Committee would add a new section, § 929.43, Contributions, to the Order. If implemented, this section would authorize the Committee to accept voluntary financial contributions. Such contributions could only be accepted from domestic sources and must be free from any encumbrances or restrictions on their use by the donor. When received, the Committee would retain complete control of their use. The use of contributed funds would be limited to funding program activities authorized under § 929.45, Research and development.

If the proposal is approved in referendum, there would be no direct financial effect on growers or handlers. This proposal would authorize the Committee to accept financial contributions. With the potential for additional funding, more research and promotional projects could be undertaken.

Therefore, it is anticipated that both small and large producer and handler businesses would benefit from implementation of this proposal. Additionally, a past referendum concerning a similar action was supported by most eligible producers and processors. However, that referendum failed because the handlers that voted in the referendum did not represent the required minimum 50 percent of the total volume of cranberries processed during the representative period (82 FR 36991).

Alternatives to this proposal, including making no changes at this time, were considered. However, the Committee believes it would be beneficial to authorize the acceptance of financial contributions from domestic sources which would help support research and promotional activities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189, ''Generic Fruit Crops.'' No changes in those requirements as a result of this action would be necessary. Should any changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

The Committee's meeting was widely publicized throughout the cranberry production area. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. The Committee meeting was public, and all entities, both large and small, were encouraged to express their views on this proposal.

A proposed rule concerning this action was published in the **Federal Register** on April 27, 2018 (83 FR 18460). Copies of the proposed rule were mailed or sent via facsimile to all

Committee members and cranberry handlers. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending June 26, 2018, was provided to allow interested persons to respond to the proposal. One comment was received. The comment submitted was not related to this proposal, therefore, no changes have been made to the proposed amendment.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Richard Lower at his previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Findings and Conclusions

The findings and conclusions and general findings and determinations included in the proposed rule set forth in the April 27, 2018, issue of the **Federal Register** are hereby approved and adopted.

Marketing Order

Annexed hereto and made a part hereof is the document entitled ''Order Amending the Order Regulating the Handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.'' This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions. It is hereby ordered, that this entire rule be published in the **Federal Register**.

Referendum Order

It is hereby directed that a producer and processor referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400–900.407) to determine whether the annexed order amending the Order regulating the handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York is approved by producers as well as by processors who have frozen or canned cranberries grown within the production area during the representative period. The representative period for the conduct of such referendum is hereby determined to be September 1, 2016 through August 31, 2017.

The agents of the Secretary of Agriculture to conduct such referendum are designated to be Doris Jamieson and Christian D. Nissen, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.* respectively.

Order Amending the Order Regulating the Handling of Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York [1]

Findings and Determinations

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The Order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. The Order, as amended, and as hereby proposed to be further amended, regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the Order;

3. The Order, as amended, and as hereby proposed to be further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The Order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of cranberries produced in the production area; and

5. All handling of cranberries produced in the production area as defined in the Order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the Order contained in the proposed rule issued by the Administrator on April 19, 2018, and published in the **Federal Register** (83 FR 18460) on April 27, 2018, will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

Dated: September 7, 2018.

Bruce Summers,

Administrator, Agricultural Marketing Service.

For the reasons discussed in the preamble, AMS proposes to amend 7 CFR part 929 as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

■ 1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Add § 929.43 to read as follows:

§ 929.43 Contributions.

The Committee may accept voluntary contributions to pay expenses incurred pursuant to § 929.45, Research and development. Such contributions may only be accepted if they are sourced from domestic contributors and are free from any encumbrances or restrictions on their use by the donor. The

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Cranberry Marketing Committee shall retain complete control of their use.

[FR Doc. 2018–19834 Filed 9–13–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0719; Product Identifier 2016–NE–24–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2017–20–01, which applies to certain Honeywell International Inc. (Honeywell) TFE731–20 and TFE731–40 turbofan engines. AD 2017–20–01 requires removing the affected fan disk and replacing it with a fan disk eligible for installation. Since we issued AD 2017–20–01, we determined that some turbofan engine models were omitted from the applicability of AD 2017–20–01. This proposed AD would add these turbofan engine models to the applicability, remove the Honeywell TFE731–20 turbofan engine from the applicability, and prohibit installation of affected fan disks. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 29, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Honeywell International Inc., 111 S. 34th Street, Phoenix, AZ, 85034–2802; phone: 800–601–3099 (Toll Free U.S.A./Canada); 602–365–3099 (International Direct); website: *www.myaerospace.com;* email: *engine.reliability@honeywell.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call (781) 238–7759.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0719; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles ACO Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA, 90712–4137; phone: 562–627–5246; fax: 562–627–5210; email: *joseph.costa@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0719; Product Identifier 2016–NE–24–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued AD 2017–20–01, Amendment 39–19058 (82 FR 45173, September 28, 2017), (''AD 2017–20–01''), for certain Honeywell TFE731–20 and TFE731–40 turbofan engines with fan disk part number, (P/N) 3060287–2, and a serial number (S/N) listed in Table 9 of Honeywell Service Bulletin (SB) TFE731–72–5256, Revision 0, dated October 7, 2016. AD 2017–20–01 requires removing the affected fan disk and replacing it with a part eligible for installation. AD 2017–20–01 resulted from two fan disks found with surface rollovers in the dovetail slot area. We issued AD 2017–20–01 to address the unsafe condition on these products.

Actions Since AD 2017–20–01 Was Issued

Since we issued AD 2017–20–01, we determined that Honeywell TFE731–20R, –20AR, –20BR, and TFE731–40R, –40AR, and –40BR turbofan engine models listed in Honeywell SB TFE731–72–5256, Revision 0, dated October 7, 2016, were omitted from the applicability of AD 2017–20–01. We also determined that the Honeywell TFE731–20 turbofan engine model was never produced and should be removed from the applicability; and that affected fan disks, P/N 3060267–2, should be prohibited from installation unless they have ''T43374'' marked adjacent to the engine P/N or S/N. This proposed AD would add Honeywell TFE731–20R, –20AR, –20BR, and TFE731–40R, –40AR, and –40BR turbofan engine models to the applicability, remove the Honeywell TFE731–20 turbofan engine from the applicability, and prohibit installation of affected fan disks.

Related Service Information Under 1 CFR Part 51

We reviewed Honeywell SB TFE731–72–5256, Revision 0, dated October 7, 2016. The SB identifies affected fan disks by S/N and describes procedures for removing, inspecting, and replacing the affected fan disks. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain certain requirements of AD 2017–20–01. This proposed AD would add Honeywell TFE731–20R, –20AR, –20BR, and TFE731–40AR, –40BR, and –40R turbofan engines with fan disk, P/N 3060287–2, and a S/N listed in Table 9 of Honeywell SB TFE731–72–5256, Revision 0, dated October 7, 2016. This proposed AD would also remove the Honeywell TFE731–20 turbofan engine from the applicability and prohibit

installation of affected fan disks that do not have ''T43374'' marked adjacent to the engine P/N or S/N.

Costs of Compliance

We estimate that this proposed AD affects 61 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove fan disk and send to Honeywell for inspection.	8 work-hours × $85 per hour = $680	$0	$680	$41,480
Install reworked or new fan disk	26 work-hours × $85 per hour = $2,210	0	2,210	134,810

The new requirements of this proposed AD add no additional economic burden. We estimate the following costs to do any necessary fan disk replacements that would be required based on the results of the proposed inspection. We estimate that 6 engines will need this replacement.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace the non-serviceable disk with a new fan disk	1 work-hour × $85 per hour = $85	$50,000	$50,085

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–20–01, Amendment 39–19058; (82 FR 45173, September 28, 2017), and adding the following new AD:

Honeywell International Inc. (Type Certificate previously held by AlliedSignal Inc.): Docket No. FAA–2018–0719; Product Identifier 2016–NE–24–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by October 29, 2018.

(b) Affected ADs

This AD replaces AD 2017–20–01, Amendment 39–19058 (82 FR 45173, September 28, 2017).

(c) Applicability

This AD applies to all Honeywell International Inc. (Honeywell) TFE731–20R, –20AR, –20BR, and TFE731–40, –40AR, –40BR, and –40R turbofan engines with a fan disk, part number (P/N) 3060287–2, and with a serial number (S/N) listed in Table 9 of Honeywell Service Bulletin (SB) TFE731–72–5256, Revision 0, dated October 7, 2016, that do not have ''T43374'' marked adjacent to the engine P/N or S/N.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by a report of two fan disks found with surface rollovers in the dovetail slot area. We are issuing this AD to prevent uncontained failure of the fan disks. The unsafe condition, if not addressed, could result in uncontained fan disk release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Remove the affected fan disk using the following criteria:

(1) Remove fan disks with 9,000 cycles-since-new (CSN) or more as of the effective date of this AD, within 100 cycles-in-service (CIS), or at the next engine shop visit, or at next access, whichever occurs first, after the effective date of this AD.

(2) Remove fan disks with between 8,000 and 8,999 CSN, inclusive, as of the effective date of this AD, within 9,100 CSN or within 1,000 CIS, or at the next engine shop visit, or at next access, whichever occurs first, after the effective date of this AD.

(3) Remove fan disks with fewer than 8,000 CSN as of the effective date of this AD, before exceeding 9,000 CSN, or at the next engine shop visit, or at next access, whichever occurs first, after the effective date of this AD.

(4) Replace any removed fan disk with a part eligible for installation.

(h) Installation Prohibition

Do not install an affected fan disk, P/N 3060267–2, unless ''T43374'' is marked adjacent to the engine P/N or S/N.

(i) Definitions

(1) For the purposes of this AD, an ''engine shop visit'' is defined as the removal of the tie-shaft nut from the engine.

(2) For the purposes of this AD, ''access'' is defined as the removal of the fan rotor assembly from the engine.

(3) For the purposes of this AD, a ''part eligible for installation'' is:

(i) a fan disk not listed in the Accomplishment Instructions, Table 9, in Honeywell SB TFE731–72–5256, Revision 0, dated October 7, 2016; or

(ii) a fan disk listed in Table 9, in Honeywell SB TFE731–72–5256, Revision 0, dated October 7, 2016, that has been inspected, reworked, and marked with ''T43374'' adjacent to the P/N or S/N. Guidance on returning affected parts to Honeywell for inspection and rework is found in the Accomplishment Instructions, paragraph 3.D., of Honeywell SB TFE731–72–5256, Revision 0, dated October 7, 2016.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

(1) For more information about this AD, contact Joseph Costa, Los Angeles ACO Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA, 90712–4137; phone: 562–627–5246; fax: 562–627–5210; email: *joseph.costa@faa.gov.*

(2) For service information identified in this AD, contact Honeywell International Inc., 111 S. 34th Street, Phoenix, AZ, 85034–2802; phone: 800–601–3099 (Toll Free U.S.A./Canada); phone: 602–365–3099 (International Direct); website: *www.myaerospace.com;* email: *engine.reliability@honeywell.com.* You may view this referenced service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued in Burlington, Massachusetts, on September 6, 2018.

Robert J. Ganley,

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

[FR Doc. 2018–19798 Filed 9–13–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9189; Product Identifier 2016–NM–114–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposal for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This action revises the notice of proposed rulemaking (NPRM) by adding airplanes to the applicability and adding a measurement of the distance between the hooks of the torsion spring of the lanyard assembly. We are proposing this airworthiness directive (AD) to address the unsafe condition on these products. Since these actions would impose an additional burden over those in the NPRM, we are reopening the comment period to allow the public the chance to comment on these changes.

DATES: The comment period for the NPRM published in the **Federal Register** on October 13, 2016 (81 FR 70647), is reopened.

We must receive comments on this SNPRM by October 29, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this SNPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9189.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9189; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this SNPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Scott Craig, Aerospace Engineer, Cabin

Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3566; email: *michael.s.craig@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9189; Product Identifier 2016–NM–114–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this SNPRM. We will consider all comments received by the closing date and may amend this SNPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this SNPRM.

Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. The NPRM published in the **Federal Register** on October 13, 2016 (81 FR 70647). The NPRM was prompted by reports of passenger service units (PSUs) becoming detached from the supporting airplane structure in several Model 737 airplanes during survivable accidents. The NPRM proposed to require modifying the PSUs and life vest panels by replacing the existing inboard lanyard and installing two new lanyards on the outboard edge of the PSUs and life vest panels.

Actions Since the NPRM Was Issued

Since we issued the NPRM, we have determined that additional airplanes are subject to the unsafe condition. In addition, we have determined that the torsion spring of a certain lanyard assembly may be manufactured incorrectly and have an inadequate distance between the hooks of the torsion spring. Since the discrepant torsion springs may have been installed in production, as well as on airplanes modified in accordance with Boeing Service Bulletin 737–25–1707, dated September 24, 2015, we have determined that it is necessary to measure the distance between the hooks of the torsion spring of the lanyard assembly and replace discrepant lanyard assemblies.

Comments

We gave the public the opportunity to comment on the NPRM. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

The National Transportation Safety Board (NTSB) and commenter London Smith expressed their support for the NPRM.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that the installation of winglets per Supplemental Type Certificate (STC) ST00830SE does not affect the accomplishment of the manufacturer's service instructions.

We agree with the commenter that STC ST00830SE does not affect the accomplishment of the manufacturer's service instructions. Therefore, the installation of STC ST00830SE does not affect the ability to accomplish the actions that would be required by this SNPRM. We have not changed this SNPRM in this regard.

Request To Extend the Compliance Time

Japan Airlines (JAL) and American Airlines (AA) requested that the compliance time in paragraph (g) of the proposed AD be extended from 60 months to 84 months. JAL suggested that, due to Boeing's manufacturing schedule for the kits, Boeing might not manufacture an adequate number of kits within the proposed compliance time. AA stated that extending the compliance time would allow operators to perform the modification during regularly scheduled heavy maintenance checks, thereby reducing the financial burden on operators.

We disagree with the requests. In developing an appropriate compliance time for this action, we considered the urgency of the unsafe condition along with the practical aspect of accomplishing the required modification at a time corresponding to the normal scheduled maintenance for most operators. According to the manufacturer, an adequate number of modification kits will be available to modify the affected fleet within the proposed compliance time. However, under the provisions of paragraph (i) of this SNPRM, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. We have not changed this SNPRM in this regard.

Request To Clarify Service Information Requirements

AA requested that we clarify that data notes (b) and (d) to Figure 1 of Boeing Service Bulletin 737–25–1707, dated September 24, 2015, can be complied with in accordance with an operator's procedures. AA noted paragraph 3.B.1.b. of the Accomplishment Instructions of Boeing Service Bulletin 737–25–1707, dated September 24, 2015, which requires the installation of new lanyards in accordance with Figure 1 of the service information, is a Required for Compliance (RC) step. AA added that data notes (b) and (d) to Figure 1 of Boeing Service Bulletin 737–25–1707, dated September 24, 2015, provide latitude when the operator has an accepted alternative procedure by using the term ''refer to.''

We agree to clarify that the operator is allowed latitude in accomplishing work steps that use the term ''refer to.'' If a step is marked RC and a procedure or document may be followed to accomplish an action (*e.g.,* the design approval holder's procedure or document may be used, but an FAA-accepted procedure could also be used), the appropriate terminology to use to cite the procedure or document is ''refer to . . . as an accepted procedure.'' We have not changed this SNPRM in this regard.

Request To Add Airplanes to the Applicability

United Airlines (UAL) noted that the proposed AD did not refer to the PSUs on Model 757–200 and –300 airplanes, which can have the same part numbers as the airplanes addressed by the proposed AD. UAL stated that operators who operate both of these fleet types need to review the risk of having both pre- and post-AD parts in their inventory. UAL added that they will mitigate the risk of potential parts intermingling by modifying their Model 757–200 and –300 airplanes with the same PSU modification.

We infer that UAL requests that Model 757–200 and –300 series airplanes should be included in the applicability of this proposed AD. We agree to investigate whether a similar unsafe condition exists on Model 757–200 and –300 series airplanes. We will take appropriate action based on the result of that investigation. However, delaying this SNPRM in order to determine if Model 757 airplanes should be added to the applicability would be inappropriate given that we

have determined that an unsafe condition exists and that the modifications must be done to ensure continued safety. We have not changed this SNPRM in this regard.

Request To Change Text To Match the Service Information

Boeing requested that we change wording in the proposed AD that discusses ''. . . removing the existing lanyard and installing two new lanyards. . .'' to instead read ''. . . replacing the existing lanyard and installing two new lanyards. . . .'' Boeing stated that the proposed text more accurately describes the modification required by the service bulletin.

We agree with the request. We have updated the wording of the applicable sentence in the Discussion and Related Service Information under 1 CFR part 51 sections of this SNPRM.

Request To Clarify Language Describing What Prompted the AD

Boeing requested that the word ''incidents'' be changed to ''accidents'' in language describing what prompted the proposed AD. Boeing noted that the events in which PSUs became detached were accidents, not incidents, as defined by the NTSB and International Civil Aviation Organization (ICAO) Annex 13.

We agree to make this change, which will more accurately define these events according to industry standards. We have updated the Discussion section and paragraph (e) of this SNPRM to reflect this change.

Request To Refer to New Service Information

Boeing requested that we update the proposed AD to refer to Boeing Service Bulletin 737–25–1707, Revision 1, dated May 18, 2018, which was recently released. Boeing stated that the service bulletin would be revised to include the 737NG Boeing Business Jet (BBJ) aircraft effectivity blocks, which were omitted in the original revision of the service bulletin.

We agree with the commenter's request. Boeing Service Bulletin 737–25–1707, Revision 1, dated May 18, 2018, adds airplanes to the effectivity, adds a new measurement of the torsion spring of the lanyard assembly, and clarifies the instructions for attaching the lanyard assembly torsion spring to the PSU rail. For these reasons, we have updated this SNPRM to refer to Boeing Service Bulletin 737–25–1707, Revision 1, dated May 18, 2018.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Service Bulletin 737–25–1707, Revision 1, dated May 18, 2018. This service information describes procedures for modifying the PSUs and life vest panels by replacing the existing inboard lanyard and installing two new lanyards on the outboard edge of the PSUs and life vest panels, measuring the distance between the hooks of the torsion spring of the lanyard assembly, replacing any discrepant lanyard assemblies, and re-identifying serviceable lanyard assemblies. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed Requirements of This SNPRM

This SNPRM would require accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Service Bulletin 737–25–1707, Revision 1, dated May 18, 2018, described previously, except as discussed under ''Differences Between this SNPRM and the Service Information,'' and except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9189.

Differences Between This SNPRM and the Service Information

The effectivity of Boeing Service Bulletin 737–25–1707, Revision 1, dated May 18, 2018, is limited to Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, line numbers 1 through 6009, without a Boeing Sky Interior (BSI). However, the applicability of this proposed AD includes all Boeing Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes without a BSI. Because the affected lanyard assemblies are rotable parts, we have determined that these parts could later be installed on airplanes that were initially delivered with acceptable lanyard assemblies, thereby subjecting those airplanes to the unsafe condition. This difference has been coordinated with Boeing.

Costs of Compliance

We estimate that this proposed AD affects 2,015 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and modification	Up to 75 work-hours × $85 per hour = Up to $6,375.	Up to $11,760	Up to $18,135	Up to $36,542,025

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations

for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2016–9189; Product Identifier 2016–NM–114–AD.

(a) Comments Due Date

We must receive comments by October 29, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category, without a Boeing Sky Interior (BSI).

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by reports of passenger service units (PSUs) becoming detached from the supporting airplane structure in several Model 737 series airplanes during survivable accidents. We are issuing this AD to address PSUs and life vest panels detaching from the supporting airplane structure, which could lead to passenger injuries and impede passenger and crew egress during evacuation.

(f) Compliance

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

(g) Required Actions

Within 60 months after the effective date of this AD, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Service Bulletin 737–25–1707, Revision 1, dated May 18, 2018.

(h) Parts Installation Prohibition

As of the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, no person may install on any airplane a PSU or life vest panel, unless the lanyard assembly has been updated as required by paragraph (g) of this AD.

(1) For airplanes that have PSUs or life vest panels without the updated lanyard assemblies installed: After modification of the airplane as required by this AD.

(2) For airplanes that have PSUs or life vest panels with the updated lanyard assemblies installed: As of the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

(1) For more information about this AD, contact Scott Craig, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3566; email: *michael.s.craig@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on August 29, 2018.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–19838 Filed 9–13–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0790; Product Identifier 2018–NM–078–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2010–14–05, which applies to certain Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes. AD 2010–14–05 requires inspection for the part numbers of the system and brake accumulators, and repetitive replacement of affected accumulators. Since we issued AD 2010–14–05, we have determined that new or more restrictive airworthiness limitations, as well as additional actions, are necessary to address the unsafe condition. In addition to the requirements of AD 2010–14–05, this proposed AD would require relocating the accumulators and revising the maintenance or inspection program to incorporate new or more restrictive airworthiness limitations. This proposed AD would also add optional terminating action for certain airplanes. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 29, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0790; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Neil Doh, Aerospace Engineer, Aviation Safety Section AIR–7B1, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; telephone 781–238–7757.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0790; Product Identifier 2018–NM–078–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued AD 2010–14–05, Amendment 39–16350 (75 FR 37994, July 1, 2010) (''AD 2010–14–05''), for certain Bombardier Model CL–600–1A11 (600), CL–600–2A12 (601), CL–600–2B16 (601–3A, 601–3R, and 604 Variants (including CL–605 Marketing Variant)) airplanes. AD 2010–14–05 requires an inspection to determine the part numbers of the system accumulators numbers 1, 2, and 3 and brake accumulators numbers 2 and 3, and repetitive replacement of the accumulator. AD 2010–14–05 resulted from reports of the on-ground failure of the hydraulic accumulator screw cap or end cap, resulting in loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. We issued AD 2010–14–05 to address failure of one of the brake accumulator screw caps/end caps, resulting in impact damage causing loss of both hydraulic systems No. 2 and No. 3, with consequent loss of both braking and nose wheel steering and the potential for a runway excursion.

Actions Since AD 2010–14–05 Was Issued

Since we issued AD 2010–14–05, we have determined that new or more restrictive airworthiness limitations and additional actions are necessary to address the unsafe condition.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2009–39R1, issued October 13, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes. The MCAI states:

> Seven cases of on-ground hydraulic accumulator screw cap or end cap failure have been experienced on CL–600–2B19 (CRJ) aircraft, resulting in loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. The lowest number of flight cycles accumulated at the time of failure, to date, has been 6991 flight cycles.
>
> Although there have been no failures to date on any CL–600–1A11, CL–600–2A12 or CL–600–2B16 aircraft, the same accumulators as those installed on the CL–600–2B19, Part Numbers (P/N) 08–60163–002 and 08–60164–002 are installed on some of the aircraft listed in the Applicability section of this directive.
>
> Notes:
>
> 1. Earlier accumulators, P/Ns 2770571–102, 2770571–103, 2770571–104 and 2770571–105, were installed in production on the following aircraft: CL–600–1A11 [all Serial Numbers (S/Ns)], CL–600–2A12 (all S/Ns) and CL–600–2B16 (S/Ns 5001 through 5194 and 5301 through 5524 only). These accumulators do not require inspection or replacement. However, if any of the accumulators with the above P/Ns have been replaced in-service by P/Ns 08–60163–002 and 08–60164–002, these latter accumulators require replacement.
>
> 2. Prior to issuance of [Canadian] AD CF–2009–39, the only accumulators ever installed in production on CL–600–2B16

aircraft, S/Ns 5525 through 5665 and 5701 through 5908, are P/Ns 08–60163–002 and 08–60164–002; these accumulators require replacement.

3. After issuance of [Canadian] AD CF–2009–39 [which corresponded to FAA AD 2010–14–05, Amendment 39–16350 (75 FR 37994, July 1, 2010)], accumulators with P/Ns specified in Note 2, above, began to feature various S/N suffixes. Only accumulators with S/N suffix ''TNAE'' do not require replacement, but they are subject to other mandatory actions detailed in this AD.

4. Stainless steel accumulators P/Ns 601R75139–3 (11094–4) and 601R75139–1 (11093–4) were installed in production on CL–600–2B16 aircraft, S/Ns 5909 and subsequent. These accumulators do not require replacement, but they are subjected to other mandatory actions detailed in this AD.

A detailed analysis of the systems and structure in the potential line of trajectory of a failed screw cap/end cap for each accumulator, P/Ns 08–60163–002 and 08–60164–002, has been conducted. On the Challengers, it has been identified that the worst case scenario would be a failure of system No. 1, 2 or 3 accumulator screw caps/end caps (depending on the model), resulting in a potential uncontrolled fire in a non-designated fire zone.

The original version of this [Canadian] AD gave instructions to perform identification and records checks, where applicable, and replace accumulators, P/Ns 08–60163–002 and 08–60164–002 within the time compliance specified.

* * * * *

The unsafe condition is potential impact damage that could cause loss of both hydraulic systems No. 2 and No. 3, and the consequent loss of both braking and nose wheel steering, the potential for a runway excursion, and damage to the airplane. Required actions include relocating certain accumulators. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0790.

Related Service Information Under 1 CFR Part 51

The following Bombardier service information describes procedures for replacing hydraulic system accumulators with new, overhauled, or refurbished accumulators. These documents are distinct since they apply to different airplane models.

- Service Bulletin 600–742, Revision 4, dated June 11, 2015
- Service Bulletin 601–597, Revision 4, dated June 11, 2015
- Service Bulletin 604–29–008, Revision 4, dated June 11, 2015
- Service Bulletin 605–29–001, Revision 4, dated June 10, 2015

The following Bombardier service information describes procedures for relocating hydraulic system accumulators. These documents are distinct since they apply to different airplane models in different configurations.

- Service Bulletin 600–0764, dated October 8, 2015
- Service Bulletin 600–0767, dated August 25, 2016
- Service Bulletin 601–0633, dated October 8, 2015
- Service Bulletin 601–0637, dated August 25, 2016
- Service Bulletin 604–29–013, Revision 2, dated April 18, 2016
- Service Bulletin 605–29–006, Revision 2, dated April 19, 2016

The following Bombardier Time Limits/Maintenance Checks describe certain systems life limits of the safe life items. These documents are distinct since they apply to different airplane models in different configurations.

- Bombardier Challenger 600 Time Limits/Maintenance Checks, PSP 605, Revision 39, dated January 8, 2018
- Bombardier Challenger 601 Time Limits/Maintenance Checks, PSP 601–5, Revision 46, dated January 8, 2018
- Bombardier Challenger 601 Time Limits/Maintenance Checks, PSP 601A–5, Revision 42, dated January 8, 2018
- Bombardier Challenger 604 CL–604 Time Limits/Maintenance Checks, Revision 30, dated December 4, 2017
- Bombardier Challenger CL–605 Time Limits/Maintenance Checks, Revision 18, dated December 4, 2017

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

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type designs.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (n)(1) of this proposed AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Difference Between Proposed AD and MCAI

Although the MCAI placed no restrictions on special flight permits, this proposed AD would limit ferry flights by requiring an engineering recommendation from Bombardier as well as approval from the Flight Standards District Office. This difference has been coordinated with TCCA.

Costs of Compliance

We estimate that this proposed AD affects 130 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions: 20 work-hours × $85 per hour = $,1,700.	$7,717	$9,417	$1,224,210.
New actions: Up to 170 work-hours × $85 per hour = Up to $14,450.	Up to $41,635	Up to $56,085	Up to $7,291,050.

For the new maintenance/inspection program revision, we have determined that this action takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet, we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours x $85 per work-hour).

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866,
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
3. Will not affect intrastate aviation in Alaska, and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2010–14–05, Amendment 39–16350 (75 FR 37994, July 1, 2010), and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2018–0790; Product Identifier 2018–NM–078–AD.

(a) Comments Due Date

We must receive comments by October 29, 2018.

(b) Affected ADs

This AD replaces AD 2010–14–05, Amendment 39–16350 (75 FR 37994, July 1, 2010) (''AD 2010–14–05'').

(c) Applicability

This AD applies to the Bombardier, Inc., airplanes, certificated in any category, identified in paragraphs (c)(1) through (c)(5) of this AD.

(1) Model CL–600–1A11 (600) airplanes, serial numbers 1004 through 1085 inclusive.

(2) Model CL–600–2A12 (601) airplanes, serial numbers 3001 through 3066 inclusive.

(3) Model CL–600–2B16 airplanes (601–3A Variant), serial numbers 5001 through 5134 inclusive.

(4) Model CL–600–2B16 airplanes (601–3R Variant), serial numbers 5135 through 5194 inclusive.

(5) Model CL–600–2B16 airplanes (604 Variant), serial numbers 5301 through 5665 inclusive and 5701 and subsequent.

Note 1 to paragraph (c) of this AD: Certain Model CL–600–2B16 (604 Variant) airplanes might be referred to by the marketing designation CL–605.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic power.

(e) Reason

This AD was prompted by reports of on-ground hydraulic accumulator screw cap or end cap failure that resulted in the loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. We are issuing this AD to address failure of one of the brake accumulator screw caps/end caps, which could result in impact damage causing loss of both hydraulic systems No. 2 and No. 3, and the consequent loss of both braking and nose wheel steering, the potential for a runway excursion, and damage to the airplane.

(f) Compliance

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

(g) Retained Part Number Inspection and Accumulator Replacement, With Revised Formatting, Service Information, and Affected Part Numbers

This paragraph restates the requirements of paragraph (g) of AD 2010–14–05, with revised formatting, service information, and affected part numbers. Do the following actions as applicable.

(1) Within 50 flight hours after August 5, 2010 (the effective date of AD 2010–14–05), inspect to determine the part numbers of the system accumulators numbers 1, 2, and 3, and brake accumulators numbers 2 and 3 that are installed on the airplane. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of each accumulator can be conclusively determined from that review. If all of the installed accumulators have part number (P/N) 2770571–102, 2770571–103, 2770571–104, 2770571–105, 601R75139–3 (11094–4), or 601R75139–1 (11093–4), no further action is required by paragraph (g) of this AD.

(2) Except as provided in paragraph (g)(1) of this AD: At the applicable time in paragraph (g)(2)(i), (g)(2)(ii), or (g)(2)(iii) of this AD, replace the accumulator with a new, overhauled, or refurbished accumulator with the same part number, in accordance with the Accomplishment Instructions of the applicable service bulletin listed in figure 1 to paragraphs (g)(2) and (g)(3) of this AD.

(i) For each accumulator having P/Ns 08–60163–002 (601R75138–1), and 08–60164–002 (601R75138–3), as applicable, that has accumulated more than 3,650 total flight cycles as of August 5, 2010 (the effective date of AD 2010–14–05): Replace the accumulator within 100 flight cycles after August 5, 2010.

(ii) For each accumulator having P/N 08–60163–002 (601R75138–1), and 08–60164–002 (601R75138–3), as applicable, that has accumulated 3,650 total flight cycles or fewer

as of August 5, 2010: Replace the accumulator before the accumulation of 3,750 total flight cycles on the accumulator.

(iii) For each accumulator having P/N 08–60163–002 (601R75138–1), and 08–60164–002 (601R75138–3), as applicable, for which it is not possible to determine the number of flight cycles accumulated: Replace the accumulator within 100 flight cycles after August 5, 2010.

Figure 1 to paragraphs (g)(2) and (g)(3) of this AD –
Service bulletins for accumulator replacement

Airplane Model –	Bombardier Service Bulletin –	Revision –	Dated –
CL-600-1A11 (600)	600-0742	04	June 11, 2015
CL-600-2A12 (601) CL-600-2B16 (601-3A and 601-3R Variants)	601-0597	04	June 11, 2015
CL-600-2B16 (604 Variant)	604-29-008	04	June 11, 2015
CL-600-2B16 (605*)	605-29-001	04	June 10, 2015
*Model CL-600-2B16 (604 Variant), referred to by the marketing designation CL-605.			

(3) Thereafter, before the accumulation of 3,750 total flight cycles on any accumulator having P/Ns 08–60163–002 (601R75138–1), and 08–60164–002 (601R75138–3), as applicable, replace the accumulator with a new, overhauled, or refurbished accumulator having the same part number, in accordance with the Accomplishment Instructions of the applicable service bulletin listed in figure 1 to paragraphs (g)(2) and (g)(3) of this AD.

(h) New Provision of This AD: Terminating Action for Certain Accumulators

For each accumulator with one of the following part number and serial number (S/N) suffixes, the repetitive replacement specified in paragraphs (g)(2) and (g)(3) of this AD is not required.

(1) P/N 08–60163–002 with S/N suffix TNAE
(2) P/N 08–601–002 with S/N suffix TNAE
(3) P/N 601R75139–3 (11094–4)
(4) P/N 601R75139–1 (11093–4)

(i) New Requirement of This AD: Relocation of Accumulators

Within 60 months or 2,400 flight cycles, whichever occurs first after the effective date of this AD, relocate the hydraulic system accumulators as specified in paragraphs (i)(1) through (i)(4) of this AD, as applicable. Relocation of the hydraulic system accumulators as required by this paragraph does not terminate any repetitive replacement required by paragraph (g)(2) or (g)(3) of this AD.

(1) For Model CL–600–1A11 (600) airplanes, S/Ns 1004 through 1085 inclusive: Relocate accumulators as specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD.

(i) Relocate hydraulic system Nos. 1 and 2 accumulators, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601–0764, dated October 8, 2015.

(ii) Relocate hydraulic system No. 3 accumulator, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 600–0767, dated August 25, 2016.

(2) For Model CL–600–2A12 (601) airplanes, S/Ns 3001 through 3066 inclusive, and Model CL–600–2B16 (601–3A and 601–3R Variants) airplanes, S/Ns 5001 through 5194 inclusive: Relocate accumulators as specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD.

(i) Relocate hydraulic system Nos. 1 and 2 accumulators, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601–0633, dated October 8, 2015.

(ii) Relocate hydraulic system No. 3 accumulator, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601–0637, dated August 25, 2016.

(3) For Model CL–600–2B16 (604 Variant) airplanes, S/Ns 5301 through 5665 inclusive: Relocate hydraulic system No. 3 accumulator, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 604–29–013, Revision 2, dated April 18, 2016.

(4) For Model CL–600–2B16 (605) airplanes, S/Ns 5701 and subsequent (*i.e.,* Model CL–600–2B16 (604 Variant), referred to by the marketing designation CL–605): Relocate hydraulic system No. 3 accumulator, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 605–29–006, Revision 2, dated April 19, 2016.

(j) New Requirement of This AD: Revision of Maintenance/Inspection Program

Within 50 flight hours after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the tasks specified in figure 2 to paragraph (j) of this AD.

Figure 2 to paragraph (j) of this AD: *Time Limits / Maintenance Checks (TLMC) tasks*

Airplane model	TLMC manual number	Section	Part number / task number
CL-600-1A11 (600)	Bombardier Challenger 600 Time Limits / Maintenance Checks, PSP 605, Revision 39, dated January 8, 2018	5-10-20	601R75138-1 (08-60163-002) with "TNAE" after the S/N
			601R75138-3 (08-60164-002) with "TNAE" after the S/N
CL-600-2A12 (601)	Bombardier Challenger 601 Time Limits / Maintenance Checks, PSP 601-5, Revision 46, dated January 8, 2018	5-10-20	601R75138-1 (08-60163-002) with "TNAE" after the S/N
			601R75138-3 (08-60164-002) with "TNAE" after the S/N
CL-600-2B16 (601-3A and 601-3R Variants)	Bombardier Challenger 601 Time Limits / Maintenance Checks, PSP 601A-5, Revision 42, dated January 8, 2018	5-10-20	601R75138-1 (08-60163-002) with "TNAE" after the S/N
			601R75138-3 (08-60164-002) with "TNAE" after the S/N
CL-600-2B16 (604 Variant)	Bombardier Challenger 604 CL–604 Time Limits / Maintenance Checks, Revision 30, dated December 4, 2017	5-10-11	29-10-00-101
			29-10-00-102
CL-600-2B16 (605*)	Bombardier Challenger CL-605 Time Limits / Maintenance Checks, Revision 18, dated December 4, 2017	5-10-11	29-10-00-101
			29-10-00-102

*Model CL-600-2B16 (604 Variant), referred to by the marketing designation CL-605.

(k) No Alternative Actions or Intervals

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

(l) Credit for Previous Actions

(1) Replacement of an accumulator with a new accumulator having the same part number is also acceptable for compliance with the requirements of paragraphs (g)(2) and (g)(3) of this AD, if done before August 5, 2010 (the effective date of AD 2010–14–05), in accordance with the applicable service bulletin listed in figure 3 to paragraph (l)(1) of this AD. This service information is not incorporated by reference in this AD.

Figure 3 to paragraph (l)(1) of this AD – *Previous service bulletins for AD 2010-14-05*

Airplane Model –	Bombardier Service Bulletin –	Revision –	Dated –
CL-600-1A11 (600)	600-0742	Original	November 10, 2008
		01	July 6, 2009
CL-600-2A12 (601) CL-600-2B16 (601-3A and 601-3R Variants)	601-0597	Original	November 10, 2008
		01	July 6, 2009
CL-600-2B16 (604 Variant)	604-29-008	Original	November 10, 2008
		01	July 6, 2009
CL-600-2B16 (605*)	605-29-001	Original	November 10, 2008
		01	July 6, 2009
*Model CL-600-2B16 (604 Variant), referred to by the marketing designation CL-605.			

(2) Replacement of an accumulator with a new accumulator having the same part number is also acceptable for compliance with the requirements of paragraphs (g)(2) and (g)(3) of this AD, if done before the effective date of this AD in accordance with the applicable service bulletin listed in figure 4 to paragraph (l)(2) of this AD. This service information is not incorporated by reference in this AD.

Figure 4 to paragraph (l)(2) of this AD – *Previous service bulletins for this AD*

Airplane Model –	Bombardier Service Bulletin –	Revision –	Dated –
CL-600-1A11 (600)	600-0742	02**	May 10, 2010
		03*	April 10, 2012
CL-600-2A12 (601) CL-600-2B16 (601-3A and 601-3R Variants)	601-0597	02**	May 10, 2010
		03*	April 10, 2012
CL-600-2B16 (604 Variant)	604-29-008	02**	May 10, 2010
		03*	April 10, 2012
CL-600-2B16 (605***)	605-29-001	02**	May 10, 2010
		03*	April 10, 2012

*This service information is not incorporated by reference in this AD.

**This service information was incorporated by reference in AD 2010-14-05.

***Model CL-600-2B16 (604 Variant), referred to by the marketing designation CL-605.

(3) This paragraph provides credit for actions required by paragraph (i)(3) of this AD, if those actions were performed before the effective date of this AD, in accordance with Bombardier Service Bulletin 604–29–013, dated April 30, 2015; or Bombardier Service Bulletin 604–29–013, Revision 1, dated October 19, 2015. This service information is not incorporated by reference in this AD.

(4) This paragraph provides credit for actions required by paragraph (i)(4) of this AD, if those actions were performed before the effective date of this AD, in accordance with Bombardier Service Bulletin 605–29–006, dated April 30, 2015; or Bombardier Service Bulletin 605–29–006, Revision 1, dated October 19, 2015. This service information is not incorporated by reference in this AD.

(m) Special Flight Permit

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified, provided the following conditions are met:

(1) An engineering recommendation must be obtained via the Bombardier process Service Request for Product Support Action (SRPSA) at *SRPSA@aerobombardier.com.*

(2) Approval of the special flight permit must be obtained from the Flight Standards District Office.

(n) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch.

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

(ii) AMOC 15–76R1 and AMOC 15–53, approved previously for AD 2010–14–05, are approved as AMOCs for the corresponding provisions of paragraph (g)(2) of this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2009–39R1, dated October 13, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0790.

(2) For more information about this AD, contact Neil Doh, Aerospace Engineer, Aviation Safety Section AIR–7B1, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; telephone 781–238–7757.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on August 24, 2018.

James Cashdollar,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–19759 Filed 9–13–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0791; Product Identifier 2018–NM–043–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 airplanes. This proposed AD was prompted by a determination that certain holes for the vertical tail plane (VTP) tension bolts connection are not properly protected against corrosion. This proposed AD would require modifying the VTP tension bolts connection by adding sealant and protective treatment to the head of the connection, at the barrel nut cavities, and in the surrounding area. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 13, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the incorporation by reference (IBR) material described in the ''Related IBR material under 1 CFR part 51'' section in **SUPPLEMENTARY INFORMATION**, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov.*

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0791; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0791; Product Identifier 2018–NM–043–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0045, dated February 15, 2018; corrected February 22, 2018 (''EASA AD 2018–0045'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A350–941 airplanes. The MCAI states:

> It was identified that the section 19 holes for the Vertical Tail Plane (VTP) tension bolts connection are not properly protected against corrosion.
>
> This condition, if not corrected, could reduce the structural integrity of the VTP [and could ultimately lead to reduced controllability of the airplane].
>
> To address this unsafe condition, Airbus developed production mod 108307 and mod 110696 to improve protection against corrosion, and issued the SB [Service Bulletin A350–55–P002] to provide in-service modification instructions.
>
> For the reasons described above, this [EASA] AD requires a modification by adding sealant and protective treatment to the head of the section 19 VTP tension bolts connection, at the barrel nut cavities and in the surrounding area.
>
> This [EASA] AD was corrected to clarify the text of the ''Modification''.

Related IBR Material Under 1 CFR Part 51

EASA AD 2018–0045, dated February 15, 2018; corrected February 22, 2018, describes procedures for modifying the VTP tension bolts connection by adding sealant and protective treatment to the head of the connection, at the barrel nut cavities, and in the surrounding area. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section and it is publicly available through the EASA website.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2018–0045 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with the provisions specified in EASA AD 2018–0045, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information referenced in EASA AD 2018–0045 that is required for

compliance with EASA AD 2018–0045 will be available at *http://www.regulations.gov* under Docket No. FAA–2018–0791 after the FAA final rule is published.

Explanation of ''RC'' (Required for Compliance)

EASA AD 2018–0045 might refer to service information that contains procedures or tests that are identified as RC. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an alternative method of compliance (AMOC), provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition.

Explanation of Change to Applicability

We have revised the applicability of this AD to identify model designations as published in the most recent type certificate data sheet for the affected model.

Costs of Compliance

We estimate that this proposed AD affects 6 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
50 work-hours × $85 per hour = $4,250	$9,200	$13,450	$80,700

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2018–0791; Product Identifier 2018–NM–043–AD.

(a) Comments Due Date

We must receive comments by November 13, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in the European Aviation Safety Agency (EASA) Airworthiness Directive 2018–0045, dated February 15, 2018; corrected February 22, 2018 (''EASA AD 2018–0045'').

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage; 55, Stabilizers.

(e) Reason

This AD was prompted by a determination that the section 19 holes for the vertical tail plane (VTP) tension bolts connection are not properly protected against corrosion. We are issuing this AD to address corrosion of the VTP tension bolts connection, which could reduce the structural integrity of the VTP, and could ultimately lead to reduced controllability of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified by paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2018–0045.

(h) Exceptions to EASA AD 2018–0045

(1) For purposes of determining compliance with the requirements of this AD, where EASA AD 2018–0045 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2018–0045 does not apply.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* Any RC procedures and tests identified in the service information referenced in EASA AD 2018–0045 must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For information about EASA AD 2018–0045, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2018–0045 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0791.

(2) For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

Issued in Des Moines, Washington, on August 16, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–19767 Filed 9–13–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0839; Product Identifier 2017–NE–31–AD]

RIN 2120–AA64

Airworthiness Directives; Zodiac Seats France, Cabin Attendant Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Zodiac Seats France 536-Series Cabin Attendant Seats. This proposed AD was prompted by potential risk of premature corrosion on the seat structure and clamps. This proposed AD would require inspection and modification of all Zodiac Seats France 536-Series Cabin Attendant Seats. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 29, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12 140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Zodiac Service Europe, 61, rue Pierre Curie, 78 373 Plaisir, France; phone: +33 (0)1 61 34 19 58; email: *zs.aog@zodiacaerospace.com;* website: *https://www.zodiacaerospace.com/en/zodiac-aerospace-services/contacts.*You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0839; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0839; Product Identifier 2017–NE–31–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2016–0167, dated August 17, 2016 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> Cases of corrosion and cracks were found on Zodiac Seats France CAS 536 rear cabin attendant seats installed on some ATR 42 and ATR 72 aeroplanes. The detected damage was located on the lower parts of the attendant seat, at the level of the seat-to-floor interface. This condition, if not detected and corrected, could lead to failure of the seat

occupied by the cabin attendant, possibly resulting in injury to the seat occupant. To address this potential unsafe condition, Zodiac Seats France issued Service Bulletin (SB) No. 536–25–002 to provide inspection instructions.

For the reason described above, this [EASA] AD requires repetitive inspections of the affected attendant seats, and, depending on findings, accomplishment of the temporary corrective action(s). This [EASA] AD is considered as interim action and further [EASA] AD action may follow. Zodiac Seats France is developing a solution preventing this kind of damage.

You may obtain further information by examining the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0839.

Related Service Information Under 1 CFR Part 51

We reviewed Zodiac Seats France Service Bulletin (SB) No. 536–25–002, Revision 3, dated September 30, 2016. The SB describes procedures for inspection, repair, or replacement of the seat structure and clamps known to be installed on the main structure. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by EASA, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all the relevant information provided by EASA and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require inspection and modification of all Zodiac Seats France 536-Series Cabin Attendant Seats.

Costs of Compliance

We estimate that this proposed AD affects 55 seat structures installed on, but not limited to, ATR 42 and ATR 72 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Seat inspection, visual (on-wing)	0.2 work-hours × $85 per hour = $17	$0	$17	$935
Seat inspection, (shop visit)	0.5 work-hours × $85 per hour = $42.50	0	42.50	2,337.50
Part replacement/repair	2.0 work-hours × $85 per hour = $170	2,000	2,170	119,350

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Zodiac Seats France (formerly SICMA Aero Seat): Docket No. FAA–2017–0839; Product Identifier 2017–NE–31–AD.

(a) Comments Due Date

We must receive comments by October 29, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Zodiac Seats France, 536-Series Cabin Attendant Seats, part number (P/N) 53600, all dash numbers, all serial numbers. These appliances are installed on, but not limited to, Avions de transport regional (ATR) 42 and ATR 72 airplanes of U.S. registry.

(d) Subject

Joint Aircraft System Component (JASC) Code 2500, Cabin Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by corrosion found on the seat structure or on clamps of the Zodiac Seats France 536-Series Cabin Attendant Seats. We are issuing this AD to prevent failure of these seats. The unsafe condition, if not addressed, could result in failure of the seat occupied by the cabin attendant, and possible injury to the seat occupant.

(f) Compliance

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

(g) Required Actions

(1) Within 14 months after the first installation of the seat on an aircraft, or within three months after the effective date of this AD, whichever occurs later, remove the seat from the aircraft and perform a detailed visual inspection in accordance with the Accomplishment Instructions, Paragraph 2.B., of Zodiac Seats France Service Bulletin (SB) No. 536–25–002, Revision 3, dated September 30, 2016. If the date of the first installation of a seat on an airplane is unknown, use the date of manufacture of the seat (which can be found on the ID placard of the seat) to determine when the inspection must be accomplished.

(2) Within three months after the inspection required by paragraph (g)(1) of this AD, and, thereafter, at intervals not to exceed three months, perform a detailed visual inspection in accordance with the Accomplishment Instructions, Paragraphs 2.A. and 2.B., of Zodiac Seats France SB No. 536–25–002, Revision 3, dated September 30, 2016.

(3) If corrosion or other damage is found, before further flight or before reinstallation of the seat on an aircraft, as applicable, repair the seat in accordance with the Accomplishment Instructions, Paragraphs 2.B. and 2.C., of Zodiac Seats France SB No. 536–25–002, Revision 3, dated September 30, 2016.

(4) Temporarily stowing and securing a damaged attendant seat in a retracted position to prevent occupancy, in accordance with the provisions and limitations applicable Master Minimum Equipment List item, is an acceptable alternative method to defer compliance with the requirements of paragraph (g)(3) of this AD.

(h) Installation Prohibition

After the effective date of this AD, do not install an affected Zodiac Seats France 536-Series Cabin Attendant Seat on any aircraft, unless having accumulated more than 14 months since first installation on any aircraft, provided that before installation, it has passed an inspection in accordance with the Accomplishment Instructions, Paragraph 2.B., of Zodiac Seats France SB No. 536–25–002, Revision 3, dated September 30, 2016.

(i) Credit for Previous Actions

You may take credit for actions required by paragraph (g) of this AD if you performed these actions before the effective date of this AD using Zodiac Seats France SB No. 536–25–002, Revision 2, dated August 29, 2016.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO Branch, send it to the attention of the person identified in paragraph (k)(1) of this AD.

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

(k) Related Information

(1) For more information about this AD, contact Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov.*

(2) Refer to European Aviation Safety Agency AD 2016–0167, dated August 17, 2016, for more information. You may examine the EASA AD in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2017–0839.

(3) For service information identified in this AD, contact Zodiac Service Europe, 61, rue Pierre Curie, 78 373 Plaisir, France; phone: +33 (0)1 61 34 19 58; email: *zs.aog@zodiacaerospace.com;* website: *https://www.zodiacaerospace.com/en/zodiac-aerospace-services/contacts.* You may view this referenced service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued in Burlington, Massachusetts, on September 5, 2018.

Robert J. Ganley,

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

[FR Doc. 2018–19797 Filed 9–13–18; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Chapter I

RIN 3142–AA13

The Standard for Determining Joint-Employer Status

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: In order to more effectively enforce the National Labor Relations Act (the Act or the NLRA) and to further the purposes of the Act, the National Labor Relations Board (the Board) proposes a regulation establishing the standard for determining whether two employers, as defined in Section 2(2) of the Act, are a joint employer of a group of employees under the NLRA. The Board believes that this rulemaking will foster predictability and consistency regarding determinations of joint-employer status in a variety of business relationships, thereby promoting labor-management stability, one of the principal purposes of the Act. Under the proposed regulation, an employer may be considered a joint employer of a separate employer's employees only if the two employers share or codetermine the employees' essential terms and conditions of employment, such as hiring, firing, discipline, supervision, and direction. More specifically, to be deemed a joint employer under the proposed regulation, an employer must possess and actually exercise substantial direct and immediate control over the essential terms and conditions of employment of another employer's employees in a manner that is not limited and routine.

DATES: Comments regarding this proposed rule must be received by the Board on or before November 13, 2018. Comments replying to comments submitted during the initial comment period must be received by the Board on or before November 20, 2018. Reply comments should be limited to replying to comments previously filed by other parties. No late comments will be accepted.

ADDRESSES:

Internet—Federal eRulemaking Portal. Electronic comments may be submitted through *http://www.regulations.gov.*

Delivery—Comments should be sent by mail or hand delivery to: Roxanne Rothschild, Associate Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001. Because of security

precautions, the Board continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments. The Board encourages electronic filing. It is not necessary to send comments if they have been filed electronically with *regulations.gov.* If you send comments, the Board recommends that you confirm receipt of your delivered comments by contacting (202) 273–2917 (this is not a toll-free number). Individuals with hearing impairments may call 1–866–315–6572 (TTY/TDD).

Only comments submitted through *http://www.regulations.gov,* hand delivered, or mailed will be accepted; ex parte communications received by the Board will be made part of the rulemaking record and will be treated as comments only insofar as appropriate. Comments will be available for public inspection at *http://www.regulations.gov* and during normal business hours (8:30 a.m. to 5 p.m. EST) at the above address.

The Board will post, as soon as practicable, all comments received on *http://www.regulations.gov* without making any changes to the comments, including any personal information provided. The website *http://www.regulations.gov* is the Federal eRulemaking portal, and all comments posted there are available and accessible to the public. The Board requests that comments include full citations or internet links to any authority relied upon. The Board cautions commenters not to include personal information such as Social Security numbers, personal addresses, telephone numbers, and email addresses in their comments, as such submitted information will become viewable by the public via the *http://www.regulations.gov* website. It is the commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment.

FOR FURTHER INFORMATION CONTACT: Roxanne Rothschild, Associate Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001, (202) 273–2917 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION: Whether one business is the joint employer of another business's employees is one of the most important issues in labor law today. There are myriad relationships between employers and their business partners, and the degree to which particular business relationships impact employees' essential terms and conditions of employment varies widely.

A determination by the Board regarding whether two separate businesses constitute a ''joint employer'' as to a group of employees has significant consequences for the businesses, unions, and employees alike. When the Board finds a joint-employer relationship, it may compel the joint employer to bargain in good faith with a Board-certified or voluntarily recognized bargaining representative of the jointly-employed workers. Additionally, each joint employer may be found jointly and severally liable for unfair labor practices committed by the other. And a finding of joint-employer status may determine whether picketing directed at a particular business is primary and lawful, or secondary and unlawful.

The last three years have seen much volatility in the Board's law governing joint-employer relationships. As detailed below, in August 2015, a divided Board overruled longstanding precedent and substantially relaxed the evidentiary requirements for finding a joint-employer relationship. *Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery,* 362 NLRB No. 186 (2015) (*Browning-Ferris*), petition for review docketed *Browning-Ferris Indus. of Cal.* v. *NLRB,* No. 16–1028 (D.C. Cir. filed Jan. 20, 2016). Then, in December 2017, a different Board majority restored the prior, more stringent standard. In February 2018, the Board vacated its December 2017 decision, effectively changing the law back again to the relaxed standard of *Browning-Ferris.* A petition for review challenging *Browning-Ferris's* adoption of the relaxed standard as beyond the Board's statutory authority is currently pending in the United States Court of Appeals for the District of Columbia Circuit. In light of the continuing uncertainty in the labor-management community created by these adjudicatory variations in defining the appropriate joint-employer standard under the Act, and for the reasons explained below, the Board proposes to address the issue through the rulemaking procedure.

I. Background

Under Section 2(2) of the Act, ''the term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act [45 U.S.C. 151 *et seq.*], as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.'' Under Section 2(3) of the Act, ''the term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter [of the Act] explicitly states otherwise . . . .''

Section 7 of the Act grants employees ''the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . .'' Section 8(a)(1) of the Act makes it an unfair labor practice for an employer ''to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in [Section 7],'' and Section 8(a)(5) of the Act makes it an unfair labor practice for an employer ''to refuse to bargain collectively with the representatives of *his* employees . . . .'' (emphasis added).

The Act does not contain the term ''joint employer,'' much less define it, but the Board and reviewing courts have over the years addressed situations where the working conditions of a group of employees are affected by two separate companies engaged in a business relationship. *Boire* v. *Greyhound Corp.,* 376 U.S. 473 (1964) (holding that Board's determination that bus company possessed ''sufficient control over the work'' of its cleaning contractor's employees to be considered a joint employer was not reviewable in federal district court); *Indianapolis Newspapers, Inc.,* 83 NLRB 407, 408–409 (1949) (finding that two newspaper businesses, Star and INI, were not joint employers, despite their integration, because ''there [wa]s no indication that Star, by virtue of such integration, t[ook] an active part in the formulation or application of the labor policy, or exercise[d] any immediate control over the operation, of INI'').

When distinguishing between an ''employee'' under Section 2(3) of the Act and an ''independent contractor'' excluded from the Act's protection, the Supreme Court has explained that the Board is bound by common-law principles, focusing on the control exercised by one employer over a person performing work for it. *NLRB* v. *United Insurance Co. of America,* 390 U.S. 254, 256 (1968); see also *Nationwide Mutual Insurance Co.* v. *Darden,* 503 U.S. 318, 322–323 (1992)

(''[W]hen Congress has used the term 'employee' without defining it, we have concluded that Congress intended to describe the conventional master-servant relationship as understood by common law agency doctrine.'') (citations omitted). Similarly, it is clear that the Board's joint-employer standard, which necessarily implicates the same focus on employer control, must be consistent with the common law agency doctrine.

The Development of the Joint-Employment Doctrine Under the NLRA

Under the Act, there has been a longstanding consensus regarding the general formulation of the Board's joint-employer standard: Two employers are a joint employer if they share or codetermine those matters governing the employees' essential terms and conditions of employment. See *CNN America, Inc.,* 361 NLRB 439, 441, 469 (2014), enf. denied in part 865 F.3d 740 (D.C. Cir. 2017); *Southern California Gas Co.,* 302 NLRB 456, 461 (1991). The general formulation derives from language in *Greyhound Corp.,* 153 NLRB 1488, 1495 (1965), enfd. 368 F.2d 778 (1966), and was endorsed in *NLRB* v. *Browning-Ferris Industries,* 691 F.2d 1117, 1122–1123 (3d Cir. 1982), where the United States Court of Appeals for the Third Circuit carefully explained the differences between the Board's joint-employer and single-employer doctrines, which had sometimes been confused.[1]

At certain points in its history, the Board has discussed the relevance of an employer's direct control over the essential employment conditions of another company's employees, as compared with its indirect control or influence, in determining whether joint-employer status has been established. For example, in *Floyd Epperson,* 202 NLRB 23, 23 (1973), enfd. 491 F.2d 1390 (6th Cir. 1974), the Board found that a dairy company (United) was the joint employer of truck drivers supplied to it by an independent trucking firm (Floyd Epperson) based on evidence of both United's direct control and indirect control over the working conditions of Epperson's drivers. The Board relied on ''all the circumstances'' of the case, including the fact that United dictated the specific routes that Epperson's drivers were required to take when transporting its goods, ''generally supervise[d]'' Epperson's drivers, and had authority to modify their work schedules. Id. at 23. The Board also relied in part on United's ''indirect control'' over the drivers' wages and discipline.[2] Id. Importantly, in *Floyd Epperson* and like cases, the Board was not called upon to decide, and did not assert, that a business's indirect influence over another company's workers' essential working conditions, standing alone, could establish a joint-employer relationship.[3]

In fact, more recently, the Board, with court approval, has made clear that ''the essential element'' in a joint-employer analysis ''is whether a putative joint employer's control over employment matters is direct and immediate.'' *Airborne Express,* 338 NLRB 597, 597 fn. 1 (2002) (citing *TLI, Inc.,* 271 NLRB 798, 798–799 (1984), enfd. mem. sub nom. *General Teamsters Local Union No. 326* v. *NLRB,* 772 F.2d 894 (3d Cir. 1985)); see also *NLRB* v. *CNN America, Inc.,* 865 F.3d 740, 748–751 (D.C. Cir. 2017) (finding that Board erred by failing to adhere to the Board's ''direct and immediate control'' standard); *SEIU Local 32BJ* v. *NLRB,* 647 F.3d 435, 442–443 (2d Cir. 2011) (''An essential element' of any joint employer determination is 'sufficient evidence of immediate control over the employees.' '') (quoting *Clinton's Ditch Co-op Co.* v. *NLRB,* 778 F.2d 132, 138 (2d Cir. 1985)); *Summit Express, Inc.,* 350 NLRB 592, 592 fn. 3 (2007) (finding that the General Counsel failed to prove direct and immediate control and therefore dismissing joint-employer allegation); *Laerco Transportation,* 269 NLRB 324 (1984) (dismissing joint-employer allegation where user employer's supervision of supplied employees was limited and routine).

Accordingly, for at least 30 years (from no later than 1984 to 2015), evidence of indirect control was typically insufficient to prove that one company was the joint employer of another business's workers. Even direct and immediate supervision of another's employees was insufficient to establish joint-employer status where such supervision was ''limited and routine.'' *Flagstaff Medical Center, Inc.,* 357 NLRB 659, 667 (2011); *AM Property Holding Corp.,* 350 NLRB 998, 1001 (2007), enfd. in relevant part sub nom. *SEIU, Local 32 BJ* v. *NLRB,* 647 F.3d 435 (2d Cir. 2011); *G. Wes Ltd. Co.,* 309 NLRB 225, 226 (1992). The Board generally found supervision to be limited and routine where a supervisor's instructions consisted mostly of directing another business's employees what work to perform, or where and when to perform the work, but not how to perform it. *Flagstaff Medical Center,* 357 NLRB at 667.

The Board's treatment of a company's contractually reserved authority over an independent company's employees also evolved over the years. In the 1960s, the Board found that a contractual reservation of authority, standing alone, could establish a joint-employer relationship even where that reserved authority had never been exercised. For example, in *Jewel Tea Co.,* 162 NLRB 508, 510 (1966), the Board found that a department store (the licensor) was a joint employer of the employees of two independent companies licensed to operate specific departments of its store. The text of the license agreements between the store and the departments provided, inter alia, that ''employees shall be subject to the general

[1] As the Third Circuit explained, a ''single employer'' relationship exists where two nominally separate employers are actually part of a single integrated enterprise so that, for all purposes, there is in fact only a ''single employer.'' The question in the ''single employer'' situation, then, is whether two nominally independent enterprises constitute, in reality, only *one integrated enterprise.* In answering that question, the Board examines four factors: (1) Functional integration of the operations; (2) centralized control of labor relations; (3) common management; and (4) common ownership. In contrast, the ''joint employer'' concept assumes that the two companies are indeed independent employers, and the four-factor standard is inapposite. Rather, as stated above, the Board has analyzed whether the two separate employers share or codetermine essential terms and conditions of employment.

[2] In *Floyd Epperson,* the Board found that United had indirect control over the drivers' wages because wage increases to Epperson's drivers came from raises given by United to Epperson, a sole proprietor. The Board found that United had indirect influence over discipline because Epperson replaced a certain driver on a route after United complained that the driver had been constantly late. 202 NLRB at 23.

[3] See also *Sun-Maid Growers of California,* 239 NLRB 346 (1978) (finding that food-processing company was joint employer of maintenance electricians supplied by a subcontractor where company actually directed electricians by making specific assignments to individual electricians and determined which of those assignments took precedence when all could not be timely completed; the Board also relied on indirect impact on other terms), enfd. 618 F.2d 56 (9th Cir. 1980); *Hamburg Industries, Inc.,* 193 NLRB 67, 67 (1971) (finding remanufacturer of railroad cars was a joint employer of labor force supplied by subcontractor where remanufacturer used subcontractor's supervisors as conduit to convey work instructions while ''constantly check[ing] the *performance* of the workers and the quality of the work'' and where remanufacturer also indirectly affected employees' other terms) (emphasis added). The Board's decision in *Clayton B. Metcalf,* 223 NLRB 642 (1976), appears to be the closest the Board has come to finding a joint-employment relationship in the absence of some exercise of direct and immediate control over essential terms. There, the Board found that a mine operator did not exercise direct supervisory authority over the employees of a subcontractor engaged to remove ''overburden'' atop coal seams. However, the Board found that the subcontractor's entire operation in removing the overburden, as well as other collateral duties performed by it, depended entirely on the mine operator's site plan, and, ''[a]s a result, [the mine operator] exercised considerable control over *the manner and means* by which [the subcontractor] performed its operations.'' Id. at 644 (emphasis added).

supervision of the licensor,'' that the licensee ''shall at all times conform to a uniform store policy with reference to wages, hours and terms, and conditions of employment for all sales and stock personnel,'' that the licensor shall approve employees hired by the licensee, and that the licensor ''may request discharge and the licensee will immediately comply with such request.'' The Board found it ''clear beyond doubt'' that the license agreements gave the store the ''power to control effectively the hire, discharge, wages, hours, terms, and other conditions of employment'' of the other two companies' employees. According to the Board, ''[t]hat the licensor has not exercised such power is not material, for an operative legal predicate for establishing a joint-employer relationship is a reserved right in the licensor to exercise such control, and we find such right of control adequately established by the facts set out above.'' Id.; see also *Thriftown, Inc.,* 161 NLRB 603, 607 (1966) (''Since the power to control is present by virtue of the operating agreement, whether or not exercised, we find it unnecessary to consider the actual practice of the parties regarding these matters as evidenced by the record.'').

However, even during the same period, not all contractual reservations of authority were found sufficient to establish a joint-employer relationship. For example, in *Hy-Chem Constructors, Inc.,* 169 NLRB 274 (1968), the Board found that a petrochemical manufacturer was not a joint employer of its construction subcontractor's employees even though their cost-plus agreement reserved to the manufacturer a right to approve wage increases and overtime hours and the right to require the subcontractor to remove any employee whom the manufacturer deemed undesirable. The Board found that the first two reservations of authority ''are consistent with the [manufacturer's] right to police reimbursable expenses under its cost-plus contract and do not warrant the conclusion that [the manufacturer] has thereby forged an employment relationship, joint or otherwise, with the [subcontractor's] employees.'' Id. at 276. Additionally, the Board found the manufacturer's ''yet unexercised prerogative to remove an undesirable . . . employee'' did not establish a joint-employment relationship. Id.

Over time, the Board shifted position, without expressly overruling precedent, and held that joint-employer status could not be established by the mere existence of a clause in a business contract reserving to one company authority over its business partner's employees absent evidence that such authority had ever been exercised. For example, in *AM Property Holding Corp.,* the Board found that a ''contractual provision giving [a property owner] the right to approve [its cleaning contractor's] hires, standing alone, is insufficient to show the existence of a joint employer relationship.'' 350 NLRB at 1000. The Board explained that ''[i]n assessing whether a joint employer relationship exists, the Board does not rely merely on the existence of such contractual provisions, but rather looks to the actual practice of the parties.'' Id. (citing *TLI,* 271 NLRB at 798–799). Because the record in *AM Property* failed to show that the property owner had ever actually participated in the cleaning contractor's hiring decisions, the Board rejected the General Counsel's contention that the two employers constituted a joint employer. See also *Flagstaff Medical Center,* 357 NLRB at 667 (finding that business contract's reservation of hospital's right to require its subcontractor to ''hire, discharge, or discipline'' any of the subcontractor's employees did not establish a joint-employer relationship absent evidence that the hospital had ever actually exercised such authority); *TLI,* 271 NLRB at 798–799 (finding that paper company's actual practice of only limited and routine supervision of leased drivers did not establish a joint-employer relationship despite broad contractual reservation of authority that paper company ''will solely and exclusively be responsible for maintaining operational control, direction and supervision'' over the leased drivers).

The law governing joint-employer relationships changed significantly in August 2015. At that time, a divided Board overruled the then-extant precedent described above and substantially relaxed the requirements for proving a joint-employer relationship. Specifically, a Board majority explained that it would no longer require proof that a putative joint employer has exercised any ''direct and immediate'' control over the essential working conditions of another company's workers. *Browning-Ferris,* 362 NLRB No. 186, slip op. at 2, 13–16. The majority in *Browning-Ferris* explained that, under its new standard, a company could be deemed a joint employer even if its ''control'' over the essential working conditions of another business's employees was indirect, limited and routine, or contractually reserved but never exercised. Id., slip op. at 15–16.

The *Browning-Ferris* majority agreed with the core of the Board's long-recognized joint-employer standard: whether two separate employers ''share'' or ''codetermine'' those matters governing the essential terms and conditions of employment. Elaborating on the core ''share'' or ''codetermine'' standard, the *Browning-Ferris* majority noted that, in some cases, two companies may engage in genuinely shared decision-making by conferring or collaborating directly to set an essential term or condition of employment. Alternatively, each of the two companies ''may exercise comprehensive authority over different terms and conditions of employment.'' Id., slip op. at 15 fn. 80.

While agreeing with the core standard, the *Browning-Ferris* majority believed that the Board's joint-employer precedents had become ''increasingly out of step with changing economic circumstances, particularly the recent dramatic growth in contingent employment relationships.'' Id., slip op. at 1. The *Browning-Ferris* majority's expressed aim was ''to put the Board's joint-employer standard on a clearer and stronger analytical foundation, and, within the limits set out by the Act, to best serve the Federal policy of 'encouraging the practice and procedure of collective-bargaining.' '' Id., slip op. at 2 (quoting 29 U.S.C. 151).

According to the *Browning-Ferris* majority, during the period before *Laerco* and *TLI* were decided in 1984, the Board had ''typically treated the *right* to control the work of employees and their terms of employment as probative of joint-employer status.'' Id., slip op. at 9 (emphasis in original). Also during that time, ''the Board gave weight to a putative joint employer's 'indirect' exercise of control over workers' terms and conditions of employment.'' Id. (citing *Floyd Epperson,* 202 NLRB at 23).

The *Browning-Ferris* majority viewed Board precedent, starting with *Laerco* and *TLI,* that expressly required proof of some exercise of direct and immediate control as having unjustifiably and without explanation departed from the Board's pre-1984 precedent. Specifically, the *Browning-Ferris* majority asserted that, in cases such as *Laerco, TLI, AM Property,* and *Airborne Express,* the Board had ''implicitly repudiated its earlier reliance on reserved control and indirect control as indicia of joint-employer status.'' Id., slip op. at 10. Further, the *Browning-Ferris* majority viewed those decisions as ''refus[ing] to assign *any significance* to contractual language expressly giving a putative employer the power to dictate

workers' terms and conditions of employment.'' Id. (emphasis added).

In short, the *Browning-Ferris* majority viewed Board precedent between 1984 and 2015 as having unreasonably ''narrowed'' the Board's joint-employer standard precisely when temporary and contingent employment relationships were on the rise. Id., slip op. at 11. In its view, under changing patterns of industrial life, a proper joint-employer standard should not be any ''narrower than statutorily required.'' Id. According to the *Browning-Ferris* majority, the requirement of exercise of direct and immediate control that is not limited and routine ''is not, in fact, compelled by the common law—and, indeed, seems inconsistent with common-law principles.'' Id., slip op. at 13. The *Browning-Ferris* majority viewed the common-law concept of the ''right to control'' the manner and means of a worker's job performance—used to distinguish a servant (*i.e.,* employee) from an independent contractor—as precluding, or at least counseling against, any requirement of exercise of direct and immediate control in the joint-employment context. Id.

Browning-Ferris reflects a belief that it is wise, and consistent with the common law, to include in the collective-bargaining process an employer's independent business partner that has an indirect or potential impact on the employees' essential terms and conditions of employment, even where the business partner has not itself actually established those essential employment terms or collaborated with the undisputed employer in setting them. The *Browning-Ferris* majority believed that requiring such a business partner to take a seat at the negotiating table and to bargain over the terms that it indirectly impacts (or could, in the future, impact under a contractual reservation) best implements the right of employees under Section 7 of the Act to bargain collectively through representatives of their own choosing. The *Browning-Ferris* majority conceded that deciding joint-employer allegations under its stated standard would not always be an easy task, id., slip op. at 12, but implicitly concluded that the benefit of bringing all possible employer parties to the bargaining table justified its new standard.

In dissent, two members argued that the majority's new relaxed joint-employer standard was contrary to the common law and unwise as a matter of policy. In particular, the *Browning-Ferris* dissenters argued that by permitting a joint-employer finding based solely on indirect impact, the majority had effectively resurrected intertwined theories of ''economic realities'' and ''statutory purpose'' endorsed by the Supreme Court in *NLRB* v. *Hearst Publications,* 322 U.S. 111 (1944), but rejected by Congress soon thereafter. In *Hearst,* the Supreme Court went beyond common-law principles and broadly interpreted the Act's definition of ''employee'' with reference to workers' economic dependency on a putative employer in light of the Act's goal of minimizing industrial strife. In response, Congress enacted the Taft-Hartley Amendments of 1947, excluding ''independent contractors'' from the Act's definition of ''employee'' and making clear that common-law principles control.

Additionally, the *Browning-Ferris* dissenters disagreed with the majority's understanding of the common law of joint-employment relationships. The dissenters argued that the ''right to control'' in the joint-employment context requires some exercise of direct and immediate control.

Then, accepting for argument's sake that the common law does not preclude the relaxed standard of *Browning-Ferris,* the dissenters found that practical considerations counseled against its adoption. They found the relaxed standard to be impermissibly vague and asserted that the majority had failed to provide adequate guidance regarding how much indirect or reserved authority might be sufficient to establish a joint-employment relationship. Additionally, the dissenters believed that the majority's test would ''actually foster substantial bargaining instability by requiring the nonconsensual presence of too many entities with diverse and conflicting interests on the 'employer' side.'' Id., slip op. at 23.

The *Browning-Ferris* dissenters also complained that the relaxed standard made it difficult not only to correctly identify joint-employer relationships but also to determine the bargaining obligations of each employer within such relationships. Under the relaxed standard, an employer is only required to bargain over subjects that it controls (even if the control is merely indirect). The dissenters expressed concern that disputes would arise between unions and joint employers, and even between the two employers comprising the joint employer, over which subjects each employer-party must bargain. Further, the dissenters found such fragmented bargaining to be impractical because subjects of bargaining are not easily severable, and the give-and-take of bargaining frequently requires reciprocal movement on multiple proposals to ultimately reach a comprehensive bargaining agreement. Finally, the dissenters were suspicious about the implications of *Browning-Ferris* for identifying an appropriate bargaining unit in cases involving a single supplier employer that contracts with multiple user employers and with potential subversion of the Act's protection of neutral employers from secondary economic pressure exerted by labor unions. Accordingly, the dissenters would have adhered to Board precedent as reflected in cases such as *Laerco, TLI,* and *Airborne Express.*

Recent Developments

In December 2017, after a change in the Board's composition and while *Browning-Ferris* was pending on appeal in the D.C. Circuit, a new Board majority overruled *Browning-Ferris* and restored the preexisting standard that required proof that a joint employer actually exercised direct and immediate control in a manner that was neither limited nor routine. *Hy-Brand Industrial Contractors, Ltd.,* 365 NLRB No. 156 (2017). Soon thereafter, the charging parties in *Hy-Brand* filed a motion for reconsideration. The Board granted that motion and vacated its earlier decision for reasons unrelated to the substance of the joint-employer issue, effectively returning the law to the relaxed joint-employer standard adopted in *Browning-Ferris. Hy-Brand,* 366 NLRB No. 26 (2018). Subsequently, the Board in *Hy-Brand* denied the respondents' motion for reconsideration and issued a decision finding it unnecessary to address the joint-employer issue in that case because, in any event, the two respondents constituted a single employer under Board precedent and were therefore jointly and severally liable for each other's unfair labor practices. 366 NLRB No. 93 (2018); 366 NLRB No. 94 (2018). As stated above, a petition for review of the Board's *Browning-Ferris* decision remains pending in the court of appeals.

II. Validity and Desirability of Rulemaking; Impact Upon Pending Cases

Section 6 of the Act, 29 U.S.C. 156, provides, ''The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by subchapter II of chapter 5 of Title 5 [the Administrative Procedure Act, 5 U.S.C. 553], such rules and regulations as may be necessary to carry out the provisions of this Act.'' The Board interprets Section 6 as

authorizing the proposed rule and invites comments on this issue.[4]

Although the Board historically has made most substantive policy determinations through case adjudication, the Board has, with Supreme Court approval, engaged in substantive rulemaking. *American Hospital Assn.* v. *NLRB,* 499 U.S. 606 (1991) (upholding Board's rulemaking on appropriate bargaining units in the healthcare industry); see also *NLRB* v. *Bell Aerospace Co.,* 416 U.S. 267, 294 (1974) (''[T]he choice between rulemaking and adjudication lies in the first instance within the Board's discretion.'').

The Board finds that establishing the joint-employer standard in rulemaking is desirable for several reasons. First, given the recent oscillation on the joint-employer standard, the wide variety of business relationships that it may affect (*e.g.,* user-supplier, contractor-subcontractor, franchisor-franchisee, predecessor-successor, creditor-debtor, lessor-lessee, parent-subsidiary, and contractor-consumer), and the wide-ranging import of a joint-employer determination for the affected parties, the Board finds that it would be well served by public comment on the issue. Interested persons with knowledge of these widely varying relationships can have input on our proposed change through the convenient comment process; participation is not limited, as in the adjudicatory setting, to legal briefs filed by the parties and amici. Second, using the rulemaking procedure enables the Board to clarify what constitutes the actual exercise of substantial direct and immediate control by use of hypothetical scenarios, some examples of which are set forth below, apart from the facts of a particular case that might come before the Board for adjudication. In this way, rulemaking will provide unions and employers greater ''certainty beforehand as to when [they] may proceed to reach decisions without fear of later evaluations labeling [their] conduct an unfair labor practice,'' as the Supreme Court has instructed the Board to do. *First National Maintenance Corp.* v. *NLRB,* 452 U.S. 666, 679 (1981). Third, by establishing the joint-employer standard in the Board's Rules & Regulations, employers, unions, and employees will be able to plan their affairs free of the uncertainty that the legal regime may change on a moment's notice (and possibly retroactively) through the adjudication process. *NLRB* v. *Wyman-Gordon Co.,* 394 U.S. 759, 777 (1969) (''The rule-making procedure performs important functions. It gives notice to an entire segment of society of those controls or regimentation that is forthcoming.'') (Douglas, J., dissenting).

III. The Proposed Rule

Under the proposed rule, an employer may be considered a joint employer of a separate employer's employees only if the two employers share or codetermine the employees' essential terms and conditions of employment, such as hiring, firing, discipline, supervision, and direction. A putative joint employer must possess and actually exercise substantial direct and immediate control over the employees' essential terms and conditions of employment in a manner that is not limited and routine.

The proposed rule reflects the Board's preliminary view, subject to potential revision in response to comments, that the Act's purposes of promoting collective bargaining and minimizing industrial strife are best served by a joint-employer doctrine that imposes bargaining obligations on putative joint employers that have actually played an active role in establishing essential terms and conditions of employment. Stated alternatively, the Board's initial view is that the Act's purposes would not be furthered by drawing into an employer's collective-bargaining relationship, or exposing to joint-and-several liability, a business partner of the employer that does not actively participate in decisions setting unit employees' wages, benefits, and other essential terms and conditions of employment. The Board's preliminary belief is that, absent a requirement of proof of some ''direct and immediate'' control to find a joint-employment relationship, it will be extremely difficult for the Board to accurately police the line between independent commercial contractors and genuine joint employers. The Board is inclined toward the conclusion that the proposed rule will provide greater clarity to joint-employer determinations without leaving out parties necessary to meaningful collective bargaining.

The proposed rule is consistent with the common law of joint-employer relationships. The Board's requirement of exercise of direct and immediate control, as reflected in cases such as *Airborne Express,* supra, has been met with judicial approval . See, *e.g., SEIU Local 32BJ* v. *NLRB,* 647 F.3d at 442–443.

The Board believes that the proposed rule is likewise consistent with Supreme Court precedent and that of lower courts, which have recognized that contracting enterprises often have some influence over the work performed by each other's workers without destroying their status as independent employers. For example, in *NLRB* v. *Denver Building & Construction Trades Council,* 341 U.S. 675, 689–690 (1951), the Supreme Court held that a contractor's exercise of supervision over a subcontractor's work ''did not eliminate the status of each as an independent contractor or make the employees of one the employees of the other,'' emphasizing that ''[t]he business relationship between independent contractors is too well established in the law to be overridden without clear language doing so.''

The requirement of ''direct and immediate'' control seems to reflect a commonsense understanding that two contracting enterprises will, of necessity, have some impact on each other's operations and respective employees. As explained in *Southern California Gas Co.,* 302 NLRB at 461:

> An employer receiving contracted labor services will of necessity exercise sufficient control over the operations of the contractor at its facility so that it will be in a position to take action to prevent disruption of its own operations or to see that it is obtaining the services it contracted for. It follows that the existence of such control, is not in and of itself, sufficient justification for finding that the customer-employer is a joint employer of its contractor's employees. Generally a joint employer finding is justified where it has been demonstrated that the employer-customer meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction.

Notably, the Board is presently inclined to find, consistent with prior Board cases, that even a putative joint employer's ''direct and immediate'' control over employment terms may not give rise to a joint-employer relationship where that control is too limited in scope. See, *e.g., Flagstaff Medical Center,* 357 NLRB at 667 (dismissing joint-employer allegation even though putative joint employer interviewed applicants and made hiring recommendations, evaluated employees consistent with criteria established by its supplier employer, and disciplined supplied employees for unscheduled absences); *Lee Hospital,* 300 NLRB 947, 948–950 (1990) (putative joint employer's ''limited hiring and disciplinary authority'' found insufficient to establish that it ''shares or codetermines those matters governing the essential terms and conditions of employment *to an extent* that it may be found to be a joint employer'') (emphasis added). Cases like *Flagstaff Medical Center* and *Lee Hospital* are

[4] As previously stated, Secs. 2(2) and 2(3) of the Act define, respectively, ''employer'' and ''employee,'' but neither these provisions nor any others in the Act define ''joint employer.''

consistent with the Board's present inclination to find that a putative joint employer must exercise substantial direct and immediate control before it is appropriate to impose joint and several liability on the putative joint employer and to compel it to sit at the bargaining table and bargain in good faith with the bargaining representative of its business partner's employees.[5]

Accordingly, under the proposed rule, there must exist evidence of direct and immediate control before a joint-employer relationship can be found. Moreover, it will be insufficient to establish joint-employer status where the degree of a putative joint employer's control is too limited in scope (perhaps affecting a single essential working condition and/or exercised rarely during the putative joint employer's relationship with the undisputed employer).

The proposed rule contains several examples, set forth below, to help clarify what constitutes direct and immediate control over essential terms and conditions of employment. These examples are intended to be illustrative and not as setting the outer parameters of the joint-employer doctrine established in the proposed rule.

The Board seeks comment on all aspects of its proposed rule. In particular, the Board seeks input from employees, unions, and employers regarding their experience in workplaces where multiple employers have some authority over the workplace. This may include (1) experiences with labor disputes and how the extent of control possessed or exercised by the employers affected those disputes and their resolution; (2) experiences organizing and representing such workplaces for the purpose of collective bargaining and how the extent of control possessed or exercised by the employers affected organizing and representational activities; and (3) experiences managing such workplaces, including how legal requirements affect business practices and contractual arrangements. What benefits to business practices and collective bargaining do interested parties believe might result from finalization of the proposed rule? What, if any, harms? Additionally, the Board seeks comments regarding the current state of the common law on joint-employment relationships. Does the common law dictate the approach of the proposed rule or of *Browning-Ferris*? Does the common law leave room for either approach? Do the examples set forth in the proposed rule provide useful guidance and suggest proper outcomes? What further examples, if any, would furnish additional useful guidance? As stated above, comments regarding this proposed rule must be received by the Board on or before November 13, 2018. Comments replying to comments submitted during the initial comment period must be received by the Board on or before November 20, 2018.

Our dissenting colleague, who was in the majority in *Browning-Ferris* and in the dissent in the first *Hy-Brand* decision, would adhere to the relaxed standard of *Browning-Ferris* and refrain from rulemaking. She expresses many of the same points made in furtherance of her position in those cases. We have stated our preliminary view that the Act's policy of promoting collective bargaining to avoid labor strife and its impact on commerce is not best effectuated by inserting into a collective-bargaining relationship a third party that does not actively participate in decisions establishing unit employees' wages, benefits, and other essential terms and conditions of employment. We look forward to receiving and reviewing the public's comments and, afterward, considering these issues afresh with the good-faith participation of all members of the Board.

VI. Dissenting View of Member Lauren McFerran

Today, the majority resumes the effort to overrule the Board's 2015 joint-employer decision in *Browning-Ferris,* which remains pending on review in the United States Court of Appeals for the District of Columbia Circuit.[6] An initial attempt to overrule *Browning-Ferris* via adjudication—in a case where the issue was neither raised nor briefed by the parties [7]—failed when the participation of a Board member who was disqualified required that the decision be vacated.[8] Now, the Board majority, expressing new support for the value of public participation, proposes to codify the same standard endorsed in *Hy-Brand I*[9] via a different route: rulemaking rather than adjudication. The majority tacitly acknowledges that the predictable result of the proposed rule would be fewer joint employer findings.[10]

The Board has recently made or proposed sweeping changes to labor law in adjudications going well beyond the facts of the cases at hand and addressing issues that might arguably have been better suited to consideration via rulemaking.[11] Here, in contrast, the majority has chosen to proceed by rulemaking, if belatedly.[12] Reasonable minds might question why the majority is pursuing rulemaking here and now.[13]

[5] Even the *Browning-Ferris* majority acknowledged that ''it is certainly possible that in a particular case, a putative joint employer's control might extend only to terms and conditions of employment too limited in scope or significance to permit meaningful collective bargaining.'' 362 NLRB No. 186, slip op. at 16.

[6] *Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery,* 362 NLRB No. 186 (2015), petition for review docketed *Browning-Ferris Indus. of Cal.* v. *NLRB,* No. 16–1028 (D.C. Cir filed Jan. 20, 2016).

[7] See *Hy-Brand Industrial Contractors, Ltd (Hy-Brand I),* 365 NLRB No. 156 (2017). In a departure from what had become established practice, the majority there also declined to issue a public notice seeking amicus briefing before attempting to reverse precedent. *See id.* at 38–40 (dissenting opinion).

[8] See *Hy-Brand Industrial Contractors, Ltd.,* 366 NLRB No. 26 (2018) (*Hy-Brand II*), granting reconsideration in part and vacating order reported at 365 NLRB No. 156 (2017) (*Hy-Brand I*). See also *Hy-Brand Industrial Contractors, Ltd.,* 366 NLRB No. 63 (2018) (*Hy-Brand III*) (order denying motion for reconsideration of order vacating).

[9] *Hy-Brand I* was decided by a majority comprising then-Chairman Miscimarra, Member Kaplan, and Member Emanuel (who was later determined to have been disqualified). The majority today, proposing what is essentially an identical standard in rulemaking, comprises Chairman Ring, Member Kaplan, and Member Emanuel. Thus, a majority of today's majority has considered and endorsed the proposed outcome of this rulemaking process before.

[10] The majority observes that under the proposed rule, ''fewer employers may be alleged as joint employers, resulting in lower costs to some small entities.''

[11] See *The Boeing Company,* 365 NLRB No.154, slip op. at 33–34 (2017) (dissenting opinion); *Caesars Entertainment Corp. d/b/a Rio All-Suites Hotel & Casino,* Case 28–CA–060841, Notice & Invitation to File Briefs (Aug. 1, 2018) (dissenting opinion), available at *www.nlrb.gov.*

[12] After *Hy-Brand I* was vacated (in *Hy-Brand II*) and after reconsideration of the order vacating was denied (in *Hy-Brand III*), the Chairman announced that the Board was contemplating rulemaking on the joint-employer standard, as reflected in a submission to the Unified Agenda of Federal Regulatory and Deregulatory Actions. See NLRB Press Release, *NLRB Considering Rulemaking to Address Joint-Employer Standard* (May 9, 2018), available at *www.nlrb.gov.* That step did not reflect my participation or that of then-Member Pearce, as the press release discloses.

[13] *See, e.g.,* May 29, 2018 Letter from Senators Warren, Gillibrand, and Sanders to Chairman Ring, available at *https://www.warren.senate.gov/imo/media/doc/2018.05.29%20Letter%20to%20NLRB%20on%20Joint%20Employer%20Rulemaking.pdf* (expressing concern that the rulemaking effort could be an attempt ''to evade the ethical restrictions that apply to adjudications''). Chairman Ring has provided assurances ''that any notice-and-comment rulemaking undertaken by the NLRB will never be for the purpose of evading ethical restrictions.'' See June 5, 2018 Letter from Chairman Ring to Senators Warren, Gillibrand, and Sanders at 1, available at *https://www.nlrb.gov/news-outreach/news-story/nlrb-chairman-provides-response-senators-regarding-joint-employer-inquiry.*

Notably, under the Standards of Ethical Conduct for Executive Branch Employees, rulemaking implicates different recusal considerations than does case adjudication, because a rulemaking of general scope is not regarded as a ''particular matter'' for purposes of determining disqualifying financial interests. See 5 CFR 2635.402. By

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It is common knowledge that the Board's limited resources are severely taxed by undertaking a rulemaking process.[14] But whatever the rationale, and whatever process the Board may use, the fact remains that there is no good reason to revisit *Browning-Ferris,* much less to propose replacing its joint-employer standard with a test that fails the threshold test of consistency with the common law and that defies the stated goal of the National Labor Relations Act: ''encouraging the practice and procedure of collective bargaining.'' [15]

A. The Majority's Justification for Revisiting Browning-Ferris Is Inadequate.

Since August 2015, the joint-employer standard announced in *Browning-Ferris* has been controlling Board law. It remains so today, and the majority properly acknowledges as much.[16] After laying out the checkered history of the effort to overrule *Browning-Ferris,* the majority points to the ''continuing uncertainty in the labor-management community created by these adjudicatory variations in defining the appropriate joint-employer standard'' as the principal reason for proposing to codify not *Browning-Ferris* (existing Board law) but the pre-*Browning-Ferris* standard resurrected in *Hy-Brand I.* The majority cites no evidence of ''continuing uncertainty in the labor-management community,'' [17] and to the extent such uncertainty exists, it has only itself to blame for the series of missteps undertaken in seeking to hurriedly reverse *BFI.*

More to the point, the best way to end uncertainty over the Board's joint-employer standard would be to adhere to existing law, not to upend it. The majority's decision to pursue rulemaking ensures the Board's standard will remain in flux as the Board develops a final rule and as that rule, in all likelihood, is challenged in the federal courts. And, of course, any final rule could not be given retroactive effect, a point that distinguishes rulemaking from adjudication.[18] Thus, cases arising before a final rule is issued will nonetheless have to be decided under the *Browning-Ferris* standard.

The majority's choice here is especially puzzling given that *Browning-Ferris* remains under review in the District of Columbia Circuit. When the court's decision issues, it will give the Board relevant judicial guidance on the contours of a permissible joint-employer standard under the Act. The Board would no doubt benefit from that guidance, even if it was not required to follow it. Of course, if the majority's final rule could not be reconciled with the District of Columbia Circuit's *Browning-Ferris* decision, it presumably would not survive judicial review in that court.[19] The Board majority thus proceeds at its own risk in essentially treating *Browning-Ferris* as a dead letter.

B. The Proposed Rule Is Inconsistent With Both the Common Law and the Goals of the NLRA

No court has held that *Browning-Ferris* does not reflect a reasonable interpretation of the National Labor Relations Act. Nor does the majority today assert that its own, proposed joint-employer standard is somehow compelled by the Act. As the majority acknowledges, the ''Act does not contain the term 'joint employer,' much less define it.'' The majority also acknowledges, as it must, that ''it is clear that the Board's joint-employer standard . . . must be consistent with common law agency doctrine.'' The joint-employer standard adopted in *Browning-Ferris,* of course, is predicated on common-law agency doctrine, as the decision explains in careful detail.[20] As the *Browning-Ferris* Board observed:

> In determining whether a putative joint employer meets [the] standard, the initial inquiry is *whether there is a common-law employment relationship with the employees in question.* If this common-law employment relationship exists, the inquiry then turns to whether the putative joint employer possesses sufficient control over employees' essential terms and conditions of employment to permit meaningful collective bargaining.

362 NLRB No. 186, slip op. at 2 (emphasis added).[21]

pursuing rulemaking rather than adjudication with respect to the joint-employer standard, the Board is perhaps able to avoid what might otherwise be difficult ethical issues, as the *Hy-Brand* case illustrates. See generally Peter L. Strauss, *Disqualifications of Decisional Officials in Rulemaking,* 80 Columbia L. Rev. 990 (1980); Administrative Conference of the United States, *Decisional Officials' Participation in Rulemaking Proceedings,* Recommendation 80–4 (1980).

[14] See Jeffrey M. Hirsch, *Defending the NLRB: Improving the Agency's Success in the Federal Courts of Appeals,* 5 FIU L. Rev. 437, 457 (2010) (explaining that rulemaking at the Board would consume significant resources, especially ''given that the NLRB is banned from hiring economic analysts'').

What is striking here is that the Board majority has opted to use this resource-intensive process to address an issue that has never been addressed through rulemaking before, and that the majority observes is implicated in *fewer than one percent* of Board filings and (by the majority's own analysis) directly affects only ''.028% of all 5.9 million business firms.'' The majority observes that the number of employers affected is ''very small.'' In contrast for example, consider the standards governing employer rules and handbooks at issue in *Boeing, supra,* which presumably affect the overwhelming number of private-sector employers in the country, but which the Board majority chose to establish by adjudication and without public participation.

[15] National Labor Relations Act, Sec. 1, 29 U.S.C. 151.

[16] As the Board recently observed in *Hy-Brand II,* because the original *Hy-Brand* decision and order was vacated, the ''overruling of the *Browning-Ferris* decision is of no force or effect.'' 366 NLRB No. 26, slip op. at 1. The majority here states that ''[i]n February 2018, the Board vacated its December 2017 decision [in *Hy-Brand*], effectively changing the law back again to the relaxed standard of *Browning-Ferris.*''

[17] To the extent that the majority is relying on anything other than anecdotal evidence of this alleged uncertainty, it is required to let the public know the evidentiary basis of its conclusion. ''It is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data, or on data that, to a critical degree, is known only to the agency.'' *Portland Cement Ass'n* v. *Ruckelshaus,* 486 F.2d 375, 393 (D.C. Cir. 1973).

[18] See generally *Bowen* v. *Georgetown University Hospital,* 488 U.S. 204 (1988). There is no indication in Sec. 6 of the National Labor Relations Act that Congress intended to give the Board authority to promulgate retroactive rules. Sec. 6 authorizes the Board ''to make . . . in the manner prescribed by [the Administrative Procedure Act] . . . such rules and regulations as may be necessary to carry out the provisions of'' the National Labor Relations Act. 29 U.S.C. 156. The Administrative Procedure Act defines a ''rule'' as an ''agency statement of general or particular applicability and *future effect.* . . .'' 5 U.S.C. 551(4) (emphasis added). *See also* See June 5, 2018 Letter from Chairman Ring to Senators Warren, Gillibrand, and Sanders at 2, available at *https://www.nlrb.gov/news-outreach/news-story/nlrb-chairman-provides-response-senators-regarding-joint-employer-inquiry* (acknowledging that ''final rules issued through notice-and-comment rulemaking are required by law to apply prospectively only'').

[19] If the District of Columbia Circuit were to uphold the Board's *Browning-Ferris* standard (in whole or in part) as compelled by—or at least consistent with—the Act, but the Board, through rulemaking, rejected *Browning-Ferris* (in whole or in part) as *not* permitted by the Act, then the Board's final rule would be premised on a legal error. Moreover, insofar as the court might hold the *Browning-Ferris* standard to be permitted by the Act, then the reasons the Board gave for *not* adopting that standard would have to be consistent with the court's understanding of statutory policy and common-law agency doctrine insofar as they govern the joint-employer standard.

[20] 362 NLRB No. 186, slip op. at 12–17. Notably, the *Browning-Ferris* Board rejected a broader revision of the joint-employer standard advocated by the General Counsel because it might have suggested ''that the applicable inquiry is based on 'industrial realities' rather than the common law.'' 362 NLRB No. 186, slip op. at 13 fn. 68. The General Counsel had urged the Board to find joint-employer status:

> where, under the totality of the circumstances, including the way the separate entities have structured their commercial relationships, the putative joint employer wields sufficient influence over the working conditions of the other entity's employees such that meaningful collective bargaining could not occur in its absence.

Id.

[21] This approach, as the *Browning-Ferris* Board explained, was consistent with the Board's traditional joint-employer doctrine, as it existed

In contrast, the Board's prior standard (which the majority revives today) had never been justified in terms of common-law agency doctrine. For the 31 years between 1984 (when the Board, in two decisions, narrowed the traditional joint-employer standard) [22] and 2015 (when *Browning-Ferris* was decided), the Board's approach to joint-employer cases was not only unexplained, but also inexplicable with reference to the principles that must inform the Board's decision-making. Common-law agency doctrine simply does not require the narrow, pre-*Browning-Ferris* standard to which the majority now seeks to return. Nor is the ''practice and procedure of collective bargaining'' encouraged by adopting a standard that reduces opportunities for collective bargaining and effectively shortens the reach of the Act.

Thus, it is not surprising that two labor-law scholars have endorsed *Browning-Ferris* as ''the better approach,'' ''predicated on common law principles'' and ''consistent with the goals of employment law, especially in the context of a changing economy.'' [23] *Browning-Ferris,* the scholars observe, ''was not a radical departure from past precedent;'' rather, despite ''reject[ing] limitations added to the joint employer concept from a few cases decided in the 1980s,'' it was ''consistent with earlier precedents.'' [24] The crux of the *Browning-Ferris* decision, and the current majority's disagreement with it, is whether the joint-employer standard should require: (1) That a joint employer ''not only *possess* the authority to control employees' terms and conditions of employment, but also *exercise* that authority;'' (2) that the employer's control ''must be exercised directly and immediately;'' and (3) that control not be ''limited and routine.'' [25] The *Browning-Ferris* Board carefully explained that none of these limiting requirements is consistent with common-law agency doctrine, as the *Restatement (Second) of Agency* makes clear.[26] It is the *Restatement* on which the Supreme Court has relied in determining the existence of a common-law employment relationship for purposes of the National Labor Relations Act.[27] The Court, in turn, has observed that the ''Board's departure from the common law of agency with respect to particular questions and in a particular statutory context, [may] render[] its interpretation [of the Act] unreasonable.'' [28]

Hy-Brand I impermissibly departed from the common law of agency as the dissent there demonstrated,[29] and the majority's proposed rule does so again. Remarkably, the majority makes no serious effort here to refute the detailed analysis of common-law agency doctrine advanced in *Browning-Ferris* and in the *Hy-Brand I* dissent. The majority fails to confront the *Restatement (Second) of Agency,* for example, or the many decisions cited in *Browning-Ferris* (and then in the *Hy-Brand I* dissent) that reveal that at common law, the existence of an employment relationship does *not* require that the putative employer's control be (1) exercised (rather than reserved); (2) direct and immediate (rather than indirect, as through an intermediary); *and* not (3) limited and routine (rather than involving routine supervision of at least some details of the work). None of these restrictions, much less all three imposed together, is consistent with common-law agency doctrine.[30]

before 1984. 362 NLRB No. 186, slip op. at 8–11. In tracing the evolution of the Board's joint-employer standard, the *Browning-Ferris* Board observed that:

Three aspects of that development seem clear. First, the Board's approach has been consistent with the common-law concept of control, within the framework of the National Labor Relations Act. Second, before the current joint-employer standard was adopted, the Board (with judicial approval) generally took a broader approach to the concept of control. Third, the Board has never offered a clear and comprehensive explanation for its joint-employer standard, either when it adopted the current restrictive test or in the decades before.

Id. at 8.

[22] *TLI, Inc.,* 271 NLRB 798 (1984), enfd. mem. 772 F.2d 894 (3d Cir. 1985), and *Laerco Transportation,* 269 NLRB 324 (1984).

[23] Charlotte Garden & Joseph E. Slater, *Comments on Restatement of Employment Law (Third), Chapter 1,* 21 Employee Rights & Employment Policy Journal 265, 276 (2017).

[24] Id. at 276–277.

Id.

[25] *Browning-Ferris,* supra, 362 NLRB No. 186, slip op. at 2 (emphasis in original).

[26] Id. at 13–14. See also *Hy-Brand I,* supra, 365 NLRB No. 156, slip op. at 42–45 (dissenting opinion).

As to whether authority must be exercised, Section 220(1) of the *Restatement (Second) of Agency* defines a ''servant'' as a ''person employed to perform services . . . who with respect to the physical conduct in the performance of the services is subject to the other's control *or right to control*'' (emphasis added). Section 220(2), in turn, identifies as a relevant factor in determining the existence of an employment relationship ''the extent of control which, *by the agreement,* the master *may* exercise over the details of the work'' (emphasis added). See, *e.g., Community for Creative Non-Violence* v. *Reid,* 490 U.S. 730, 751 (1989) (''In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished.''); *Singer Mfg. Co.* v. *Rahn,* 132 U.S. 518, 523 (1889) (observing that the ''relation of master and servant exists whenever the employer retains the right to direct the manner in which the business shall be done'').

As to whether control must be direct and immediate, the *Restatement* observes that the ''control needed to establish the relation of master and servant may be very attenuated.'' *Restatement (Second) of Agency* Section 220(l), comment d. The *Restatement* specifically recognizes the common-law ''subservant'' doctrine, addressing cases in which one employer's control is or may be exercised indirectly, while a second employer directly controls the employee. *Restatement (Second) of Agency* Sections 5, 5(2), comment e. See, *e.g., Kelley* v. *Southern Pacific Co.,* 419 U.S. 3218, 325 (1974) (recognizing subservant doctrine for purposes of Federal Employers' Liability Act); *Allbritton Communications Co.* v. *NLRB,* 766 F.2d 812, 818–819 (3d Cir. 1985) (applying subservant doctrine under National Labor Relations Act), cert. denied, 474 U.S. 1081 (1986).

As to the issue of control that is limited and routine, the *Restatement* makes clear that if an entity routinely exercises control ''over the details of the work,'' it is more likely to be a common-law employer. See *Restatement (Second) of Agency* Section 220(2)(a). That control might be routine, in the sense of not requiring special skill, does not suggest the absence of an employment relationship; to the contrary, an unskilled worker is *more* likely to be an employee, rather than an independent contractor. See *id.,* Section 220(2)(d) and comment i.

[27] See, *e.g., NLRB* v. *United Insurance Co. of America,* 390 U.S. 254, 256–258 (1968) (interpreting Act's exclusion of independent contractors from coverage).

[28] *NLRB* v. *Town & Country Electric, Inc.,* 516 U.S. 85, 94 (1995), citing *United Insurance,* supra, 390 U.S. at 256.

[29] See *Hy-Brand I,* supra, 365 NLRB No. 156, slip op. at 42–47 (dissenting opinion).

[30] The majority observes that in some cases, courts have upheld the Board's application of the ''direct and immediate''-control restriction. But as the *Hy-Brand I* dissent explained, no federal appellate court has addressed the argument that this restriction is inconsistent with common-law agency principles. 365 NLRB No. 156, slip op. at 46.

Nor, as the majority suggests, is the restriction supported by the Supreme Court's decision in *NLRB* v. *Denver Building & Construction Trades Council,* 341 NLRB 675 (1951). As the *Hy-Brand I* dissent explained:

The issue in . . . *Denver Building & Construction Trades Council* . . . was whether (as the Board had found) a labor union violated Sec. 8(b)(4)(A) of the Act ''by engaging in a strike, an object of which was to force the general contractor on a construction project to terminate its contract with a certain subcontractor on the project.'' Id. at 677. The relevant statutory language prohibits a strike ''where an object thereof is . . . forcing or requiring . . . any employer or other person . . . to cease doing business with any other person.'' Id. at 677 fn. 1 (citing 29 U.S.C. 158(b)(4)(A), current version at 29 U.S.C. 158(b)(4)(i)(B)). The Court agreed with the Board's conclusion that the general contractor and the subcontractor were ''doing business'' with each other. Id. at 690.

It was in that context that the Court observed that ''the fact that the contractor and the subcontractor were engaged on the same construction project, and that the contactor had some supervision over the subcontractor's work, did not eliminate the status of each as an independent contractor or make the employees of one the employees of the other,'' such that the ''doing business'' element could not be satisfied. Id. at 689–690. The Court's decision in no way implicated the common-law test for an employment relationship or the Board's joint-employer standard. As a general matter, to say that a general contractor and a subcontractor are

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Instead of demonstrating that its proposed rule is consistent with the common law (an impossible task), the majority simply asserts that it is—and then invites public comment on the ''current state of the common law on joint-employment relationships'' and whether the ''common law dictate[s] the approach of the proposed rule or of *Browning-Ferris*'' or instead ''leave[s] room for either approach.'' The answers to these questions have been clear for quite some time: The restrictive conditions for finding joint-employer status proposed by the majority simply restore the pre-*Browning Ferris* standard, which the Board had never presented as consistent with, much less compelled by, common-law agency doctrine.[31] The majority, in short, seeks help in finding a new justification for an old (and unsupportable) standard. But the proper course is for the Board to *start* with first principles, as the *Browning-Ferris* decision did, and then to derive the joint-employer standard from them.

Just as the majority fails to reconcile the proposed rule with common-law agency doctrine—a prerequisite for any viable joint-employer standard under the National Labor Relations Act—so the majority fails to explain how its proposed standard is consistent with the actual policies of the Act. There should be no dispute about what those policies are. Congress has told us. Section 1 of the Act states plainly that:

> It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate those obstructions when they have occurred *by encouraging the practice and procedure of collective bargaining* and by protecting the exercise of workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

29 U.S.C. 151 (emphasis added). The Supreme Court has explained that:

> Congress' goal in enacting federal labor legislation was to create a framework within which labor and management can establish the mutual rights and obligations that govern the employment relationship. ''The theory of the act is *that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace* and may bring about the adjustments and agreements which the act in itself does not attempt to compel.''

NLRB v. *J. Weingarten, Inc.,* 420 U.S. 251, 271 (1975) (emphasis added), quoting *NLRB* v. *Jones & Laughlin Steel Corp.,* 301 U.S. 1, 45 (1937).

The *Browning-Ferris* standard—current Board law—clearly ''encourage[s] the practice and procedure of collective bargaining'' (in the words of the Act) by eliminating barriers to finding joint-employer relationships that have no basis in the common-law agency doctrine that Congress requires the Board to apply. The predictable result is that more employees will be able to engage in ''free opportunities for negotiation'' (in the Supreme Court's phrase) with the employers who actually control the terms and conditions of their employment—as Congress intended—and that orderly collective bargaining, not strikes, slowdowns, boycotts, or other ''obstructions to the free flow of commerce'' will prevail in joint-employer settings.

The question for the majority is why it would preliminarily choose to abandon *Browning-Ferris* for a standard that, by its own candid admission, is intended to—and will—result in *fewer* joint employer findings and thus in a greater likelihood of economically disruptive labor disputes. Where collective bargaining under the law is not an option, workers have no choice but to use other means to improve their terms and conditions of employment. Economic pressure predictably will be directed at the business entities that control a workplace, whether or not the Board recognizes them as employers. History shows that when employees' right to have effective union representation is obstructed, they engage in alternative and more disruptive means of improving their terms of employment.[32] Resort to such economic weapons is hardly a relic of the past. Recent examples include nationwide strikes by employees unable to gain representation in fast food, transportation, retail, and other low-pay industries, often directed at parent companies, franchisors, investors, or other entities perceived by the workers as having influence over decisions that ultimately impact the workers' well-being.[33] Congress enacted the NLRA in order to minimize the disruption of commerce and to provide employees with a structured, non-disruptive alternative to such action. In blocking effective representation by unreasonably narrowing the definition of joint employer, the majority thwarts that goal and invites disruptive economic activity.

The majority does not explain its choice in any persuasive way. It asserts that codifying the *Hy-Brand I,* pre-*Browning-Ferris* standard ''will foster predictability and consistency regarding determinations of joint-employer status in a variety of business relationships, thereby promoting labor-management stability, one of the principal purposes of the Act.'' But, as already suggested, ''predictability and consistency'' with respect to the Board's joint-employer standard could be achieved just as well by codifying the *Browning-Ferris* standard—which, crucially, is both consistent with common-law agency doctrine and promotes the policy of the Act (in contrast to the *Hy-Brand I* standard).

As for ''labor-management stability,'' that notion does *not* mean the perpetuation of a state in which workers in joint-employer situations remain

independent entities (*e.g.,* not a ''single employer'') is not to say that they can *never* be joint employers, *if* it is proven that the general contractor retains or exercises a sufficient degree of control over the subcontractor's workers to satisfy the common-law test of an employment relationship.

Hy-Brand I, supra, 365 NLRB No. 156, slip op. at 46 fn. 63 (dissenting opinion).

[31] With respect to the issue of reserved control, the majority acknowledges that ''[o]ver time, the Board shifted position, without expressly overruling precedent, and held that joint-employer status could not be established by the mere existence of a clause in a business contract reserving to one company authority over its business partner's employees absent evidence that such authority had ever been exercised.'' The Board, however, is required to adhere to its precedent or to explain why it chooses to deviate from it. See, *e.g., ABM Onsite Services-West, Inc.* v. *NLRB,* 849 F.3d 1137, 1146 (D.C. Cir. 2017). Here, too, the Board's pre-*Browning-Ferris* approach fell short of the standard for reasoned decision-making.

[32] Between 1936 and 1939, when the NLRA was in its infancy and still meeting massive resistance from employers, American employees engaged in 583 sit-down strikes of at least one day's duration. Jim Pope, *Worker Lawmaking, Sit-Down Strikes, and the Shaping of American Industrial Relations, 1935—1938,* Law and History Review, Vol. 24, No. 1 at 45, 46 (Spring 2006). See also *NLRB* v. *Fansteel Metallurgical Corp.,* 306 U.S. 240 (1939). For many years after plant occupations were found illegal by the Supreme Court, employees resorted to wildcat, ''quickie,'' ''stop-and-go,'' and partial strikes; slowdowns; and mass picketing. *Id* at 108–111.

[33] E.g., Michael M. Oswalt, *The Right to Improvise in Low-Wage Work,* 38 Cardozo L. Rev. 959, 961–986 (2017); Steven Greenhouse and Jana Kasperkevic, *Fight For $15 Swells Into Largest Protest By Low-wage Workers in US History,* The Guardian/U.S. News (April 15, 2015); Dominic Rushe, *Fast Food Workers Plan Biggest US Strike to Date Over Minimum Wage,* The Guardian/U.S. News (September 1, 2014). Strikes, walkouts, and other demonstrations of labor unrest have also been seen in recent years in the college and university setting among graduate teaching assistants and similar workers responding to their academic employers' refusal to recognize unions and engage in collective bargaining. See, *e.g.,* Danielle Douglas-Gabrielle, *Columbia Graduate Students Strike Over Refusal to Negotiate a Contract,* The Washington Post (April 24, 2018); David Epstein, *On Strike: In a showdown over TA unions at private universities, NYU grad students walk off the job,* Inside Higher Ed (November 10, 2005). Here, again, the common thread is workers resort to more disruptive channels when they are denied the ability to negotiate directly about decisions impacting their employment.

unrepresented, despite their desire to unionize, because Board doctrine prevents it. ''The object of the National Labor Relations Act is industrial peace and stability, *fostered by collective-bargaining agreements providing for the orderly resolution of labor disputes between workers and employe[r]s.*'' [34] Congress explained in Section 1 of the Act that it is the ''denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining'' that ''lead to strikes and other forms of industrial strife or unrest.'' [35] A joint-employer standard that predictably and consistently frustrates the desire of workers for union representation is a recipe for workplace instability—for just the sort of conflict that Congress wanted to eliminate. Whether it proceeds by adjudication or by rulemaking, the Board is not free to substitute its own idea of proper labor policy for the Congressional policy embodied in the statute.

The majority expresses the ''preliminary belief . . . that absent a requirement of proof of some 'direct and immediate' control to find a joint-employment relationship, it will be extremely difficult for the Board to accurately police the line between independent commercial contractors and genuine joint employers.'' But any such difficulty is a function of applying common-law agency doctrine, which the Board is not free to discard, whether in the interests of administrative convenience or a so-called predictability that insulates employers from labor-law obligations. In holding that Congress had made common-law agency doctrine controlling under the Act, the Supreme Court itself has noted the ''innumerable situations which arise in the context of the common law where it is difficult to say whether a particular individual is an employee or an independent contractor.'' [36] To quote the *Hy-Brand I* majority, ''[t]he Board is not Congress.'' [37] It is not free to decide that the common law is simply too difficult to apply, despite the Congressional instruction to do so.

Notably, the majority's proposed inclusion of a ''direct and immediate'' control requirement in the joint-employer standard would hardly result in an easy-to-apply test. The majority takes pains to say that while the exercise of ''direct and immediate'' control is *necessary* to establish a joint-employer relationship, it is not *sufficient.*[38] As for the ''examples'' set forth in the proposed rule, they are ''intended to be illustrative and not as setting the outer parameters of the joint-employer doctrine established in the proposed rule.'' [39] Even with respect to those examples that illustrate the exercise of ''direct and immediate'' control, the proposed rule does not actually state that a joint-employer relationship is demonstrated. Here, too, the majority's ostensible goal of predictability is elusive. The proposed rule, if ultimately adopted by the Board, will reveal its true parameters only over time, as it is applied case-by-case through adjudication. What purpose, then, does codifying the *Hy-Brand I* standard via rulemaking actually serve?

The majority's examples, rather than helping ''clarify'' what constitutes ''direct and immediate control,'' confirm that joint employment cannot be determined by any simplistic formulation, let alone the majority's artificially restrictive one. This is because additional circumstances in each of the provided examples could change the result. In example 1(a), the majority declares that under its proposed rule a ''cost-plus'' service contract between two businesses that merely establishes a maximum reimbursable labor expense does not, by itself, justify finding that the user business exercises direct control. But if, under that contract, the user also imposes hiring standards; prohibits individual pay to exceed that of the user's own employees; determines the provider's working hours and overtime; daily adjusts the numbers of employees to be assigned to respective production areas; determines the speed of the worksite's assembly or production lines; conveys productivity instructions to employees through the provider's supervisors; or restricts the period that provided employees are permitted to work for the user—all as in *Browning-Ferris*—does the result change? Would some but not all of these additional features change the result? If not, under common-law principles, why not?

In example 2(a), the majority declares that under its proposed rule, a user business does not exercise direct control over the provider's employees simply by complaining that the product coming off its assembly line worked by those employees is defective. Does the result change if the user also indicates that it believes certain individual employees are partly responsible for the defects? Or if it also demands those employees' reassignment, discipline, or removal? Or if it demands that provided employees be allocated differently to different sections of the line?

And in example 6(a), the majority declares that where a service contract reserves the user's right to discipline provided employees, but the user has never exercised that authority, the user has not exercised direct control. Again, does the result change if the user indicates to the supplier which employees deserve discipline, and/or how employees should be disciplined? And, assuming that the actual exercise of control is necessary, when is it sufficient to establish a joint-employer relationship? How many times must control be exercised, and with respect to how many employees and which terms and conditions of employment?

The majority's simplified examples, meanwhile, neither address issues of current concern implicating joint employment—such as, for example—the recent revelation that national fast-food chains have imposed ''no poaching'' restrictions on their franchisees that limit the earnings and mobility of franchise employees [40]—nor accurately

[34] *Auciello Iron Works, Inc.* v. *NLRB,* 517 U.S. 781, 785 (1996) (emphasis added).

[35] 29 U.S.C. 151.

[36] *United Insurance,* supra, 390 U.S. at 258. See also *Restatement (Second) of Agency* Section 220, comment c (''The relation of master and servant is one not capable of exact definition. . . . [I]t is for the triers of fact to determine whether or not there is a sufficient group of favorable factors to establish the relation.'').

[37] *Hy-Brand I,* supra, 365 NLRB No. 156, slip op. at 33.

[38] ''Direct and immediate'' control ''will be insufficient,'' the majority observes, ''where the degree of a putative employer's control is too limited in scope (perhaps affecting a single essential working condition and/or exercised rarely during the putative joint employer's relationship with the undisputed employer).'' In comparison, *Browning-Ferris* explained that a joint employer ''will be required to bargain only with respect to those terms and conditions over which it possesses sufficient control for bargaining to be meaningful.'' 362 NLRB No. 186, slip op. at 2 fn. 7. The decision acknowledged that a ''putative joint employer's control might extend only to terms and conditions of employment too limited in scope or significance to permit meaningful collective bargaining.'' Id. at 16. The difference between the proposed rule and *Browning-Ferris* is that the former treats joint employment as an all-or-nothing proposition, while the latter permits joint-employer determinations that are tailored to particular working arrangements, allowing collective bargaining to the extent that it can be effective.

[39] Of course, illustrating a legal standard is not the same as explaining it: In this case, demonstrating that the proposed joint-employer standard, as illustrated by a particular example, is consistent with common-law agency doctrine and promotes statutory policies.

[40] ''AG Ferguson Announces Fast-Food Chains Will End Restrictions on Low-Wage Workers Nationwide,'' Press Release, Office of the Attorney General, Washington State (July 12, 2018) (explaining that ''seven large corporate fast-foods chains will immediately end a nationwide practice that restricts worker mobility and decreases competition for labor by preventing workers from moving among the chains' franchise locations''), available at *www.atg.wa.gov/news/news-releases;* ''AG Ferguson: Eight More Restaurant Chains Will

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reflect the complicated circumstances that the Board typically confronts in joint-employer cases, where the issue of control is raised with respect to a range of employment terms and conditions and a variety of forms of control.[41]

The majority's examples and their possible variations therefore illustrate why the issue of joint employment is particularly suited to individual adjudication under common-law principles. As the majority acknowledges, ''[t]here are myriad relationships between employers and their business partners, and the degree to which particular business relationships impact employees' essential terms and conditions of employment varies widely.'' This being true, the majority's simplistic examples are of limited utility in providing guidance, and merely serve to illustrate the impossibility of predetermining with ''clarity'' all of the situations in which a joint employment relationship does or does not exist. This is why the Board's best course of action may well be to continue to define the contours of the correct standard, re-established in *Browning-Ferris,* through the usual process of adjudication. This process will provide a more nuanced understanding of the contours of potential joint employment relationships that is difficult to achieve in the abstract via rulemaking.

C. The Majority's Proposed Rulemaking Process Is Flawed

For all of these reasons, I dissent from the majority's decision to issue the notice of proposed rulemaking (NPRM). To be sure, if the majority is determined to revisit *Browning-Ferris,* then permitting public participation in the process is preferable to the approach taken in the now-vacated *Hy-Brand I,* where the majority overruled *Browning-Ferris* sua sponte and without providing the parties or the public with notice and an opportunity to file briefs on that question. Having chosen to proceed, however, the majority should at the very least encourage greater public participation in the rulemaking process, by holding one or more public hearings.

There is no indication that the Board intends to hold a public hearing on the proposed rule, in addition to soliciting written comments. In the past, the Board has held such hearings to enhance public participation in the rulemaking process,[42] and there is no good reason why it should not do so again. Despite the Chairman's publicly professed desire to hear from ''thousands of commentators . . . including individuals and small businesses that may not be able to afford to hire a law firm to write a brief for them, yet have valuable insight to share from hard-won experience,''[43] the process outlined by the majority—with limited time for public comment and no public hearings—seems ill-designed to provide the broad range of public input the majority purportedly seeks.

Regardless of my views on the desirability of rulemaking on the joint-employer standard in the wake of *Hy-Brand I,* I will give careful consideration to the public comments that the Board receives and to the views of my colleagues. It is worth recalling that the *Hy-Brand I* majority, in overruling *Browning-Ferris,* asserted that the decision ''destabilized bargaining relationships and created unresolvable legal uncertainty,'' ''dramatically changed labor law sales and successorship principles and discouraged efforts to rescue failing companies and preserve employment,'' ''threatened existing franchising arrangements,'' and ''undermined parent-subsidiary relationships.''[44] The *Hy-Brand I* majority cited no actual examples from the Board's case law applying *BFI,* or empirical evidence of any sort, to support its hyperbolic claims, instead recycling Member Miscimarra's dissent in *Browning-Ferris* practically verbatim.[45] *Browning-Ferris* was issued more than 3 years ago, on August 27, 2015. Today's notice specifically solicits empirical evidence from the public: information about real-world experiences, not desk-chair hypothesizing. And so the question now is whether the record in this rulemaking ultimately will support the assertions made about *Browning-Ferris* and its supposed consequences—or, instead, will reveal them to be empty rhetoric.

V. Regulatory Procedures

The Regulatory Flexibility Act

A. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (''RFA''), 5 U.S.C. 601, *et seq.* ensures that agencies ''review rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the [RFA].''[46] It requires agencies promulgating proposed rules to prepare an Initial Regulatory Flexibility Analysis (''IRFA'') and to develop alternatives wherever possible, when drafting regulations that will have a significant impact on a substantial

End No-Poach Practices Nationwide,'' Press Release, Office of the Attorney General, Washington State (Aug. 20, 2018), available at *www.atg.wa.gov/news/news-releases.* See also generally Rachel Abrams, ''Why Aren't Paychecks Growing? A Burger-Joint Clause Offers a Clue,'' *The New York Times* (Sept. 27, 2017); Alan B. Krueger & Orley C. Ashenfelter, ''Theory and Evidence on Employer Collusion in the Franchise Sector,'' Princeton University Working Paper No. 614 (Sept. 28, 2017), available at *http://arks.princeton.edu/ark:/88435/dsp014f16c547g.*

[41] In *Browning-Ferris,* for example, the Board found that BFI Newby Island Recyclery (BFI) was a joint employer with Leadpoint Business Services (Leadpoint) of sorters, screen cleaners, and housekeepers at a recycling facility. That finding was based on a range of evidence reflecting both direct and indirect control, both reserved and exercised, over various terms and conditions of employment.

First, the Board found that under its agreement with Leadpoint, BFI ''possesse[d] significant control over who Leadpoint can hire to work at its facility,'' with respect to both hiring and discipline, and at least occasionally exercised that authority in connection with discipline. 362 NLRB No. 16, slip op. at 18.

Second, BFI ''exercised control over the processes that shape the day-to-day work'' of the employees, particularly with respect to the ''speed of the [recycling] streams and specific productivity standards for sorting,'' but also by assigning specific tasks that need to be completed, specifying where Leadpoint workers were to be positioned, and exercising oversight of employees' work performance.'' Id. at 18–19. (footnote omitted).

Third, BFI ''played a significant role in determining employees' wages'' by (1) ''prevent[ing] Leadpoint from paying employees more than BFI employees performing comparable work; and (2) entering into a cost-plus contract with Leadpoint coupled with an ''apparent requirement of BFI approval over employee pay raises.'' Id. at 19.

Example 1(a) of the proposed rule suggests that the majority would give no weight to BFI's cost-plus contract, but it is not clear how the majority would analyze BFI's veto power over pay raises. Example 1(b) suggests that this power might be material. Example 2(b), meanwhile, suggests that BFI's control over day-to-day work processes supports a joint-employer finding. Finally, Example 6(b), apparently would support finding that BFI exercised direct and immediate disciplinary control over Leadpoint employees. Ironically, then, it is far from clear that adoption of the majority's proposed rule would lead to a different result in *Browning-Ferris.*

[42] See Representation-Case Procedures, 79 FR 74308 (2014) (the Board held four days of oral hearings with live questioning by Board members that resulted in over 1,000 pages of testimony); Union Dues Regulations, 57 FR 43635 (1992) (the Board held one hearing); Collective-Bargaining Units in the Health Care Industry, 53 FR 33900 (1988), (the Board held four hearings—two in Washington, DC, one in Chicago, IL, and one in San Francisco, CA—that over the course of 14 days resulted in the appearance of 144 witnesses and 3,545 pages of testimony).

[43] See June 5, 2018 Letter from Chairman Ring to Senators Warren, Gillibrand, and Sanders, available at *https://www.nlrb.gov/news-outreach/news-story/nlrb-chairman-provides-response-senators-regarding-joint-employer-inquiry.*

[44] *Hy-Brand I,* supra, 365 NLRB No.156, slip op. at 20, 26, 27, and 29.

[45] The relationship between Member Miscimarra's dissent in *Browning-Ferris* and the majority opinion in *Hy-Brand* is examined in a February 9, 2018 report issued by the Board's Inspector General, which is posted on the Board's website (''OIG Report Regarding *Hy-Brand* Deliberations'' available at *www.nlrb.gov*).

[46] E.O. 13272, Sec. 1, 67 FR 53461 (''Proper Consideration of Small Entities in Agency Rulemaking'').

number of small entities. However, an agency is not required to prepare an IRFA for a proposed rule if the agency head certifies that, if promulgated, the rule will not have a significant economic impact on a substantial number of small entities.[47] The RFA does not define either ''significant economic impact'' or ''substantial number of small entities.''[48] Additionally, ''[i]n the absence of statutory specificity, what is 'significant' will vary depending on the economics of the industry or sector to be regulated. The agency is in the best position to gauge the small entity impacts of its regulations.''[49]

The Board has elected to prepare an IRFA to provide the public the fullest opportunity to comment on the proposed rule. An IRFA describes why an action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of this proposed rule, its purpose, objectives, and the legal basis are contained earlier in the **SUMMARY** and **SUPPLEMENTAL INFORMATION** sections and are not repeated here.

The Board believes that this rule will likely not have a significant economic impact on a substantial number of small entities. While we assume for purposes of this analysis that a substantial number of small employers and small entity labor unions will be impacted by this rule, we anticipate low costs of compliance with the rule, related to reviewing and understanding the substantive changes to the joint-employer standard. There may be compliance costs that are unknown to the Board; perhaps, for example, employers may incur potential increases in liability insurance costs. The Board welcomes comments from the public that will shed light on potential compliance costs or any other part of this IRFA.

[47] 5 U.S.C. 605(b).

[48] 5 U.S.C. 601.

[49] Small Business Administration Office of Advocacy, ''A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act'' (''SBA Guide'') at 18, *https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf.*

B. Description and Estimate of Number of Small Entities to Which the Rule Applies

In order to evaluate the impact of the proposed rule, the Board first identified the entire universe of businesses that could be impacted by a change in the joint-employer standard. According to the United States Census Bureau, there were approximately 5.9 million business firms with employees in 2015.[50] Of those, the Census Bureau estimates that about 5,881,267 million were firms with fewer than 500 employees.[51] While this proposed rule does not apply to employers that do not meet the Board's jurisdictional requirements, the Board does not have the data to determine the number of excluded entities.[52] Accordingly, the Board assumes for purposes of this analysis that the great majority of the 5,881,267 million small business firms could be impacted by the proposed rule.

The proposed rule will only be applied as a matter of law when small businesses are alleged to be joint employers in a Board proceeding. Therefore, the frequency that the issue comes before the Board is indicative of the number of small entities most directly impacted by the proposed rule. A review of the Board's representation petitions and unfair labor practice (ULP) charges provides a basis for estimating the frequency that the joint-employer issue comes before the Agency. During the five-year period between January 1, 2013 and December 31, 2017, a total of 114,577 representation and unfair labor practice cases were initiated with the Agency. In 1,598 of those filings, the representation petition or ULP charge filed with the Agency asserted a joint-employer relationship between at least two employers.[53] Accounting for repetitively alleged joint-employer relationships in these filings, we identified 823 separate joint-employer relationships involving an estimated 1,646 employers.[54] Accordingly, the joint-employer standard most directly impacted approximately .028% of all 5.9 million business firms (including both large and small businesses) over the five-year period. Since a large share of our joint-employer cases involves large employers, we expect an even lower percentage of small businesses to be most directly impacted by the Board's application of the rule.

Irrespective of an Agency proceeding, we believe the proposed rule may be more relevant to certain types of small employers because their business relationships involve the exchange of employees or operational control.[55] In addition, labor unions, as organizations representing or seeking to represent employees, will be impacted by the

[50] ''Establishments'' refer to single location entities—an individual ''firm'' can have one or more establishments in its network. The Board has used firm level data for this IRFA because establishment data is not available for certain types of employers discussed below. Census Bureau definitions of ''establishment'' and ''firm'' can be found at *https://www.census.gov/programs-surveys/susb/about/glossary.html.*

[51] The Census Bureau does not specifically define small business, but does break down its data into firms with 500 or more employees and those with fewer than 500 employees. *See* U.S. Department of Commerce, Bureau of Census, 2015 Statistics of U.S. Businesses (''SUSB'') Annual Data Tables by Establishment Industry, *https://www.census.gov/data/tables/2015/econ/susb/2015-susb-annual.html* (from downloaded Excel Table entitled ''U.S., 6-digit NAICS''). Consequently, the 500-employee threshold is commonly used to describe the universe of small employers. For defining small businesses among specific industries, the standards are defined by the North American Industry Classification System (NAICS), which we set forth below.

[52] Pursuant to 29 U.S.C. 152(6) and (7), the Board has statutory jurisdiction over private sector employers whose activity in interstate commerce exceeds a minimal level. *NLRB* v. *Fainblatt,* 306 U.S. 601, 606–07 (1939). To this end, the Board has adopted monetary standards for the assertion of jurisdiction that are based on the volume and character of the business of the employer. In general, the Board asserts jurisdiction over employers in the retail business industry if they have a gross annual volume of business of $500,000 or more. *Carolina Supplies & Cement Co.,* 122 NLRB 88 (1959). But shopping center and office building retailers have a lower threshold of $100,000 per year. *Carol Management Corp.,* 133 NLRB 1126 (1961). The Board asserts jurisdiction over non-retailers generally where the value of goods and services purchased from entities in other states is at least $50,000. *Siemons Mailing Service,* 122 NLRB 81 (1959).

The following employers are excluded from the NLRB's jurisdiction by statute:

- Federal, state and local governments, including public schools, libraries, and parks, Federal Reserve banks, and wholly-owned government corporations. 29 U.S.C. 152(2).
- Employers that employ only agricultural laborers, those engaged in farming operations that cultivate or harvest agricultural commodities, or prepare commodities for delivery. 29 U.S.C. 153(3).
- Employers subject to the Railway Labor Act, such as interstate railroads and airlines. 29 U.S.C. 152(2).

[53] This includes initial representation case petitions (RC petitions) and unfair labor practice charges (CA cases) filed against employers.

[54] Since a joint-employer relationship requires at least two employers, we have estimated the number of employers by multiplying the number of asserted joint-employer relationships by two. Some of these filings assert more than two joint employers; but, on the other hand, some of the same employers are named multiple times in these filings. Additionally, this number is certainly inflated because the data does not reveal those cases where joint-employer status is not in dispute.

[55] The Board acknowledges that there are other types of entities and/or relationships between entities that may be affected by a change in the joint-employer rule. Such relationships include but are not limited to: Lessor/lessee, and parent/subsidiary. However, the Board does not believe that entities involved in these relationships would be impacted more than the entities discussed below.

Board's change in its joint-employer standard. Thus, the Board has identified the following five types of small businesses or entities as those most likely to be impacted by the rule: Contractors/subcontractors, temporary help service suppliers, temporary help service users, franchisees, and labor unions.

(1) Businesses commonly enter into contracts with vendors to receive a wide range of services that may satisfy their primary business objectives or solve discrete problems that they are not qualified to address. And there are seemingly unlimited types of vendors who provide these types of contract services. Businesses may also subcontract work to vendors to satisfy their own contractual obligations—an arrangement common to the construction industry. Businesses that contract to receive or provide services often share workspaces and sometimes share control over workers, rendering their relationships subject to application of the Board's joint-employer standard. The Board does not have the means to identify precisely how many businesses are impacted by contracting and subcontracting within the U.S., or how many contractors and subcontractors would be small businesses as defined by the SBA.[56]

(2) Temporary help service suppliers (North American Industry Clarification System (''NAICS'') #561320), are primarily engaged in supplying workers to supplement a client employer's workforce. To be defined as a small business temporary help service supplier by the SBA, the entity must generate receipts of less than $27.5 million annually.[57] In 2012, there were 13,202 temporary service supplier firms in the U.S.[58] Of these business firms, 6,372 had receipts of less than $1,000,000; 3,947 had receipts between $1,000,000 and $4,999,999; 1,639 had receipts between $5,000,000 and $14,999,999; and 444 had receipts between $15,000,000 and $24,999,999. In aggregate, at least 12,402 temporary help service supplier firms (93.9% of total) are definitely small businesses according to SBA standards. Since the Board cannot determine how many of the 130 business firms with receipts between $25,000,000–$29,999,999 fall below the $27.5 million annual receipt threshold, it will assume that these are small businesses as defined by the SBA. For purposes of this IRFA, the Board assumes that 12,532 temporary help service suppliers firms (94.9% of total) are small businesses.

(3) Entities that use temporary help services in order to staff their businesses are widespread throughout many types of industries, and include both large and small employers. A 2012 survey of business owners by the Census Bureau revealed that at least 266,006 firms obtained staffing from temporary help services in that calendar year.[59] This survey provides the only gauge of employers that obtain staffing from temporary help services and the Board is without the means to estimate what portion of those are small businesses as defined by the NAICS. For purposes of this IRFA, the Board assumes that all users of temporary services are small businesses.

(4) Franchising is a method of distributing products or services, in which a franchisor lends its trademark or trade name and a business system to a franchisee, which pays a royalty and often an initial fee for the right to conduct business under the franchisor's name and system.[60] Franchisors generally exercise some operational control over their franchisees, which renders the relationship subject to application of the Board's joint-employer standard. The Board does not have the means to identify precisely how many franchisees operate within the U.S., or how many are small businesses as defined by the SBA. A 2012 survey of business owners by the Census Bureau revealed that at least 507,834 firms operated a portion of their business as a franchise. But, only 197,204 of these firms had paid employees.[61] In our view, only franchisees with paid employees are potentially impacted by the joint-employer standard. Of the franchisees with employees, 126,858 (64.3%)) had sales receipts totaling less than $1 million. Based on this available data and the SBA's definitions of small businesses, which generally define small businesses as having receipts well over $1 million, we assume that almost two-thirds of franchisees would be defined as small businesses.[62]

(5) Labor unions, as defined by the NLRA, are entities ''in which employees participate and which exist for the purpose . . . of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.''[63] By defining which employers are joint employers under the NLRA, the proposed rule impacts labor unions generally, and more directly impacts those labor unions that organize the specific business sectors discussed above. The SBA's ''small business'' standard for ''Labor Unions and Similar Labor Organizations'' (NAICS #813930) is $7.5 million in annual receipts.[64] In 2012, there were 13,740 labor union firms in the U.S.[65] Of these firms, 11,245 had receipts of less than $1,000,000; 2,022 labor unions had receipts between $1,000,000 and $4,999,999, and 141 had receipts between $5,000,000 and $7,499,999. In aggregate, 13,408 labor union firms (97.6% of total) are small businesses according to SBA standards.

Based on the foregoing, the Board assumes there are 12,532 temporary help supplier firms, 197,204 franchise firms, and 13,408 union firms that are small businesses; and further that all 266,006 temporary help user firms are small businesses. Therefore, among these four categories of employers that are most interested in the proposed rule, 489,150 business firms are assumed to be small businesses as defined by the

[56] The only data known to the Board relating to contractor business relationships involve businesses that contract with the Federal Government. In 2014, the Department of Labor reported that approximately 500,000 federal contractor firms were registered with the General Services Administration. *Establishing a Minimum Wage for Contractors,* 79 FR 60634, 60697. However, the Board is without the means to identify the precise number of firms that actually receive federal contracts or to determine what portion of those are small businesses as defined by the SBA. Even if these data were available, given that the Board does not have jurisdiction over government entities, business relationships between federal contractors and the federal agencies will not be impacted by the Board's joint-employer rule. The business relationships between federal contractors and their subcontractors could be subject to the Board's joint-employer rule. However, we also lack the means for estimating the number of businesses that subcontract with federal contractors or determine what portion of those would be defined as small businesses. Input from the public in this regard is welcome.

[57] 13 CFR 121.201.

[58] The Census Bureau only provides data about receipts in years ending in 2 or 7. The 2017 data has not been published, so the 2012 data is the most recent available information regarding receipts. *See* U.S. Department of Commerce, Bureau of Census, 2012 SUSB Annual Data Tables by Establishment Industry, NAICS classification #561320, *https://www2.census.gov/programs-surveys/susb/tables/2012/us_6digitnaics_r_2012.xlsx.*

[59] *See* U.S. Department of Commerce, Bureau of Census, 2012 Survey of Business Owners, *https://factfinder.census.gov/bkmk/table/1.0/en/SBO/2012/00CSCB46.*

[60] *See* International Franchising Establishments FAQs, found at *https://www.franchise.org/faqs-about-franchising.*

[61] *See* U.S. Department of Commerce, Bureau of Census, 2012 Survey of Business Owners, *https://factfinder.census.gov/bkmk/table/1.0/en/SBO/2012/00CSCB67.*

[62] *See* 13 CFR 121.201.

[63] 29 U.S.C. 152(5).

[64] 13 CFR 121.201.

[65] *See* U.S. Department of Commerce, Bureau of Census, 2012 SUSB Annual Data Tables by Establishment Industry, NAICS classification #722513, *https://www2.census.gov/programs-surveys/susb/tables/2012/us_6digitnaics_r_2012.xlsx.*

SBA. We believe that all of these small businesses, and also those businesses regularly engaged in contracting/subcontracting, have a general interest in the rule and would be impacted by the compliance costs discussed below, related to reviewing and understanding the rule. But, as previously noted, employers will only be directly impacted when they are alleged to be a joint employer in a Board proceeding. Given our historic filing data, this number is very small relative to the number of small employers in these five categories.

C. Recordkeeping, Reporting, and Other Compliance Costs

The RFA requires an agency to consider the direct burden that compliance with a new regulation will likely impose on small entities.[66] Thus, the RFA requires the Agency to determine the amount of ''reporting, recordkeeping and other compliance requirements'' imposed on small entities.[67]

We conclude that the proposed rule imposes no capital costs for equipment needed to meet the regulatory requirements; no costs of modifying existing processes and procedures to comply with the proposed rule; no lost sales and profits resulting from the proposed rule; no changes in market competition as a result of the proposed rule and its impact on small entities or specific submarkets of small entities; and no costs of hiring employees dedicated to compliance with regulatory requirements.[68] The proposed rule also does not impose any new information collection or reporting requirements on small entities.

Small entities may incur some costs from reviewing the rule in order to understand the substantive changes to the joint-employer standard. We estimate that a labor compliance employee at a small employer who undertook to become generally familiar with the proposed changes may take at most one hour to read the summary of the rule in the introductory section of the preamble. It is also possible that a small employer may wish to consult with an attorney which we estimated to require one hour as well.[69] Using the Bureau of Labor Statistics' estimated wage and benefit costs, we have assessed these labor costs to be $124.37.[70]

As for other potential impacts, it is possible that liability and liability insurance costs may increase for small entities because they may no longer have larger entities with which to share the cost of any NLRA backpay remedies ordered in unfair labor practice proceedings. Such a cost may arguably fall within the SBA Guide's category of ''extra costs associated with the payment of taxes or fees associated with the proposed rule.'' Conversely, fewer employers may be alleged as joint employers, resulting in lower costs to some small entities. The Board is without the means to quantify such costs and welcomes any comment or data on this topic.[71] Nevertheless, we believe such costs are limited to very few employers, considering the limited number of Board proceedings where joint-employer status is alleged, as compared with the number of employers subject to the Board's jurisdiction. Moreover, the proposed rule may make it easier for employers to collectively bargain without the complications of tri-partite bargaining, and further provide greater certainty as to their bargaining responsibilities. We consider such positive impacts as either indirect, or impractical to quantify, or both.

As to the impact on unions, we anticipate they may also incur costs from reviewing the rule. We believe a union would consult with an attorney, which we estimate to require no more than one hour of time ($80.26, *see* n.45) because union counsel should already be familiar with the pre-*Browning-Ferris* standard. Additionally, the Board expects that the additional clarity of the proposed rule will serve to reduce litigation expenses for unions and other small entities. Again, the Board welcomes any data on any of these topics.

The Board does not find the estimated $124.37 cost to small employers and the estimated $80.26 cost to unions in order to review and understand the rule to be significant within the meaning of the RFA. In making this finding, one important indicator is the cost of compliance in relation to the revenue of the entity or the percentage of profits affected.[72] Other criteria to be considered are the following:

—Whether the rule will cause long-term insolvency, *i.e.,* regulatory costs that may reduce the ability of the firm to make future capital investment, thereby severely harming its competitive ability, particularly against larger firms;

—Whether the cost of the proposed regulation will (a) eliminate more than 10 percent of the businesses' profits; (b) exceed one percent of the gross revenues of the entities in a particular sector, or (c) exceed five percent of the labor costs of the entities in the sector.[73]

The minimal cost to read and understand the rule will not generate any such significant economic impacts.

Since the only quantifiable impact that we have identified is the $124.37 or $80.26 that may be incurred in reviewing and understanding the rule, we do not believe there will be a significant economic impact on a substantial number of small entities associated with this proposed rule.

D. Duplicate, Overlapping, or Conflicting Federal Rules

The Board has not identified any federal rules that conflict with the proposed rule. It welcomes comments that suggest any potential conflicts not noted in this section.

E. Alternatives Considered

Pursuant to 5 U.S.C. 603(c), agencies are directed to look at ''any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.'' The Board considered two primary alternatives to the proposed rules.

First, the Board considered taking no action. Inaction would leave in place the *Browning-Ferris* joint-employer standard to be applied in Board decisions. However, for the reasons

[66] *See Mid-Tex Elec. Co-op* v. *FERC,* 773 F.2d 327, 342 (D.C. Cir. 1985) (''[I]t is clear that Congress envisioned that the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities.'').

[67] *See* 5 U.S.C. 603(b)(4), 604(a)(4).

[68] *See* SBA Guide at 37.

[69] We do not believe that more than one hour of time by each would be necessary to read and understand the rule. This is because the new standard constitutes a return to the pre-*Browning-Ferris* standard with which most employers are already knowledgeable if relevant to their businesses, and with which we believe labor-management attorneys are also familiar.

[70] For wage figures, see May 2017 National Occupancy Employment and Wage Estimates, found at *https://www.bls.gov/oes/current/oes_nat.htm.* The Board has been administratively informed that BLS estimates that fringe benefits are approximately equal to 40 percent of hourly wages. Thus, to calculate total average hourly earnings, BLS multiplies average hourly wages by 1.4. In May 2017, average hourly wages for labor relations specialists (BLS #13–1075) were $31.51. The same figure for a lawyer (BLS #23–1011) is $57.33. Accordingly, the Board multiplied each of those wage figures by 1.4 and added them to arrive at its estimate.

[71] The RFA explains that in providing initial and final regulatory flexibility analyses, ''an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, *or more general descriptive statements if quantification is not practicable or reliable.*'' 5 U.S.C. 607 (emphasis added).

[72] *See* SBA Guide at 18.

[73] *Id.* at 19.

stated in Sections II and III above, the Board finds it desirable to revisit the *Browning-Ferris* standard and to do so through the rulemaking process. Consequently, we reject maintaining the status quo.

Second, the Board considered creating exemptions for certain small entities. This was rejected as impractical, considering that an exemption for small entities would substantially undermine the purpose of the proposed rule because such a large percentage of employers and unions would be exempt under the SBA definitions. Moreover, as this rule often applies to relationships involving a small entity (such as a franchisee) and a large enterprise (such as a franchisor), exemptions for small businesses would decrease the application of the rule to larger businesses as well, potentially undermining the policy behind this rule. Additionally, given the very small quantifiable cost of compliance, it is possible that the burden on a small business of determining whether it fell within a particular exempt category might exceed the burden of compliance. Congress gave the Board very broad jurisdiction, with no suggestion that it wanted to limit coverage of any part of the Act to only larger employers.[74] As the Supreme Court has noted, ''[t]he [NLRA] is federal legislation, administered by a national agency, intended to solve a national problem on a national scale.'' [75] As such, this alternative is contrary to the objectives of this rulemaking and of the NLRA.

Neither of the alternatives considered accomplished the objectives of proposing this rule while minimizing costs on small businesses. Accordingly, the Board believes that proceeding with this rulemaking is the best regulatory course of action. The Board welcomes public comment on any facet of this IRFA, including issues that we have failed to consider.

Paperwork Reduction Act

The NLRB is an agency within the meaning of the Paperwork Reduction Act (PRA). 44 U.S.C. 3502(1) and (5). This Act creates rules for agencies when they solicit a ''collection of information.'' 44 U.S.C. 3507. The PRA defines ''collection of information'' as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format.'' 44 U.S.C. 3502(3)(A). The PRA only applies when such collections are ''conducted or sponsored by those agencies.'' 5 CFR 1320.4(a).

The proposed rule does not involve a collection of information within the meaning of the PRA; it instead clarifies the standard for determining joint-employer status. Outside of administrative proceedings (discussed below), the proposed rule does not require any entity to disclose information to the NLRB, other government agencies, third parties, or the public.

The only circumstance in which the proposed rule could be construed to involve disclosures of information to the Agency, third parties, or the public is when an entity's status as a joint employer has been alleged in the course of Board administrative proceedings. However, the PRA provides that collections of information related to ''an administrative action or investigation involving an agency against specific individuals or entities'' are exempt from coverage. 44 U.S.C. 3518(c)(1)(B)(ii). A representation proceeding under section 9 of the NLRA as well as an investigation into an unfair labor practice under section 10 of the NLRA are administrative actions covered by this exemption. The Board's decisions in these proceedings are binding on and thereby alter the legal rights of the parties to the proceedings and thus are sufficiently ''against'' the specific parties to trigger this exemption.[76]

For the foregoing reasons, the proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under the PRA.

Congressional Review Act

The provisions of this rule are substantive. Therefore, the Board will submit this rule and required accompanying information to the Senate, the House of Representatives, and the Comptroller General as required by the Small Business Regulatory Enforcement Fairness Act (Congressional Review Act or CRA), 5 U.S.C. 801–808.

This rule is a ''major rule'' as defined by Section 804(2) of the CRA because it will have an effect on the economy of more than $100 million, at least during the year it takes effect. 5 U.S.C. 804(2)(A).[77] Accordingly, the rule will become effective no earlier than 60 days after publication of the final rule in the **Federal Register**.

List of Subjects in 29 CFR Part 103

Colleges and universities, Health facilities, Joint-employer standard, Labor management relations, Military personnel, Music, Sports.

Text of the Proposed Rule

For the reasons discussed in the preamble, the Board proposes to amend 29 CFR part 103 as follows:

PART 103—OTHER RULES

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 29 U.S.C. 156, in accordance with the procedure set forth in 5 U.S.C. 553.

■ 2. Add § 103.40 to read as follows:

§ 103.40: Joint employers.

An employer, as defined by Section 2(2) of the National Labor Relations Act (the Act), may be considered a joint employer of a separate employer's employees only if the two employers share or codetermine the employees' essential terms and conditions of employment, such as hiring, firing, discipline, supervision, and direction. A putative joint employer must possess and actually exercise substantial direct and immediate control over the

[74] However, there are standards that prevent the Board from asserting authority over entities that fall below certain jurisdictional thresholds. This means that extremely small entities outside of the Board's jurisdiction will not be affected by the proposed rule. *See* CFR 104.204.

[75] *NLRB* v. *Nat. Gas Util. Dist. of Hawkins Cty., Tenn.,* 402 U.S. 600, 603–04 (1971) (quotation omitted).

[76] Legislative history indicates Congress wrote this exception to broadly cover many types of administrative action, not just those involving ''agency proceedings of a prosecutorial nature.'' *See* S. REP. 96–930 at 56, *as reprinted in* 1980 U.S.C.C.A.N. 6241, 6296. For the reasons more fully explained by the Board in prior rulemaking, 79 FR 74307, 74468–69 (2015), representation proceedings, although not qualifying as adjudications governed by the Administrative Procedure Act, 5 U.S.C. 552b(c)(1), are nonetheless exempt from the PRA under 44 U.S.C. 3518(c)(1)(B)(ii).

[77] A rule is a ''major rule'' for CRA purposes if it will (A) have an annual effect on the economy of $100 million or more; (B) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (C) result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States–based enterprises to compete with foreign-based enterprises in domestic and export markets. 5 U.S.C. 804. The proposed rule is a ''major rule'' because, as explained in the discussion of the Regulatory Flexibility Act above, the Board has estimated that the average cost of compliance with the rule would be approximately $124.37 per affected employer and approximately $80.26 per union. Because there are some 5.9 million employers and 13,740 unions that could potentially be affected by the rule, the total cost to the economy of compliance with the rule will exceed $100 million ($733,783,000 + $1,102,772.4 = $734,885,772.4) in the first year after it is adopted. Since the costs of compliance are incurred in becoming familiar with the legal standard adopted in the proposed rule, the rule would impose no additional costs in subsequent years. Additionally, the Board is confident that the rule will have none of the effects enumerated in 5 U.S.C. 804(2)(B) and (C), above.

employees' essential terms and conditions of employment in a manner that is not limited and routine.

Example 1 to § 103.40. Company A supplies labor to Company B. The business contract between Company A and Company B is a ''cost plus'' arrangement that establishes a maximum reimbursable labor expense while leaving Company A free to set the wages and benefits of its employees as it sees fit. Company B does not possess and has not exercised direct and immediate control over the employees' wage rates and benefits.

Example 2 to § 103.40. Company A supplies labor to Company B. The business contract between Company A and Company B establishes the wage rate that Company A must pay to its employees, leaving A without discretion to depart from the contractual rate. Company B has possessed and exercised direct and immediate control over the employees' wage rates.

Example 3 to § 103.40. Company A supplies line workers and first-line supervisors to Company B at B's manufacturing plant. On-site managers employed by Company B regularly complain to A's supervisors about defective products coming off the assembly line. In response to those complaints and to remedy the deficiencies, Company A's supervisors decide to reassign employees and switch the order in which several tasks are performed. Company B has not exercised direct and immediate control over Company A's lineworkers' essential terms and conditions of employment.

Example 4 to § 103.40. Company A supplies line workers and first-line supervisors to Company B at B's manufacturing plant. Company B also employs supervisors on site who regularly require the Company A supervisors to relay detailed supervisory instructions regarding how employees are to perform their work. As required, Company A supervisors relay those instructions to the line workers. Company B possesses and exercises direct and immediate control over Company A's line workers. The fact that Company B conveys its supervisory commands through Company A's supervisors rather than directly to Company A's line workers fails to negate the direct and immediate supervisory control.

Example 5 to § 103.40. Under the terms of a franchise agreement, Franchisor requires Franchisee to operate Franchisee's store between the hours of 6:00 a.m. and 11:00 p.m. Franchisor does not participate in individual scheduling assignments or preclude Franchisee from selecting shift durations. Franchisor has not exercised direct and immediate control over essential terms and conditions of employment of Franchisee's employees.

Example 6 to § 103.40. Under the terms of a franchise agreement, Franchisor and Franchisee agree to the particular health insurance plan and 401(k) plan that the Franchisee must make available to its workers. Franchisor has exercised direct and immediate control over essential employment terms and conditions of Franchisee's employees.

Example 7 to § 103.40. Temporary Staffing Agency supplies 8 nurses to Hospital to cover during temporary shortfall in staffing. Over time, Hospital hires other nurses as its own permanent employees. Each time Hospital hires its own permanent employee, it correspondingly requests fewer Agency-supplied temporary nurses. Hospital has not exercised direct and immediate control over temporary nurses' essential terms and conditions of employment.

Example 8 to § 103.40. Temporary Staffing Agency supplies 8 nurses to Hospital to cover for temporary shortfall in staffing. Hospital manager reviewed resumes submitted by 12 candidates identified by Agency, participated in interviews of those candidates, and together with Agency manager selected for hire the best 8 candidates based on their experience and skills. Hospital has exercised direct and immediate control over temporary nurses' essential terms and conditions of employment.

Example 9 to § 103.40. Manufacturing Company contracts with Independent Trucking Company (''ITC'') to haul products from its assembly plants to distribution facilities. Manufacturing Company is the only customer of ITC. Unionized drivers—who are employees of ITC—seek increased wages during collective bargaining with ITC. In response, ITC asserts that it is unable to increase drivers' wages based on its current contract with Manufacturing Company. Manufacturing Company refuses ITC's request to increase its contract payments. Manufacturing Company has not exercised direct and immediate control over the drivers' terms and conditions of employment.

Example 10 to § 103.40. Business contract between Company and a Contractor reserves a right to Company to discipline the Contractor's employees for misconduct or poor performance. Company has never actually exercised its authority under this provision. Company has not exercised direct and immediate control over the Contractor's employees' terms and conditions of employment.

Example 11 to § 103.40. Business contract between Company and Contractor reserves a right to Company to discipline the Contractor's employees for misconduct or poor performance. The business contract also permits either party to terminate the business contract at any time without cause. Company has never directly disciplined Contractor's employees. However, Company has with some frequency informed Contractor that particular employees have engaged in misconduct or performed poorly while suggesting that a prudent employer would certainly discipline those employees and remarking upon its rights under the business contract. The record indicates that, but for Company's input, Contractor would not have imposed discipline or would have imposed lesser discipline. Company has exercised direct and immediate control over Contractor's employees' essential terms and conditions.

Example 12 to § 103.40. Business contract between Company and Contractor reserves a right to Company to discipline Contractor's employees for misconduct or poor performance. User has not exercised this authority with the following exception. Contractor's employee engages in serious misconduct on Company's property, committing severe sexual harassment of a coworker. Company informs Contractor that offending employee will no longer be permitted on its premises. Company has not exercised direct and immediate control over offending employee's terms and conditions of employment in a manner that is not limited and routine.

Dated: September 10, 2018.

Roxanne Rothschild,

Deputy Executive Secretary.

[FR Doc. 2018–19930 Filed 9–13–18; 8:45 am]

BILLING CODE 7545–01–P

Notices

Federal Register

Vol. 83, No. 179

Friday, September 14, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Intent To Establish the 2020 Dietary Guidelines Advisory Committee and Solicitation of Nominations for Membership

AGENCY: U.S. Department of Agriculture (USDA), Food, Nutrition and Consumer Services (FNCS) and Research, Education and Economics (REE); and U.S. Department of Health and Human Services (HHS), Office of the Assistant Secretary for Health.

ACTION: Notice; correction.

SUMMARY: The Departments of Agriculture and Health and Human Services published a document in the **Federal Register** of September 6, 2018 concerning solicitation of nominations for membership on the 2020 Dietary Guidelines Advisory Committee. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Eve Stoody (telephone 703–305–7600), Center for Nutrition Policy and Promotion, 3101 Park Center Drive, Room 1034, Alexandria, Virginia 22302, or, Richard Olson (telephone 240–453–8280), Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Suite LL100, Rockville, Maryland 20852. Additional information is available on the internet at *www.dietaryguidelines.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of September 6, 2018, in FR Doc. 2018–19302, on page 45206, in the first column, correct the **DATES** caption to read:

Nominations must be submitted by midnight Eastern Time on October 6, 2018.

Dated: September 7, 2018.

Donald Wright,

Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services.

Dated: September 11, 2018.

Jackie Haven,

Deputy Director, Center for Nutrition Policy and Promotion, Food and Nutrition Service, U.S. Department of Agriculture.

[FR Doc. 2018–20013 Filed 9–13–18; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Generic Clearance To Conduct Pre-Testing of Surveys

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is an extension, without change, of a currently approved collection to conduct various procedures to test questionnaires and survey procedures to improve the quality and usability of information collection instruments.

DATES: Written comments must be received on or before November 13, 2018.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Planning and Regulatory Affairs Office, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 1014, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to either Rachelle Ragland-Greene at 703–305–2586, or the Planning and Regulatory Affairs Office at 703–305–2017.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance to Conduct Pre-Testing of Surveys.

OMB Number: 0584–0606.

Expiration Date: March 31, 2019.

Type of Request: Extension of a currently approved information collection request, without change.

Abstract: The Food and Nutrition Service (FNS) intends to request approval from the Office of Management and Budget (OMB) for a generic clearance that will allow FNS to conduct a variety of data-gathering activities aimed at improving the quality and usability of information collection instruments associated with research and analysis activities.

The data-gathering activities utilized to this effect include but are not limited to experiments with levels of incentives for study participants, tests of various types of survey operations, focus groups, cognitive laboratory activities, pilot testing, exploratory interviews, experiments with questionnaire design, and usability testing of electronic data collection instruments. FNS envisions using a variety of techniques including field tests, respondent debriefing questionnaires, cognitive interviews,

and focus groups in order to identify questionnaire and procedural problems, suggest solutions, and measure the relative effectiveness of alternative solutions.

Following standard OMB requirements, FNS will submit a change request to OMB for each data collection activity undertaken under this generic clearance. FNS will provide OMB with the instruments and supporting materials describing the research project and specific pre-testing activities.

Affected Public: The respondents will be identified at the time that each change request is submitted to OMB. Respondents will include State, Local and Tribal Government; Individual/Households; and/or Businesses.

Estimated Number of Respondents: 2,200.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 2,200.

Estimated Time per Response: 0.682.

Estimated Total Annual Burden on Respondents: 2,200.

Respondent	Estimated number of respondents	Responses annually per respondent	Total annual responses (col. bxc)	Estimated average number of hours per response	Estimated total hours (col. dxe)
Reporting Burden:					
Pretesting Respondents (State, Local and Tribal Government; Individual/Households; and/or Businesses)	2,200.00	1.00	2,200.00	0.682	1,500.00
Grand Total Burden Estimates for 3 years			6,600.00		4,500.00

Dated: September 6, 2018.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2018–19910 Filed 9–13–18; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Sites; Federal Lands Recreation Enhancement Act

AGENCY: Coronado National Forest, USDA Forest Service, Tucson, Arizona.

ACTION: Notice of new fee sites.

SUMMARY: The Coronado National Forest is proposing new recreation fees at 13 day use sites at $8 a day or $40 for an annual pass, four campgrounds at $15 a day, and six group camping sites and one group picnic site at $50 a day, plus $10 per vehicle per day. Fees are assessed based on the level of amenities and services provided, cost of operations and maintenance, and market assessment. Fee revenue would be used for the continued operation and maintenance as well as improvements to the facilities within the recreation sites.

DATES: New fees would be implemented no sooner than six months from publication of this notice.

FOR FURTHER INFORMATION CONTACT: Joe Winfield at (520) 388–8422 or by email at *CoronadoRecreation@fs.fed.us.*

Information about the fee proposal can also be found on the Coronado National Forest website at: *http://www.fs.usda.gov/goto/coronado/feereview.*

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (Title VII, P.L. 108–447) directs the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. Currently, about one-third of Coronado National Forest's developed recreation sites collect fees. This notice is part of a comprehensive fee proposal to restructure developed recreation on the Coronado National Forest. More information can be found at: *http://www.fs.usda.gov/goto/coronado/feereview.*

The new proposed fee sites are:

Day Use Sites: Bigelow Trailhead, Brown Canyon Ranch and Trailhead, Butterfly Trailhead, Carr Canyon Picnic Area, Gordon Hirabayashi Interpretive Site and trailhead, Herb Martyr Trailhead, Parker Canyon Lake Fishing and Boating Site (and nature trail), Pena Blanca Lake Fishing and Boating Site, Red Rock Picnic Area, Riggs Lake Fishing and Boating Site, Rucker Forest Camp Trailhead, Upper and Lower Thumb Rock Picnic Area, Whipple Picnic Area and Trailhead.

Campgrounds: Herb Martyr, Noon Creek, Stockton Pass, Sycamore.

Group Sites: Columbine Visitor Center Ramada, Gordon Hirabayashi Horse Camp, Stockton Pass, Twilight, Upper Arcadia, Treasure Park.

This new fee proposal will be reviewed by the Bureau of Land Management—Arizona Recreation Resource Advisory Council prior to final decision and implementation.

Dated: August 27, 2018.

Chris French,

Acting Deputy Chief, National Forest System.

[FR Doc. 2018–19965 Filed 9–13–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act

AGENCY: Rogue River-Siskiyou National Forest, Forest Service, USDA.

ACTION: Notice of new recreation fees.

SUMMARY: The Rogue River-Siskiyou National Forest will be implementing new fees at four cabin/lookout rentals, six campgrounds, two group campsites, and nine day use sites. Fees are assessed based on the level of amenities and services provided, cost of operation and maintenance, market assessment, and public comment. Fee receipts will be used to improve customer services, operate and maintain facilities and to make needed improvements.

A complete list of the site fees can be found at: *https://www.fs.usda.gov/detail/rogue-siskiyou/home/?cid=FSEPRD571220.*

DATES: Implementation of the new fees will occur no sooner than 180 days from date of publication in the **Federal Register**.

Public comment for these new fee proposals was completed on February 16, 2018. The Rogue-Umpqua Resource Advisory Committee and/or the Siskiyou Resource Advisory Board reviewed and offered recommendations on these new fees on April 4, 2018 and April 25, 2018 respectively. The Region 6 Regional Forester decided to move forward with these new fees on May 22, 2018.

FOR FURTHER INFORMATION CONTACT: Brian White, Recreation, Engineering, Lands, Heritage, and Minerals Staff

Officer at 541–618–2061 or email *brianwhite@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

New fees will be implemented at the following sites:

Campgrounds:

Butler Bar, Eden Valley, Laird Lake, Little Redwood, Oak Flat/Gravel Bar, Sunshine Bar.

Depending on the site, the new recreation fee will be $8 or $10 per night.

Group Campsites:

Six Mile and Winchuck. Group camping fees will be $50 per night.

Cabins/lookouts:

Ferris Ford Cabin, Store Gulch Guard Station, and Squaw Peak Lookout. Depending on the facility, the overnight fee will be $65 to $125. The pricing difference reflects variables such as the number of people who can use the sites, and whether electricity, running water and other amenities are provided.

Day use areas/interpretive/picnic sites:

Diver's Hole, Foster Bar, Lobster Creek, Quosatana, River Bench, Six Mile, Store Gulch, Union Wayside, Natural Bridge, and Rogue Gorge. These day use sites will be $5 per day. The Northwest Forest Pass and all America the Beautiful—the National Parks and Federal Recreational Lands passes will be honored at these sites.

The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

Dated: September 6, 2018.

Chris French,

Acting Deputy Chief, National Forest System.

[FR Doc. 2018–19966 Filed 9–13–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Understanding Value Trade-Offs Regarding Fire Hazard Reduction Programs in the Wildland-Urban Interface

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the renewal of a currently approved information collection, Understanding Value Trade-offs regarding Fire Hazard Reduction Programs in the Wildland-Urban Interface (OMB # 0596–0189), with a revision for the removal of in-depth phone interviews and minor changes in questionnaire.

DATES: Comments must be received in writing on or before November 13, 2018 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to José Sánchez, USDA Forest Service, Pacific Southwest Research Station, 4955 Canyon Crest Drive, Riverside, California 92507. Comments may also be submitted via facsimile to 951–680–1501, or by email to *jsanchez@fs.fed.us.*

The public may inspect comments received at the Pacific Southwest Research Station, during normal business hours. Visitors are encouraged to call ahead to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: José Sánchez, by phone at 951–680–1560. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Understanding Value Trade-offs Regarding Fire Hazard Reduction Programs in the Wildland-Urban Interface.

OMB Number: 0596–0189.

Expiration Date of Approval: November 30, 2018.

Type of Request: Renewal with revision.

Abstract: Forest Service and university researchers will collect information from members of the public via a brief phone questionnaire followed by the respondent's choice of a mail questionnaire or an online questionnaire to help forest and fire managers understand value trade-offs regarding fire hazard reduction programs in the wildland-urban interface. Researchers will evaluate the responses of Arizona, Colorado, New Mexico, and Texas residents to different scenarios related to fire-hazard reduction programs, determine how effective residents think the programs are, and calculate how much residents would be willing to pay to implement the alternatives presented to them. This information will help researchers provide better information to natural resource, forest, and fire managers when they are contemplating the type of fire-hazard reduction program to implement to achieve forestland management planning objectives.

A random sample of residents of Arizona, Colorado, New Mexico, and Texas will be contacted via random-digit dialed telephone calls and asked to participate in the research study. If they are willing to participate in the study, they will elect to receive an online or paper questionnaire and will provide the appropriate address. Though different forms, these questionnaires have the same set of questions. In this initial call, we will also ask those willing to participate a brief set of questions to determine pre-existing knowledge of fuels reduction treatments. After completion of the mail or online questionnaire, no further contact with the participants will occur. The in-depth phone interviews approved in the prior version of this information collection will be removed from the protocol in this renewal. Additionally, we anticipate adding several questions to the questionnaire on emerging issues, including how scenic quality impacts resident support for fire-hazard reduction programs.

A university research-survey center will collect the information for the mail and online questionnaires. A Forest Service researcher and collaborators at a cooperating university will analyze the data collected. Researchers are experienced in applied economic non-market valuation research and survey research methods.

The Forest Service, Bureau of Land Management, Bureau of Indian Affairs, National Park Service, Fish and Wildlife Service, as well as many state agencies with fire protection responsibilities will benefit from this information collection. At present, many of these agencies with fire protection responsibilities continue an ambitious and costly fuels reduction program for fire risk reduction and will benefit from public opinion on which treatments are most effective or desirable.

Estimate of Annual Burden per Respondent: 40 minutes.

Type of Respondents: Members of the public.

Estimated Annual Number of Respondents: 1,675.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 690 hours.

Comment is Invited:

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: August 29, 2018.

Carlos Rodriguez-Franco,

Deputy Chief, Research & Development.

[FR Doc. 2018–20046 Filed 9–13–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bridger-Teton National Forest, Jackson Ranger District, Teton County, Wyoming; Snow King Mountain Resort On-Mountain Improvements Project Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice to reopen the public scoping period.

SUMMARY: The USDA Forest Service, Bridger-Teton National Forest is issuing this notice to advise the public that the public scoping period for the preparation of an Environmental Impact Statement on the Snow King Mountain Resort On-mountain Improvements Project has been reopened.

DATES: Comments concerning the scope of the analysis must be received by October 4, 2018.

ADDRESSES: Send written comments to: Bridger-Teton National Forest—Jackson Ranger District, P.O. Box 1689, Jackson, WY 83001—attention District Ranger Mary Moore. Comments may be hand-delivered to 340 N. Cache St. between 8 a.m. and 4:30 p.m., Monday through Friday, excluding holidays. Comments may be sent via email to: *comments-intermtn-bridger-teton-jackson@fs.fed.us,* or via facsimile to 307–739–5010.

FOR FURTHER INFORMATION CONTACT: Mary Moore, Jackson District Ranger, *marymoore@fs.fed.us* or (307) 739–5410. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The original Notice of Intent for public comment on the Snow King Mountain Resort On-mountain Improvements Project was published in the **Federal Register** on August 3, 2018 (83 FR 38117), announcing a 30-day public scoping period. A corrected notice was published on August 14, 2018 (83 FR 40215), providing a correction to the contact information and clarifying the end date of the scoping period. Recognizing a 30-day comment period may be insufficient for comment preparation from all interested parties, the comment period is being extended until October 4, 2018. A detailed description of the proposed action, including maps, and additional information, is available at: *http://www.fs.usda.gov/project/?project=54201.*

Dated: September 5, 2018.

Allen Rowley,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2018–20044 Filed 9–13–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites; Federal Lands Recreation Enhancement Act

AGENCY: Monongahela National Forest, Forest Service, USDA.

ACTION: Notice of proposed new fee sites.

SUMMARY: The Monongahela National Forest is proposing to charge a reservation fee at the newly constructed Seneca Rocks Picnic Shelter of $75 per day plus a $10 service fee. Advance reservations for the shelter will be available through *www.recreation.gov* or by calling 1–877–444–6777. Use of the shelter during unreserved times will remain free of charge. The final fee price will be determined upon further analysis and public comment. An analysis of nearby shelters with similar amenities shows that the proposed fee is reasonable and typical of similar sites in the area. Funds from the fee would be used for the continued operation, maintenance, and improvements of this site.

DATES: Comments will be accepted by September 30, 2018 so comments can be compiled, analyzed, and shared with the Eastern Region Recreation Resource Advisory Committee. The applicable date of implementation of the proposed new fee will be no earlier than six months after publication of this notice.

ADDRESSES: Cheat-Potomac Ranger District, Attn: Alex Schlueter, 2499 North Fork Hwy., Petersburg, WV 26847.

FOR FURTHER INFORMATION CONTACT: Alex Schlueter, North Zone Recreation Staff Officer, 304–257–4488 x7114. Information about proposed fee changes can also be found on the Monongahela National Forests' website: *https://www.fs.usda.gov/mnf.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

Once public involvement is complete, this new fee will be reviewed by the Eastern Region Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: August 28, 2018.

Chris French,

Acting Deputy Chief, National Forest System.

[FR Doc. 2018–19963 Filed 9–13–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Beaverhead-Deerlodge National Forest, Madison Ranger District; Montana; Strawberry to Cascade Allotment Management Plans

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for the Strawberry to Cascade allotment management plans (AMPs). The proposed project would revise grazing management on the Barnett, Black Butte, Coal Creek, Cottonwood, Fossil-Hellroaring, Lyon-Wolverine, Poison Basin, and Upper Ruby allotments (sheep grazing portions) in the Gravelly Mountain Range on the Madison Ranger District of the Beaverhead-Deerlodge National Forest (B–D NF).

DATES: Comments concerning the scope of the analysis must be received by October 15, 2018. The draft EIS is expected to be published March 2019

and the final EIS is expected to be published October 2019.

ADDRESSES: Send written comments to Dale Olson, District Ranger, Madison Ranger District, 5 Forest Service Road, Ennis, MT 59729. Comments may also be sent via email to *comments-northern-beaverhead-deerlodge@fs.fed.us* or via facsimile to 406–682–4233. For all forms of comment, make sure to include your name, physical address, phone number, and a subject title of ''Strawberry to Cascade AMPs.''

FOR FURTHER INFORMATION CONTACT: Dale Olson, District Ranger, Madison Ranger District, 5 Forest Service Road, Ennis, MT 59729. Phone: 406–682–4253. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for this EIS is to revise grazing management, as necessary, on the Barnett, Black Butte, Coal Creek, Cottonwood, Fossil-Hellroaring, Lyon-Wolverine, Poison Basin, and Upper Ruby allotments sheep grazing portions to ensure consistency with all law, regulation and policy, including direction from the Rescissions Act of 1995 [Pub. L. 104–19]. Section 504(a) of the Rescissions Act; and, the 2004 Appropriations Act (P.L. 108–108) Section 325, require the Secretary of Agriculture to schedule when national forests will complete environmental analysis and documentation required under the National Environmental Policy Act for all grazing allotments.

Proposed Action

The proposed action would authorize domestic livestock (sheep) grazing on eight allotments and proposes no change to existing grazing management.

Possible Alternatives

A 'no grazing' alternative will be analyzed in detail in addition to the proposed action.

Responsible Official

The responsible official will be the Madison District Ranger.

Nature of Decision To Be Made

The decision to be made is whether or not to implement the proposed action, another alternative, or a combination of the alternatives.

Preliminary Issues

Issues of concern are the effects of domestic sheep grazing on the wild Bighorn Sheep populations found on the B–D NF. There is concern that domestic sheep grazing is a disease transmission risk to the wild Bighorn sheep. Additional issues will be identified through scoping.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

It is important that reviewers provide their comments in a manner that are useful to the agency's preparation of the environmental impact statement. Comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered.

Dated: August 23, 2018.

Chris French,

Associate Deputy Chief, National Forest System.

[FR Doc. 2018–20045 Filed 9–13–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites; Federal Lands Recreation Enhancement Act

AGENCY: Huron-Manistee National Forests, USDA Forest Service.

ACTION: Notice of proposed new fee sites.

SUMMARY: The Huron-Manistee National Forests proposes to charge fees at several campsites and special recreation areas. Fees range from $5 per day to $60 per day based on the level of amenities and services provided, cost of operations and maintenance, and market assessment. A new day use fee of $5 per vehicle is proposed for Iargo Springs Interpretive Site, McKinley Horse Trailhead, Luzerne Horse Trailhead, and Eagle Run Cross Country Ski Trailhead. New camping fees of $10 per night are proposed for Red Bridge Access, Sulak Recreation Area, McKinley Horse Trail Campsites, Buttercup Backcountry Campsites, Cathedral Pines Backcountry Group Campsite, Meadow Springs Backcountry Campsites, Bear Island Backcountry Campsites, River Dune Backcountry Campsites, Luzerne Horse Trail Campground, and Government Landing Access Campsites. New group campground fees of $45 per night are proposed for the group sites at AuSable Loop Recreation Area Campground, Mack Lake ORV Campground, Kneff Lake Recreation Area, and Gabions Campground.

New group campground fee of $60 per night is proposed for the group sites at McKinley Horse Trail Campground, Luzerne Horse Trail Campground, and River Road Horse Trail Camp.

Fees will be determined upon further analysis and public comment. An analysis of nearby campsites with similar amenities shows that the proposed fees are reasonable and typical of similar sites in the area. Funds from fees would be used for the continued operation and maintenance and improvements of these sites.

DATES: Comments will be accepted through September 28, 2018. New fees would begin May 2019, if approved.

ADDRESSES: Leslie M. Auriemmo, Forest Supervisor, Huron-Manistee National Forests, 1755 South Mitchell Street, Cadillac, MI 49601.

FOR FURTHER INFORMATION CONTACT: Kristen Thrall, Recreation Program Manager, 231–775–2421. Information about proposed fee changes can also be found on the Huron-Manistee National Forests' website: *http://www.fs.usda.gov/hmnf/.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established.

Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: August 28, 2018.

Chris French,

Acting Deputy Chief, National Forest System.

[FR Doc. 2018–19964 Filed 9–13–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2018–0006]

Notice of Recommended Standard Methods for Use as Soil Health Indicator Measurements

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture (USDA).

ACTION: Notice of availability of proposed technical note ''Recommended Soil Health Indicators and Associated Laboratory Procedures'' for public review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a technical note on a group of recommended standard methods for soil health indicators selected by a collaborative multi-organizational effort, as described in the document. USDA/NRCS and partner efforts to assess soil health problems and impacts of management nationally, as part of conservation planning and implementation, will be facilitated if soil health indicators are measured using a standard set of methods. Soil health is defined as the capacity of the soil to function as a vital living ecosystem to sustain plants, animals, and humans. Six key soil physical and biological processes were identified that must function well in a healthy soil, and therefore would especially benefit from measurement methods standardization: (1) Organic matter dynamics and carbon sequestration, (2) soil structural stability, (3) general microbial activity, (4) C food source, (5) bioavailable N, and (6) microbial community diversity. The chosen methods met several criteria including indicator effectiveness with respect to management sensitivity and process interpretability, ease of use, cost effectiveness, measurement repeatability, and ability to be used for agricultural management decisions. The soil health indicator methods included are soil organic carbon (dry combustion), water-stable aggregation (Mikha and Rice, 2004), short-term mineralizable carbon (Schindelbeck *et al.,* 2016), four enzymes: β-glucosidase (Deng and Popova, 2011), N-acetyl-β-D-glucosaminidase (Deng and Popova, 2011), acid or alkaline phosphatase (Acosta-Martínez and Tabatabai, 2011), and arylsulfatase (Klose *et al.,* 2011), permanganate oxidizable carbon (Schindelbeck *et al.* 2016), autoclaved citrate extractable (ACE) protein (Schindelbeck *et al.* 2016), and phospholipid fatty acid analysis (Buyer and Sasser 2012). Standard operating procedures to be used in laboratories have been provided in the appendices.

DATES:

Applicable Date: This is Applicable September 14, 2018.

Comment Date: Submit comments on or before December 13, 2018. A final version of this technical note will be published after the close of the 90-day period and after consideration of all comments.

ADDRESSES:

Obtaining Documents: You may download the draft Technical Note at *https://go.usa.gov/xUFJE.*

Comments should be submitted, identified by Docket Number NRCS–2018–0006, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or hand-delivery:* Public Comments Processing, Attention: Regulatory and Agency Policy Team, Strategic Planning and Accountability, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Building 1–1112D, Beltsville, Maryland 20705.

NRCS will post all comments on *http://www.regulations.gov.* In general, personal information provided with comments will be posted. If your comment includes your address, phone number, email, or other personal identifying information (PII), your comments, including PII, may be available to the public. You may ask in your comment that your PII be withheld from public view, but this cannot be guaranteed.

FOR FURTHER INFORMATION CONTACT: Dr. Diane Stott, National Soil Health Specialist, Soil Health Division, U.S. Department of Agriculture, Natural Resources Conservation Service, 915 W State Street, West Lafayette, IN 47907, *diane.stott@in.usda.gov.*

Electronic copies can be downloaded or printed from *https://go.usa.gov/xUFJE.*

Requests for paper versions may be directed to: Public Comments Processing, Attention: Regulatory and Agency Policy Team, Strategic Planning and Accountability, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Building 1–1112D, Beltsville, Maryland 20705.

Signed this 28th day of August 2018, in Washington, DC.

Leonard Jordan,

Acting Chief, Natural Resources Conservation Service.

[FR Doc. 2018–19985 Filed 9–13–18; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; License Transfer and Duplicate License Services

AGENCY: Bureau of Industry and Security (BIS), 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: To ensure consideration, written comments must be submitted on or before November 13, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, 1401 Constitution Avenue NW, Room 6616, Washington, DC 20230 (or via the internet at *docpra@doc.gov.*)

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482–8093 or at *mark.crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The collection is necessary under Section 750.9 of the Export Administration Regulation (EAR) which outlines the process for obtaining a duplicate license when a license is lost or destroyed. Section 750.10 of the EAR explains the procedure for transfer of ownership of validated export licenses. Both activities are services provided after the license approval process. The supporting statement will use the terms ''transfer'' and ''duplicate'' to distinguish the unique activities of each. When no distinction is made, the response supports both activities.

II. Method of Collection

Transfer: When a request to transfer a license or licenses is received, BIS reviews the proposed transfer, and if approved, submits a validated letter authorizing the transfer of ownership.

Duplicate: When a request for a duplicate license is received, the original license is found in BIS's Export Control Automated Support System (ECASS) and the duplicate is then issued by ECASS. The request for a

duplicate license is a written submission; the output is electronic.

III. Data

OMB Control Number: 0694–0126.

Form Number(s): N/A.

Type of Review: Regular submission.

Affected Public: Private Sector.

Estimated Number of Respondents: 110.

Estimated Time per Response: 1 to 30 minutes.

Estimated Total Annual Burden Hours: 31.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Export Administration Act of 1979, Section 15(b) of the EAR, Section 750.9 and 750.10 of the EAR.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–19956 Filed 9–13–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Fimex VN sold certain frozen warmwater shrimp from the Socialist Republic of Vietnam (Vietnam) at less than normal value (NV) during the period of review (POR), February 1, 2016, through January 31, 2017.

DATES: Applicable September 14, 2018.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik or Josh Simonidis, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6905 or (202) 482–0608, respectively.

SUPPLEMENTARY INFORMATION: On March 12, 2018, Commerce published the *Preliminary Results.*[1] On August 9, 2018, we invited interested parties to comment on the Preliminary Results.[2] For events since the *Preliminary Results, see* Issues and Decision Memorandum.[3]

Scope of the Order [4]

The merchandise subject to the *Order* is certain frozen warmwater shrimp. The product is currently classified under the following Harmonized Tariff Schedule of the United States item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. The written description of the scope of the *Order* is dispositive. A full description of the scope of the *Order* is available in the accompanying Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the accompanying Issues and Decision Memorandum. A list of the issues which parties raised, and to which we respond in the Issues and Decision Memorandum is attached at Appendix I. 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 in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that the following companies, as initiated, did not have any reviewable transactions during the POR: (1) Au Vung One Seafood Processing Import & Export Joint Stock Company; (2) Bien Dong Seafood Co., Ltd.; (3) BIM Seafood Joint Stock Company; (4) Cafatex Corporation and its claimed aka names (a) Taydo Seafood Enterprise and (b) Xi Nghiep Che Bien Thuy Sue San Xuat Cantho; (5) Cam Ranh Seafoods; (6) Ngo Bros, also initiated as, Ngo Bros Seaproducts Import-Export One Member Company Limited, and NGO BROS Seaproducts Import-Export One Member Company Limited; (7) Quang Minh Seafood Co., Ltd., also initiated as Quang Minh Seafood Co LTD; (8) Tacvan Frozen Seafood Processing Export Company, also initiated as Tacvan Seafoods Company, Tacvan Seafoods Company (''TACVAN''), and Tacvan Seafoods Company (TACVAN); (9) Thong Thuan Seafood Company Limited; (10) Trong Nhan Seafood Company Limited, also initiated as Trong Nhan Seafood Co., Ltd. (''Trong Nhan''); and (11) Vinh Hoan Corp. As we have not received any information to contradict this preliminary determination, we determine for these final results that the

[1] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2017,* 83 FR 10673 (March 12, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum re: ''Case and Rebuttal Brief Schedule,'' dated August 9, 2018.

[3] *See* Memorandum re: ''Issues and Decision Memorandum for the Final Results'' (Issues and Decision Memorandum), dated concurrently with, and hereby adopted by, this notice.

[4] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam,* 70 FR 5152 (February 1, 2005) (*Order*).

above-named companies did not have any reviewable entries of subject merchandise during the POR and will issue appropriate instructions that are consistent with our ''automatic assessment'' clarification.[5]

Changes Since the Preliminary Results

Commerce made changes to Fimex VN's preliminary dumping margin based on verification findings. For detailed information, *see* the Issues and Decision Memorandum.

Final Results of Review

In the *Preliminary Results,* Commerce found that 30 companies for which a review was requested had not established eligibility for a separate rate and were considered to be part of the Vietnam-wide entity.[6] We continue to find, for the final results, that these 30 companies are ineligible for a separate rate (*see* Appendix II). Commerce's change in policy regarding conditional review of the Vietnam-wide entity applies to this administrative review.[7] Under this policy, the Vietnam-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the Vietnam-wide entity, the entity is not under review and the entity's rate is not subject to change. For companies for which a review was requested and that have established eligibility for a separate rate, Commerce determines that the following weighted-average dumping margins exist:

Exporter[8]	Weighted-average margin (percent)
Fimex VN	4.58
Au Vung Two Seafood Processing Import & Export Joint Stock Company, aka AU VUNG TWO SEAFOOD	4.58
Bac Lieu Fisheries Joint Stock Company	4.58
Bentre Forestry and Aquaproduct Import-Export Joint Stock Company, aka FAQUIMEX	4.58
C.P. Vietnam Corporation	4.58
Cadovimex Seafood Import-Export and Processing Joint Stock Company	4.58
Camau Frozen Seafood Processing Import Export Corporation, aka Camimex	4.58
Camau Seafood Processing and Service Joint Stock Corporation, aka Camau Seafood Processing and Service Joint-Stock Corporation, aka CASES	4.58
Can Tho Import Export Fishery Limited Company, aka CAFISH	4.58
Cuulong Seaproducts Company, aka Cuulong Seapro	4.58
Fine Foods Co, aka FFC	4.58
Green Farms Seafood Joint Stock Company	4.58
Hai Viet Corporation, aka HAVICO	4.58
Investment Commerce Fisheries Corporation	4.58
Khanh Sung Company, Ltd	4.58
Kim Anh Company Limited	4.58
Minh Hai Export Frozen Seafood Processing Joint-Stock Company, aka Minh Hai Jostoco	4.58
Minh Hai Joint-Stock Seafoods Processing Company, aka Sea Minh Hai, aka Seaprodex Minh Hai, aka Minh Hai Joint Stock Seafoods	4.58
Ngoc Tri Seafood Joint Stock Company	4.58
Nha Trang Seaproduct Company, aka NT Seafoods Corporation, aka Nha Trang Seafoods-F89 Joint Stock Company, aka NTSF Seafoods Joint Stock Company	4.58
Phuong Nam Foodstuff Corp	4.58
Seaprimexco Vietnam, aka Seaprimexco	4.58
Taika Seafood Corporation	4.58
Tan Phong Phu Seafood Co., Ltd	4.58
Thanh Doan Sea Products Import & Export Processing Joint-Stock Company, aka THADIMEXCO	4.58
Thong Thuan-Cam Ranh Seafood Joint Stock Company	4.58
Thong Thuan Company Limited	4.58
Thuan Phuoc Seafoods and Trading Corporation	4.58
Trung Son Seafood Processing Joint Stock Company, aka Trung Son Seafood Processing JSC	4.58
UTXI Aquatic Products Processing Corporation	4.58
Viet Foods Co., Ltd	4.58
Vietnam Clean Seafood Corporation, aka Vina Cleanfood, aka Viet Nam Clean Seafood Corporation	4.58
Vietnam Fish One Co., Ltd	4.58

Rate for Non-Selected Companies

Under section 735(c)(5)(A) of the Tariff Act of 1930, as amended (Act), the all-others rate is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely on the basis of facts available. Accordingly, under Commerce's practice, in an administrative review of a nonmarket economy antidumping order, when only one weighted-average dumping margin for an individually investigated respondent is above *de minimis* and not based entirely on facts available, the separate rate will be equal to that single, above *de minimis* rate. In these final results, Commerce calculated

[5] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (*Assessment of AD Duties).*

[6] *See* Appendix II for a full list of the 30 companies (accounting for duplicate names initiated upon); *see also Preliminary Results* at Appendix II.

[7] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[8] Due to the issues we have had in the past with variations of exporter names related to this *Order,* we remind exporters that the names listed below are the exact names, including spelling and punctuation, which Commerce will provide to CBP and which CBP will use to assess POR entries and collect cash deposits.

a rate for Fimex VN that is not zero, *de minimis,* or based entirely on facts available. Therefore, Commerce has assigned to the companies that have not been individually examined but have demonstrated their eligibility for a separate rate a margin of 4.58 percent, which is the final dumping margin calculated for Fimex VN.

Disclosure and Public Comment

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

For Fimex VN, Commerce will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of sales. Where we do not have entered values for all U.S. sales to a particular importer/customer, we will calculate a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).[9] To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer- (or customer-) specific *ad valorem* ratios based on the estimated entered value. Where either a respondent's weighted average dumping margin is zero or *de minimis,* or an importer- (or customer-) specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[10]

For the companies receiving a separate rate, we intend to assign an *ad valorem* assessment rate of 4.58 percent, consistent with the methodology described above. With regard to the companies identified in Appendix II as part of the Vietnam-Wide Entity, we will instruct CBP to apply an *ad valorem* assessment rate of 25.76 percent to all entries of subject merchandise during the POR which were produced and/or exported by those companies.[11]

Additionally, consistent with its assessment practice in non-market economy (NME) cases, for any exporter under review which Commerce determined had no shipments of the subject merchandise during the POR, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate.[12]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For the companies listed above, which have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed Vietnamese and non-Vietnamese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Vietnamese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the Vietnam-wide entity; and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporter that supplied that non-Vietnamese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a 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, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(h) and 19 CFR 351.221(b)(5).

Dated: September 7, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Issues Discussed in the Final Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Issues
Comment 1: Fresh Shrimp Surrogate Value
Comment 2: Fimex VN Shrimp Input Conversion
Comment 3: Separate Rate Status for Trade Names
A. Thuan Phuoc Seafoods and Trading Corporation
B. Seaprodex Minh Hai
C. Camau Frozen Seafood Processing Import Export Corporation
D. Can Tho Import Export Fishery Limited Company
E. Minh Hai Export Frozen Seafood Processing Joint-Stock Company
F. Fine Foods Co.
G. Bentre Forestry and Aquaproduct Import-Export Joint Stock Company
H. UTXI Aquatic Products Processing Corporation
I. Abbreviated Names for Other Companies
V. Recommendation

Appendix II—Companies Subject to Review Determined To Be Part of the Vietnam-Wide Entity

1. Amanda Seafood Co., Ltd.
2. Asia Food Stuffs Import Export Co., Ltd.
3. Binh Thuan Import-Export Joint Stock Company (THAIMEX)
4. B.O.P. Limited Co.

[9] *See* 19 CFR 351.212(b)(1).

[10] *See* 19 CFR 352.106(c)(2); *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012) (*Final Modification for Reviews*).

[11] *See Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[12] For a full discussion of this practice, *see Assessment of AD Duties,* 76 FR at 65694–65695.

5. Coastal Fisheries Development Corporation (''COFIDEC'')
6. CJ Freshway (FIDES Food System Co., Ltd.)
7. Dong Hai Seafood Limited Company
8. Duc Cuong Seafood Trading Co., Ltd.
9. Frozen Seafoods Factory No. 32 (Tho Quang Seafood Processing and Export Company)
10. Gallant Dachan Seafood Co., Ltd.
11. Gallant Ocean (Vietnam) Co. Ltd., also initiated under Gallant Ocean (Viet Nam) Co., Ltd. (''Gallant Ocean Vietnam'')
12. Hanh An Trading Service Co., Ltd.
13. Hoang Phuong Seafood Factory
14. Huynh Huong Seafood Processing
15. JK Fish Co., Ltd.
16. Khai Minh Trading Investment Corporation
17. Long Toan Frozen Aquatic Products Joint Stock Company
18. Minh Cuong Seafood Import-Export Processing (''MC Seafood'')
19. Minh Phu Seafood Corporation
20. Nam Hai Foodstuff and Export Company Ltd
21. New Wind Seafood Co., Ltd.
22. Nha Trang Fisheries Joint Stock Company (''Nha Trang Fisco''), also initiated under Nha Trang Fisheries Joint Stock Company
23. Nhat Duc Co., Ltd.
24. Phu Cuong Jostoco Seafood Corporation
25. Quoc Ai Seafood Processing Import Export Co., Ltd.
26. Saigon Food Joint Stock Company
27. Tan Thanh Loi Frozen Food Co., Ltd.
28. Thinh Hung Co., Ltd.
29. Trang Khan Seafood Co., Ltd.
30. Xi Nghiep Che Bien Thuy Suc San Xuat Kau Cantho

[FR Doc. 2018–20030 Filed 9–13–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG483

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council and its Committees.

DATES: The meetings will be held Monday, October 1, 2018 through Thursday, October 4, 2018. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Congress Hall, 200 Congress Place, Cape May, NJ 08204, telephone: (609) 884–8421.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's website, *www.mafmc.org* also has details on the meeting location, proposed agenda, webinar listen-in access, and briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda; though agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

Monday, October 1, 2018

Executive Committee

Review 2018 and proposed 2019 implementation plans and develop recommendations for 2019 priorities.

Tuesday, October 2, 2018

Spiny Dogfish Specifications

Develop and approve 2019–21 specifications.

Annual Update on GARFO/NEFSC Fishery Dependent Data Initiative Project (FDDI)

FDDI overview, update, potential expansion, and enhancement of electronic vessel trip reporting.

Ecosystem Approach to Fisheries Management Risk Assessment

Review of Ecosystems and Ocean Planning Committee (EOP) meeting and recommendations; identify high-risk priorities and determine next steps; overview of EOP Committee comments on draft Northeast Regional Ecosystems-Based Fishery Management Implementation Plan.

Risk Policy Framework

Update on summer flounder economic Risk Policy analysis and discuss next steps on Risk Policy Framework.

2020–24 Strategic Plan

Discuss timeline and approach.

Wednesday, October 3, 2018

Squids and Butterfish Specifications

Review 2019–20 specifications and adopt modifications if needed.

Industry Funded Monitoring Amendment

Review history, pilot electronic monitoring results, and New England actions and discuss next steps.

Illex Amendment

Review and approve scoping document.

Chub Mackerel Amendment

Review Fishery Management Action Team, Advisory Panel, and Committee recommendations for range of alternatives, review, and approve public hearing document.

Thursday, October 4, 2018

South East Regional Office (SERO) Party/Charter Reporting Requirement

Presentation on pending electronic reporting requirements for vessels with for-hire South Atlantic federal permits.

HMS Permits and Law Enforcement Issues

Discuss how permits are issued with respect to USCG safety regulations and law enforcement responsibilities of the USCG and NOAA.

Business Session

Committee Reports (SSC); Executive Director's Report (Summer Flounder, Scup, and Black Sea Bass Framework and addendum on conservation equivalency, Block Island Sound transit, and slot limits and review and approve modification to alternatives); Organization Reports; and, Liaison Reports.

Continuing and New Business

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: September 11, 2018.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–20028 Filed 9–13–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG480–X

Gulf of Mexico 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 Gulf of Mexico Fishery Management Council will hold a two-day meeting of its Standing, Reef Fish and Socioeconomic Scientific and Statistical Committees (SSC).

DATES: The meeting will convene on Tuesday, October 2, 2018, from 8:30 a.m. to 5:15 p.m. and Wednesday, October 3, 2018, from 8:30 a.m. to 12:15 p.m. EDT.

ADDRESSES: The meeting will be held at the Gulf Council's *new* office, located at 4107 W Spruce Street, Suite 200, Tampa, FL 33607.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. John Froeschke, Deputy Director, Gulf of Mexico Fishery Management Council; *john.froeschke@gulfcouncil.org;* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Tuesday, October 2, 2018: 8:30 a.m.–5:15 p.m.

I. Introductions and Adoption of Agenda
II. Election of Chair and Vice-Chair
III. Approval of August 2, 2018 SSC Minutes
IV. Selection of SSC representative at October 22–25, 2018 Council meeting in Mobile, AL
V. Discussion of ''Best Scientific Information Available''
a. Presentation—NMFS
b. Presentation—SSC
VI. Update on Red Grouper Interim Analysis
VII. Briefing on Marine Recreation Information Program (MRIP) Transition to Improved Survey Designs
VIII. Presentation: The Great Red Snapper Count
IX. Summary of the SEDAR Steering Committee Meeting
X. Discussion on ''right-sizing'' Stock Assessments
XI. Review Gulf SEDAR Stock Assessment Schedule 2021

Wednesday, October 3, 2018: 8:30 a.m.–12:15 p.m.

XII. Gulf of Mexico Allocation Review Triggers
XIII. Specify the Terms of Reference (TORs) for the 2020 Operational Assessments for Gag and Greater Amberjack
XIV. Discussion on Gulf Council Fishery Monitoring and Research Priorities for 2020–25
XV. Discussion of ''Something's Fishy'' Red Grouper Questionnaire
XVI. Other Business
—Meeting Adjourns

The meeting will be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the SSC meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committee will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Dated: September 11, 2018.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–20026 Filed 9–13–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG481

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet October 1, 2018 through October 9, 2018.

DATES: The Council will begin its plenary session at 8 a.m. in the Aleutian Room on Wednesday, October 3, 2018 continuing through Tuesday, October 9, 2018. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. in the King Salmon/Iliamna Room on Monday, October 1, 2018 and continue through Wednesday, October 3, 2018. The Council's Advisory Panel (AP) will begin at 8 a.m. in the Dillingham/Katmai Room on Tuesday, October 2, 2018 and continue through Friday, October 5, 2018. The Ecosystem Committee will meet on Tuesday, October 2, 2018 in the Birch/Willow room from 1 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, 500 W 3rd Ave., Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, October 1, 2018 through Tuesday, October 9, 2018

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Executive Director's Report (including report on ideas for public forums, SSC survey workgroup report)
2. NMFS Management Report (including report on ACLIM and the IPCC climate meeting (T))
3. NOAA GC Report
4. ADF&G Report
5. USCG Report
6. USFWS Report

7. Protected Species Report
8. Halibut Decksorting EFP—Report on 2018
9. BSAI Crab Specifications for 4 stocks—Final Specifications, PT report
10. Groundfish Harvest Specifications—Proposed Specifications, PT reports
11. 2019 Observer Program Annual Deployment Plan—Review; FMAC, EMC Reports
12. Halibut retention in BSAI pots—Final action
13. Bering Sea Fishery Ecosystem Plan—Initial Review
14. BSAI Halibut Abundance-based Management PSC Limits—Preliminary Review
15. AI Pacific cod set aside adjustment—Initial Review
16. IFQ medical lease, beneficiary designation provisions—Initial Review
17. IFQ CQE fish up in 3A—Discussion paper
18. Small sablefish retention—Discussion paper
19. Unguided halibut rental boats—Discussion paper

The Advisory Panel will address Council agenda items (9) through (19). The SSC agenda will include the following issues:

1. SSC survey workgroup report
2. BSAI Crab Specifications for 4 stocks—Final Specifications, PT report
3. Groundfish Harvest Specifications—Proposed Specifications, PT reports
4. 2019 Observer Program Annual Deployment Plan—Review
5. BSAI Halibut Abundance-based Management PSC Limits—Preliminary Review
6. Bering Sea Fishery Ecosystem Plan—Initial Review
7. AI Pacific cod set aside adjustment—Initial Review
8. IFQ medical lease, beneficiary designation provisions—Initial Review

The Ecosystem Committee agenda will include review of the Bering Sea Fishery Ecosystem Plan, NOAA Ecosystem-Based Fisheries Management Implementation Plan, and other business.

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Council's primary peer review panel for scientific information, as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

The Agendas are subject to change, and the latest versions will be posted at *http://www.npfmc.org/.*

Public Comment

Public comment letters will be accepted and should be submitted either electronically via the eCommenting portal at: *meetings.npfmc.org*or through the mail: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: September 11, 2018.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–20025 Filed 9–13–18; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* October 14, 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:

Additions

On 5/18/2018 (83 FR 97), 5/25/2018 (83 FR 102), 6/4/2018 (83 FR 107), and 6/8/2018 (83 FR111), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and a service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and a service listed below are 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 organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and 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 products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

NSN(s)—Product Name(s): 7920–00–655–5290—Pad, Scouring, Synthetic, Heavy Duty, Yellow and Green, 4–½″ × 3″ × ½″
Mandatory for: Total Government Requirement
Mandatory Source(s) of Supply: The Lighthouse for the Blind in New Orleans, Inc., New Orleans, LA
Contracting Activity: General Services Administration, Fort Worth, TX
Distribution: A-List

NSN(s)—Product Name(s): 7025–00–NIB–0013—PC Keyboard, USB, Black
Mandatory for: Broad Government Requirement
Mandatory Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: General Services Administration, New York, NY
Distribution: B-List

Note: The Committee for Purchase From People Who Are Blind or Severely Disabled published a document in the **Federal Register** of May 25, 2018, concerning an incorrect notice of deletion for PC Keyboard, USB, Black. As shown immediately above, the notice should read.

Mandatory for: Broad Government

Requirement and *Distribution:* B-List.
NSN(s)—Product Name(s): 4330–01–189–1007—Filter-Separator, Liquid Fuel
Mandatory Source(s) of Supply: Georgia Industries for the Blind, Bainbridge, GA
Mandatory for: 100% of the requirement of the Department of Defense
Contracting Activity: Defense Logistics Agency Land and Maritime
Distribution: C-List

NSN(s)—Product Name(s): 2540–01–165–6136—Chock, Wheel-Track, Wood, 7–¾″ × 5–¾″
Mandatory Source(s) of Supply: NewView Oklahoma, Inc., Oklahoma City, OK
Mandatory for: 100% of the requirement of the Department of Defense
Contracting Activity: Defense Logistics Agency Land and Maritime
Distribution: C-List

Service

Service Type: Grounds Maintenance and Snow Removal Service
Mandatory for: U.S. Navy, NAVFAC Mid-Atlantic Division:
Naval Station Newport Complex, Newport, RI;
Naval Undersea Warfare Center Division, Newport, RI;
Fishers Island, NY & Dodge Pond, NY;
Naval Health Clinic New England, Newport, RI;
9324 Virginia Avenue, Norfolk, VA
Mandatory Source of Supply: CW Resources, Inc., New Britain, CT
Contracting Activity: Dept. of the Navy, Naval FAC Engineering CMD MID LANT

Deletions

On 7/27/2018 (83 FR 145) and 8/3/2018 (83 FR 150), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services 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 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 deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted 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

Services

Service Type: Janitorial Service
Mandatory for: Customs and Border Protection, B.P. Maintenance, 398 E. Aurora Drive, El Centro, CA
Mandatory Source(s) of Supply: ARC-Imperial Valley, El Centro, CA
Contracting Activity: U.S. Customs and Border Protection, Border Enforcement Contracting Division

Service Type: Janitorial/Custodial Service
Mandatory for: Naval Reserve Center: 85 Sea Street, Quincy, MA
Mandatory Source(s) of Supply: Community Workshops, Inc., Boston, MA
Contracting Activity: Dept. of the Navy, Navy Crane Center

Michael R. Jurkowski,

Business Management Specialist, Business Operations.

[FR Doc. 2018–20034 Filed 9–13–18; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete a product and services from the Procurement List that was previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* October 14, 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: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product and services are proposed for deletion from the Procurement List:

Product

NSN(s)—Product Name(s): 6545–00–853–6309—First Aid Kit, Eye Dressing
Mandatory Source of Supply: Suburban Adult Services, Inc., Elma, NY
Contracting Activity: Defense Logistics Agency Troop Support

Services

Service Type: Reproduction and Courier Service
Mandatory for: Naval Facilities Engineering Command, Chesapeake, Engineering Field Activity Chesapeake, 1314 Harwood Avenue SE, Washington, DC
Mandatory Source of Supply: Linden Resources, Inc., Arlington, VA
Contracting Activity: Dept. of the Navy, U.S. Fleet Forces Command

Service Type: Janitorial/Custodial Service
Mandatory for: Naval & Marine Corps Reserve Center (NMCRC), 1201 N 35th Avenue, Phoenix, AZ
Mandatory Source of Supply: The Centers for Habilitation/TCH, Tempe, AZ
Contracting Activity: Dept. of the Navy, NAVFAC Southwest

Service Type: Janitorial/Custodial Service
Mandatory for: Cherry Capital Airport System Support Center, General Aviation Terminal Bldg, 1220, Airport Access Road, 2nd Floor, Traverse City, MI
Mandatory Source of Supply: Grand Traverse Industries, Inc., Traverse City, MI
Contracting Activity: Federal Aviation Administration, FAA

Service Type: Grounds Maintenance Service
Mandatory for: Naval Air Warfare Center Weapons Division: Buildings 456 (N97) and 1438 (Main Post Area), White Sands Missile, NM
Mandatory Source of Supply: Tresco, Inc., Las Cruces, NM
Contracting Activity: Dept. of the Navy, U.S. Fleet Forces Command

Service Type: Food Service Attendant Service

Mandatory for: Schofield Barracks: Building 3004, Fort Shafter, HI
Mandatory Source of Supply: Opportunities and Resources, Inc., Wahiawa, HI
Contracting Activity: Dept. of the Army, 0413 AQ HQ

Michael R. Jurkowski,

Business Management Specialist, Business Operations.

[FR Doc. 2018–20033 Filed 9–13–18; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Military Personnel Testing will take place.

DATES: Thursday, September 20, 2018 and Friday, September 21, 2018. Open to the public Day 1 from 9:00 a.m. to 4:30 p.m.; Day 2 from 9:00 a.m. to 12:00 p.m.

ADDRESSES: Hyatt Place, 425 7th Street South, Minneapolis, MN 55415.

FOR FURTHER INFORMATION CONTACT: Stephanie Miller, (703) 695–5525 (Voice), 703 614–9272 (Facsimile), *stephanie.p.miller.civ@mail.mil* (Email). Mailing address is Assistant Director, Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, Room 3D1066, The Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the Defense Advisory Committee on Military Personnel Testing was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the meeting on September 20 through 21, 2018 of the Defense Advisory Committee on Military Personnel Testing. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to review planned changes and progress in developing computerized tests for military enlistment screening.

Agenda

Day 1, Thursday, September 20, 2018

9:00 a.m. to 9:15 a.m. Welcome and Opening Remarks Chris Arendt, OASD(M&RA)AP
9:15 a.m. to 9:45 a.m. Accession Policy Update Chris Arendt, Deputy Director, AP
9:45 a.m. to 10:15 a.m. ASVAB Milestones and Project Matrix, Dr. Mary Pommerich, DPAC/OPA
10:15 a.m. to 10:30 a.m. Break
10:30 a.m. to 11:00 a.m. Next Generation ASVAB and ETP Update, Dr. Mary Pommerich
11:00 a.m. to 11:30 a.m. Validity Framework Update Dr. Art Thacker, the Human Resources Research Organization (HumRRO)
11:30 a.m. to 12:15 p.m. Mental Counters Dr. Ping Yin, HumRRO
12:15 p.m. to 1:15 p.m. Lunch
1:15 p.m. to 1:45 p.m. CAT–ASVAB Form 10 Equating Study Dr. Matt Trippe, HumRRO
1:45 p.m. to 2:30 p.m. Sparse Data Dimensionality Assessment Dr. Furong Guo with application to the Cyber Test, HumRRO
2:30 p.m. to 2:45 p.m. Break
2:45 p.m. to 3:15 p.m. Development of New Cyber Test Items and Pools Dr. Matt Trippe
3:15 p.m. to 3:45 p.m. TAPAS Expert Panel Update Dr. Tim McGonigle, HumRRO
3:45 p.m. to 4:30 p.m. Adverse Impact Dr. Greg Manley, DPAC/OPA
4:30 p.m. Adjourn

Day 2, Friday, September 21, 2018

9:00 a.m. to 9:45 a.m. Device Evaluation Dr. Tia Fechter, DPAC/OPA
9:45 a.m. to 10:30 a.m. WK Automated Item Generation Dr. Isaac Bejar, ETS
10:30 a.m. to 10:45 a.m. Break
10:45 a.m. to 11:30 a.m. CEP Update Dr. Shannon Salyer, DPAC/OPA
11:30 a.m. to 11:45 a.m. Future Topics Dr. Daniel Segall
11:45 a.m. to 12:00 p.m. Closing Comments Dr. Neal Schmitt
12:00 p.m. Adjourn

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, the meeting is open to the public. Seating is based on a first-come, first-served basis. All members of the public who wish to attend the public meeting must contact the Designated Federal Officer, not later than 12:00 p.m. on Monday, September 17, 2018, as listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, interested persons may submit written statements to the Committee at any time about its approved agenda or at any time on the Committee's mission. Written statements should be submitted to the Committee's Designated Federal Officer at the address or facsimile number listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at the planned meeting, then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the Committee until its next meeting. The Designated Federal Officer will review all timely submitted written statements and provide copies to all the committee members before the meeting that is the subject of this notice. Please note that since the Committee operates under the provisions of the FACA, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection.

Dated: September 11, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–20020 Filed 9–13–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2018–HQ–0013]

Privacy Act of 1974; System of Records; Correction

AGENCY: Department of the Navy, DoD.

ACTION: Notice of a modified system of records; correction.

SUMMARY: On August 28, 2018, the Department of Defense published a system of records notice that proposed to modify Data Warehouse Business Intelligence System (DWBIS), N05220–1. Subsequent to the publication of the notice, DoD discovered that the docket ID had published incorrectly. This notice corrects that error.

DATES: This correction is effective on September 14, 2018.

FOR FURTHER INFORMATION CONTACT: Patricia Toppings, 571–372–0485.

SUPPLEMENTARY INFORMATION:

Correction

On August 28, 2018 (83 FR 43857–43860), the Department of Defense published a system of records notice, FR Doc. 2018–18587, that proposed to modify Data Warehouse Business Intelligence System (DWBIS), N05220–1. Subsequent to the publication of the notice, DoD discovered that the docket ID had published incorrectly. The docket ID incorrectly published as ''USN–2018–OS–0013.''

The docket ID is corrected to read as set forth in this notice.

Dated: September 11, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–20035 Filed 9–13–18; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meetings

TIME AND DATE: 1:45 p.m.–4:00 p.m., September 17, 2018.

PLACE: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004.

STATUS: Closed. During the closed meeting, the Board Members will discuss issues dealing with potential Recommendations to the Secretary of Energy. The Board is invoking the exemptions to close a meeting described in 5 U.S.C. 552b(c)(3) and (9)(B) and 10 CFR 1704.4(c) and (h). The Board has determined that it is necessary to close the meeting since conducting an open meeting is likely to disclose matters that are specifically exempted from disclosure by statute, and/or be likely to significantly frustrate implementation of a proposed agency action. In this case, the deliberations will pertain to potential Board Recommendations which, under 42 U.S.C. 2286d(b) and (h)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively.

MATTERS TO BE CONSIDERED: The meeting will proceed in accordance with the closed meeting agenda which is posted on the Board's public website at *www.dnfsb.gov*. Technical staff may present information to the Board. The Board Members are expected to conduct deliberations regarding potential Recommendations to the Secretary of Energy.

CONTACT PERSON FOR MORE INFORMATION: Glenn Sklar, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: September 12, 2018.

Joseph Bruce Hamilton,

Acting Chairman.

[FR Doc. 2018–20154 Filed 9–12–18; 4:15 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

Notice of Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Energy (DOE) is hosting a workshop to develop new prizes, competitions, and related initiatives that advance water security in the United States and globally. The workshop will inform a DOE-led Grand Challenge that seeks breakthroughs on a set of critical water issues through a coordinated suite of prizes, competitions, early-stage research and development, and related programs.

DATES: The public meeting will be held on October 25, 2018 from 8 a.m. to 4 p.m.

ADDRESSES: The public meeting will be held at DOE's National Renewable Energy Laboratory, 15301 Denver West Parkway, Golden, CO 80401.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to Andre de Fontaine, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Washington, DC 20585. Telephone (202) 586–6585. Email: *andre.defontaine@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: Water is a critical resource for human health, economic growth, and agricultural productivity. The United States has benefitted from access to low-cost water supplies—however, new challenges are emerging that, if left unaddressed, could shift this paradigm.

In the U.S., a growing number of regions are competing for fresh water sources and water quality problems are impacting human health and the environment. Municipal water and wastewater treatment systems face billions of dollars in unmet infrastructure investment needs, which will likely increase as population grows, and water and wastewater treatment requirements become more stringent.

Lack of safe and secure water supplies is also a global problem. According to the World Health Organization, more than 2 billion people globally lack access to safe, readily available water at home.[1] Aside from the humanitarian implications, water security is also an issue of national security.

On March 13, 2018, U.S. Department of Energy (''DOE'') Secretary Perry led a roundtable discussion on the use of challenges and prize competitions to drive innovation on critical water issues. In conjunction with this, DOE's Office of Energy Efficiency and Renewable Energy (''EERE'') published in the **Federal Register** a request for information (RFI) seeking input on the possible use of challenges and prize competitions to address technical and other barriers that may prevent long-term access to low-cost water supplies. Through the RFI responses, a series of internal DOE meetings, and conversations with external experts, DOE identified the following set of key issues to address through this effort:

1. Cost-competitive desalination technologies
2. Transforming produced water from a waste to a resource
3. Reducing water impacts in the power sector
4. Lowering energy costs in wastewater treatment
5. Developing off-grid, modular energy-water systems
6. Cross-cutting, or open issues

The RFI can be found at *https://www.federalregister.gov/documents/2018/03/19/2018-05472/notice-of-request-for-information-rfi-on-critical-water-issues-prize-competition.* DOE is now announcing a public meeting to gather additional, focused input on the use of prize competitions to make progress on these water issues.

The purpose of this public meeting is to solicit feedback from industry, academia, research laboratories, government agencies and other stakeholders on potential prize competitions that could be developed to address these key water issues. Participants will spend much of the day in breakout sessions aligned with the six topic areas identified above. Participants will be asked to brainstorm specific prize ideas aligned with the breakout topics and report the results of their discussion out to the group. DOE's goal is to produce a number of different

[1] World Health Organization, ''2.1 billion people lack safe drinking water at home, more than twice as many lack safe sanitation,'' July 2017. *http://www.who.int/news-room/detail/12-07-2017-2-1-billion-people-lack-safe-drinking-water-at-home-more-than-twice-as-many-lack-safe-sanitation.*

prize ideas through the workshop that it and its partners may pursue in the future.

Public Participation

Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. Please register at *www.nrel.gov/waterchallenge* to attend the meeting. DOE plans to cap attendance to about 60 participants and will handle registration on a first-come, first-served basis.

Please note, foreign nationals (including Canadian citizens, permanent resident aliens and resident aliens) visiting NREL are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If you are a foreign national, contact Sarah Barba at *sarah.barba@nrel.gov* or (303) 275–3023 for the necessary foreign national paperwork. All foreign national data cards must be received by close of business Friday, September 21, 2018. Foreign national data cards received after this date will be reviewed on a case by case basis.

U.S. citizens must show government issued photo I.D. (such as a driver's license, passport, or military ID) to NREL Security upon arrival.

Conduct of Public Meeting

DOE will designate a DOE official to preside over the public meeting. DOE reserves the right to schedule the order of presentations, determine the composition of the breakout sessions and to establish the procedures governing the conduct of the public meeting.

The public meeting will be conducted in an informal style, with a mix of plenary presentations and breakout sessions. Following one or two opening plenary addresses in the morning, DOE will split the audience into breakout groups aligned with the six critical water issue topic areas described above, with one or two breakout groups per topic area. Participants in each breakout group will discuss potential prize ideas aligned with the topic area, and report the results of their discussions out to the full group of attendees. DOE will use the results of these discussions to inform the development of potential prize competitions and challenges.

Signed in Washington, DC, on September 10, 2018.

Alex Fitzsimmons,

Chief of Staff, Office of Energy Efficiency & Renewable Energy.

[FR Doc. 2018–20032 Filed 9–13–18; 8:45 am]

BILLING CODE 6450–01–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: EC18–152–000.
Applicants: Puget Sound Energy, Inc., PGGM Vermogensbeheer B.V., Alberta Investment Management Corporation, OMERS Administration Corporation, British Columbia Investment Management Corporation.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Puget Sound Energy, Inc., et al.
Filed Date: 9/7/18.
Accession Number: 20180907–5166.
Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: EC18–153–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Mid-Atlantic Interstate Transmission, LLC.
Filed Date: 9/7/18.
Accession Number: 20180907–5175.
Comments Due: 5 p.m. ET 9/28/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1244–002.
Applicants: Emera Maine.
Description: Tariff Amendment: 2nd Deficiency Response (ER18–1213–000 and ER18–1244–001) to be effective 6/1/2018.
Filed Date: 9/10/18.
Accession Number: 20180910–5017.
Comments Due: 5 p.m. ET 10/1/18.

Docket Numbers: ER18–2398–000.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2018–09–07 Order No. 844 Compliance to be effective 1/1/2019.
Filed Date: 9/7/18.
Accession Number: 20180907–5101.
Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2399–000.
Applicants: GenOn Holdco 10, LLC.
Description: § 205(d) Rate Filing: normal name change to be effective 9/8/2018.
Filed Date: 9/7/18.
Accession Number: 20180907–5130.
Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2400–000.
Applicants: New York Independent System Operator, Inc.
Description: Compliance filing: Compliance Order 844 Uplift Cost Reporting to be effective 12/31/9998.
Filed Date: 9/7/18.
Accession Number: 20180907–5139.
Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2401–000.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance Filing Pursuant to Order No 844 re Uplift to be effective 1/1/2019.
Filed Date: 9/7/18.
Accession Number: 20180907–5145.
Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2402–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to the Market Monitoring Services Agreement to be effective 1/1/2020.
Filed Date: 9/7/18.
Accession Number: 20180907–5158.
Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2403–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to the Market Monitor Service Level Agreement to be effective 11/6/2018.
Filed Date: 9/7/18.
Accession Number: 20180907–5159.
Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2404–000.
Applicants: Southwest Power Pool, Inc.
Description: Petition for Tariff Waiver of Southwest Power Pool, Inc.
Filed Date: 9/10/18.
Accession Number: 20180910–5057.
Comments Due: 5 p.m. ET 10/1/18.

Docket Numbers: ER18–2405–000.
Applicants: Midcontinent Independent System Operator, Inc., Wolverine Power Supply Cooperative, Inc.
Description: § 205(d) Rate Filing: 2018–09–10_SA 3165 Wolverine-Consumers Energy IFA (Stoney Corners) to be effective 9/11/2018.
Filed Date: 9/10/18.
Accession Number: 20180910–5093.
Comments Due: 5 p.m. ET 10/1/18.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES18–60–000.
Applicants: New England Power Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of New England Power Company.

Filed Date: 9/10/18.

Accession Number: 20180910–5110.

Comments Due: 5 p.m. ET 10/1/18.

Docket Numbers: ES18–61–000.

Applicants: Consolidated Edison Company of New York, Inc.

Description: Application of Consolidated Edison Company of New York, Inc. under ES18–61. for an order pursuant to Section 204 of the Federal Power Act authorizing the issue and sale of short-term debt.

Filed Date: 9/10/18.

Accession Number: 20180910–5111.

Comments Due: 5 p.m. ET 10/1/18.

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: September 10, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19999 Filed 9–13–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–198–000]

Notice of Request for Partial Waiver; Kansas Power Pool

Take notice that on September 6, 2018, pursuant to section 292.402 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,[1] the Kansas Power Pool (KPP) on behalf of itself and its authorizing member municipal cities (Authorizing Members), filed a request for partial waiver of certain obligations imposed on KPP and its Authorizing Members through the Commission's regulations[2] implementing section 210 of the Public Utility Regulatory Policies Act of 1978, all as more fully explained in the request.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the 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.

Comment Date: 5:00 p.m. Eastern time on September 27, 2018.

Dated: September 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19997 Filed 9–13–18; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 292.402.

[2] 18 CFR 292.303(a) and 292.303(b).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–199–000]

Notice of Complaint; East Texas Electric Cooperative, Inc. v. Public Service Company of Oklahoma, Southwestern Electric Power Company, AEP Oklahoma Transmission Company, AEP Southwestern Transmission Company

Take notice that on September 6, 2018, pursuant to sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824e and 825h, and Rules 206 and 212 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and 385.212, East Texas Electric Cooperative, Inc. (Complainant) filed a formal complaint against Public Service Company of Oklahoma, Southwestern Electric Power Company, AEP Oklahoma Transmission Company, and AEP Southwestern Transmission Company (Respondents or AEP West Companies) alleging that the 10.70 percent base return on common equity currently included in the formula transmission rates of the AEP West Companies is unjust and unreasonable and should be reduced as of the date of the complaint, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondents as listed on the Commission's list of Corporate Officials, in accordance with Rule 206(c).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the 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.

Comment Date: 5:00 p.m. Eastern Time on October 16, 2018.

Dated: September 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19998 Filed 9–13–18; 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: ER18–2390–000.
Applicants: Chubu TT Energy Management Inc.
Description: Tariff Cancellation: Chubu TT MBRA Cancellation to be effective 9/30/2018.
Filed Date: 9/7/18.
Accession Number: 20180907–5001.
Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2391–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 3688; Queue No. Y2–117 to be effective 10/1/2018.
Filed Date: 9/7/18.
Accession Number: 20180907–5031.
Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2392–000.
Applicants: Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: AEP Ohio submits revised ILDSA, Service Agreement No. 1420 and City of Clyde FA to be effective 8/14/2018.
Filed Date: 9/7/18.
Accession Number: 20180907–5037.
Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2393–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: MAIT submits four ECSAs, Service Agreement Nos. 4991, 5017, 5018, and 5026 to be effective 11/7/2018.
Filed Date: 9/7/18.
Accession Number: 20180907–5056.
Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2394–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Compliance filing: Revisions to ISO–NE Tariff in Compliance with FERC Order No. 844 to be effective 1/1/2019.
Filed Date: 9/7/18.
Accession Number: 20180907–5067.
Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2395–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA SA No. 5159, Queue No. AB2–040 to be effective 8/8/2018.
Filed Date: 9/7/18.
Accession Number: 20180907–5080.
Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2396–000.
Applicants: Nevada Power Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 162 NPC/DesertLink Agr. to be effective 9/8/2018.
Filed Date: 9/7/18.
Accession Number: 20180907–5083.
Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2397–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2018–09–07_Order 844 Compliance Uplift Cost Allocation and Transparency to be effective 1/1/2019.
Filed Date: 9/7/18.
Accession Number: 20180907–5085.
Comments Due: 5 p.m. ET 9/28/18.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD18–8–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standard VAR–001–5.
Filed Date: 9/6/18.
Accession Number: 20180906–5137.
Comments Due: 5 p.m. ET 9/27/18.

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: September 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19995 Filed 9–13–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Order Rejecting Proposed Tariff Revisions, Providing Guidance and Providing Limited Compliance Period

Before Commissioners: Kevin J. McIntyre, Chairman; Cheryl A. LaFleur, Neil Chatterjee, and Richard Glick.

	Docket Nos.
Commonwealth Edison Company.	ER18–899–000. ER18–899–001.
Delmarva Power & Light Company.	ER18–903–000. ER18–903–001.
Atlantic City Electric Company.	ER18–904–000. ER18–904–001.
Potomac Electric Power Company.	ER18–905–000. ER18–905–001.
PJM Interconnection, L.L.C	(Not Consolidated).

1. On February 23, 2018, as amended on July 9, 2018, Commonwealth Edison Company (ComEd), Delmarva Power & Light Company (Delmarva), Atlantic City Electric Company (ACE) and Potomac Electric Power Company (PEPCO) (together, Exelon Companies), submitted separate but nearly identical filings pursuant to section 205 of the Federal Power Act (FPA).[1] Exelon Companies propose revisions to their formula transmission rates (Formula Rates), contained in Attachments H–13A, H–3D, H–1A and H–9A of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT),[2] to

[1] 16 U.S.C. 824d (2012).

[2] PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT ATT H–13A, OATT Attachment H–13A—Commonwealth Edison Company, 13.0.0, OATT ATT H–3D, OATT Attachment H–3D—Delmarva Power & Light Company, 5.0.0, OATT ATT H–1A,

Continued

provide a mechanism to refund or recover, as appropriate, certain deferred income tax excesses and deficiencies that they previously recorded on their books and that they will record on an ongoing basis. In particular, Exelon Companies propose to recover or refund in their Formula Rates: (1) Excess or deficient Accumulated Deferred Income Taxes (ADIT) related to tax rate changes (Excess/Deficient Deferred Taxes); (2) the tax effect of the Allowance for Funds Used During Construction (AFUDC) equity portion of depreciation expense (AFUDC Equity); and (3) amounts related to Exelon Companies' switch years ago from the flow-through method for income tax treatment in ratemaking to the tax normalization method (Flow-Through Items).

2. In this order, we find that Exelon Companies have not shown that their proposed Formula Rate provisions allowing for the recovery of previously incurred income tax amounts are just and reasonable. Therefore, as discussed below, we reject Exelon Companies' filings, but we provide guidance that Exelon Companies may submit new filings with a mechanism to refund or recover, as appropriate, deferred income tax excesses and deficiencies related to the recent Tax Cuts and Jobs Act [3] and any future income tax changes, any new originations of past income tax changes, and taxes on AFUDC Equity associated with current and future years' depreciation expense. As described below, we also announce a limited compliance period under Order No. 144 during which other utilities may make FPA section 205 filings to recover past ADIT under certain conditions.

I. Background

3. Under a tax normalization policy, tax savings and increases that result from different treatment for ratemaking and income tax purposes are not immediately flowed through to customers, but are instead recognized in rates over time. In 1981, the Commission amended its regulations to require companies to determine the income tax allowance included in jurisdictional rates on a fully normalized basis.[4] The Commission in Order No. 144 recognized that the adoption of full normalization, as well as tax rate changes, might result in excesses or deficiencies in the deferred tax accounts and required rate applicants to make provision in the income tax component of their cost of service for any such excess or deficiency. Order No. 144 stated that rate applicants must ''begin the process of making up deficiencies in or eliminating excesses in their deferred tax account reserves so that, within a reasonable period of time to be determined on a case-by-case basis, they will be operating under a full normalization policy.'' [5] Order No. 144 further specified that a rate applicant must make adjustments pertaining to reversals from prior flow-through or tax rate changes in ''the applicant's next rate case following the applicability of [Order No. 144].'' [6]

4. In 1992, the Financial Accounting Standards Board issued Financial Accounting Standards Board Statement No. 109 (FAS 109), which required public utilities to make certain changes to their balance sheets. Among other things, FAS 109 required: (1) Recognition in the deferred tax accounts for changes in tax laws or tax rates in the period that the change is enacted; (2) recognition of a deferred tax liability for the equity component of AFUDC depreciation expense; and (3) recognition of a deferred tax liability for timing differences under normalization even if the deferred tax liability was previously flowed through to ratepayers prior to adopting normalization. Addressing the implementation of FAS 109, the Commission's Chief Accountant explained that if as a result of action by a regulator, it was probable that a tax deficiency would be recovered from customers or any tax excess would be returned to customers in rates, an asset or liability must be recognized in the appropriate account. The Chief Accountant also explained that the asset or liability is a temporary difference for which a deferred tax asset or liability must be recognized in the appropriate deferred tax account.[7] The Chief Accountant further stated that if an entity's billing determinations would be affected by adoption of FAS 109, the entity shall make a filing with the proper rate regulatory authorities prior to implementing the change for tariff billing purposes.[8]

II. Related Proceedings

A. BGE Proceeding

5. On November 16, 2017, the Commission rejected Baltimore Gas and Electric Company's (BGE) proposed revisions to its formula transmission rate to provide a mechanism to refund or recover, as appropriate, certain deferred income tax excesses and deficiencies previously recorded and on an ongoing basis.[9] In the instant proceedings, Exelon Companies state that their proposed revisions to their Formula Rates are ''essentially identical'' to those proposed by BGE, which is also a subsidiary of Exelon.[10]

6. In the November 16 Order, the Commission found that BGE failed to demonstrate that its proposed mechanisms for the recovery of previously incurred tax amounts were just and reasonable.[11] In particular, the Commission found that BGE should have captured the accumulated amounts associated with AFUDC Equity that has already been depreciated and prior period tax balances associated with Flow-Through Items in its formula rate since its implementation in 2005, consistent with the directive in Order No. 144 that utilities make such adjustments in their next rate case, or at least ''within a reasonable period of time.'' [12] The Commission further found BGE's proposal to be inconsistent with the principle of matching (*i.e.,* the recognition in rates of the tax effects of expenses and revenues with the expenses and revenues themselves) because the Flow-Through Items related to certain pre-1976 plant that could be either fully depreciated or retired by 2016, and because the additional taxes associated with AFUDC Equity are applicable only to the relevant year's depreciation expense.[13] Finding that BGE failed to explain why it did not make provision for recovery of the deferred amounts for nearly 12 years after implementing its formula rate and that the proceedings cited by BGE in support of its proposal do not establish binding precedent, the Commission rejected BGE's proposed formula rate revisions.[14]

7. On December 18, 2017, BGE requested rehearing of the November 16 Order regarding recovery of past deferred tax liabilities and assets. It also requested clarification that it could

OATT Attachment H–1A—Atlantic City Electric Company, 4.0.0, and OATT ATT H–9A, OATT Attachment H–9A—Potomac Electric Power Company, 6.0.0.

[3] Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054 (2017).

[4] *See* 18 CFR 35.24 (2017); *see also Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes,* Order No. 144, FERC Stats. & Regs. ¶ 30,254 (1981), *order on reh'g,* Order No. 144–A, FERC Stats. & Regs. ¶ 30,340 (1982).

[5] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560.

[6] *Id.* at 31,519.

[7] *See* Accounting for Income Taxes, Docket No. AI93–5–000 (April 23, 1993).

[8] *Id.* at 11.

[9] *PJM Interconnection, L.L.C.,* 161 FERC ¶ 61,163 (2017) (November 16 Order).

[10] *See, e.g.,* ComEd Transmittal at 33.

[11] November 16 Order, 161 FERC ¶ 61,163 at P 18.

[12] *Id.* PP 18–19 (citing Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,519, 31,560).

[13] *Id.* P 20.

[14] *Id.* PP 21–22.

recover: (1) Amounts for new tax liabilities and assets that were originated on or after the February 11, 2017 effective date that BGE originally proposed; and (2) amounts for past deferred tax liabilities and assets that would not have been collected until after February 11, 2017, even if its formula rate had been amended in 2005 to include such recovery. In support of its rehearing request, BGE raised similar arguments to those now advanced in Exelon Companies' filings regarding the timing of recovering deferred amounts, matching, and prior Commission precedent. The Commission denies all rehearing requests,[15] but grants clarification in part, of the November 16 Order in an order being issued concurrently with this one in Docket No. ER17–528–002.[16]

B. Notice of Inquiry

8. On March 15, 2018, the Commission sought industry-wide comment on the effect of the Tax Cuts and Jobs Act on Commission-jurisdictional rates.[17] In particular, the Commission sought comment whether, and if so how, the Commission should address changes related to ADIT and bonus depreciation in Commission-jurisdictional rates. That proceeding remains pending.

III. Exelon Companies' Filings

A. Original Filings

9. Exelon Companies propose to implement three tax-related changes (Excess/Deficient Deferred Taxes, AFUDC Equity and Flow-Through Items) to their Formula Rates to more accurately track expenses arising from tax liabilities and to clarify the timing for recovery of various accrued tax liabilities. Exelon Companies assert that the proposed changes do not alter the amount of taxes to be recovered, but instead provide clarity to ratepayers as to when various tax liabilities and assets will be recovered or refunded, and ensure that the proper amounts will be recovered or refunded over a timeframe that is consistent with Commission policies. Exelon Companies request that the Commission accept the revised tariff sheets with an effective date of April 24, 2018, although these proposed tax changes would be reflected for the first time in the rate levels charged to customers in Exelon Companies' June 1, 2019 Annual Update of their Formula Rates (2019 Annual Update) (with the resulting rate levels charged for service on and after June 1, 2019).

10. First, Exelon Companies propose an adjustment to their Formula Rates for Excess/Deficient Deferred Taxes that are the result of enacted changes in tax laws or rates. Exelon Companies explain that, due to changes in state and federal tax rates that occur from time to time, such as the Tax Cuts and Jobs Act, Exelon Companies' deferred income tax balances do not match their actual tax liabilities. Rather than allowing such mismatches to accumulate over time, Exelon Companies propose to correct the mismatches by including a mechanism in their Formula Rates that will automatically return any future excess deferred income taxes to customers, as well as recover any future deficiencies in deferred income taxes from customers. Exelon Companies state that the automatic adjustments would reflect the tax rate changes from the Tax Cuts and Jobs Act and past federal and state income tax rate changes that are not yet fully accounted for, and would also provide an automatic mechanism to capture the impact of any future tax rate changes that may be enacted at the state or federal level. Exelon Companies state that, consistent with the ''*South Georgia* method'' [18] and Commission precedent, Exelon Companies propose to amortize the relevant balances over the remaining useful life of the assets impacted by the tax rate change.[19]

11. Second, Exelon Companies propose an adjustment to their Formula Rates for the tax effect of AFUDC Equity, which would automatically amortize in rates the accumulated tax balances for past AFUDC Equity originations that have not flowed through rates and future AFUDC Equity originations. Exelon Companies explain that federal income tax rules do not permit the deduction of AFUDC Equity on the income tax return, but that AFUDC Equity is included in depreciation expense for financial reporting purposes. Under FAS 109, this difference between the cost basis calculated for income tax and financial statement reporting purposes is recorded as a deferred regulatory asset and associated tax liability. Thus, Exelon Companies propose to modify their Formula Rates to recover this tax difference on an ongoing basis, as well as to use a *South Georgia* catch-up provision to recover all previously unrecovered FAS 109 amounts associated with AFUDC Equity over the remaining life of the transmission assets. Exelon Companies assert that the Commission has recognized that AFUDC Equity requires adjustment in the income tax calculation [20] and that this modification is consistent with the tax recovery mechanisms that the Commission has allowed in other transmission rate filings.[21]

12. Third, Exelon Companies propose an adjustment to their Formula Rates for tax benefits flowed through to customers at the time that they originated (Flow-Through Items). Exelon Companies explain that, in the past, they recovered substantially all of their transmission revenue requirements through bundled retail rates. Exelon Companies state that they sold their generating facilities and now recover their transmission revenue requirements through the Formula Rates regulated by this Commission. Exelon Companies explain that, while their Formula Rates now employ the tax normalization methodology (*i.e.,* Exelon Companies use comprehensive tax normalization for ratemaking purposes), Exelon Companies previously employed flow-through ratemaking for property placed in service (*i.e.,* Exelon Companies immediately reflected the tax benefits of accelerated depreciation and cost of removal in their bundled retail rates).[22]

[15] The Maryland Public Service Commission and the Edison Electric Institute also filed requests for rehearing.

[16] *PJM Interconnection L.L.C.,* 164 FERC ¶ 61,173.

[17] *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-jurisdictional Rates,* FERC Stats. & Regs. ¶ 35,582 (2018) (Notice of Inquiry).

[18] *See South Georgia Natural Gas Co.,* Docket No. RP77–32 (May 5, 1978) (delegated order). Under the *South Georgia* method, a calculation is taken of the difference between the amount actually in the deferred account and the amount that would have been in the account had normalization continuously been followed. This difference is collected from ratepayers over the remaining depreciable life of the plant that caused the difference. When the deferred account is fully funded at the end of this transition period, the annual increment ceases. *Memphis Light, Gas & Water Div.* v. *FERC,* 707 F.2d 565, 569 (D.C. Cir. 1983).

[19] *See, e.g.,* ComEd Transmittal Letter at 24–28 (citing *Virginia Elec. Power Co.,* Docket No. ER16–2116–000 (August 2, 2016) (delegated order) (*VEPCO*); *Midcontinent Indep. Sys. Operator, Inc.,* 153 FERC ¶ 61,374 (2015) (*ITC*); *DATC Midwest Holdings, LLC,* 144 FERC ¶ 61,015 (2013) (*DATC*); *American Transmission Co., LLC,* 93 FERC ¶ 61,335 (2000) (*ATC*); *Michigan Gas Storage Co.,* 83 FERC ¶ 63,001 (1998), *order on initial decision,* 87 FERC ¶ 61,038 (1999)).

[20] *Id.* at 29 (citing Order No. 144–A, FERC Stats. & Regs. ¶ 30,340 at 30,136).

[21] *Id.* at 28–30 (citing *Indianapolis Power & Light,* 162 FERC ¶ 61,134 (2018) (*IPL*), *Wisconsin Power & Light Co.,* Docket No. ER18–216–000 (Feb. 13, 2018) (delegated order) (*WPL*), *VEPCO,* Docket No. ER16–2116–000 (Aug. 2, 2016) (delegated order); *ITC,* 153 FERC ¶ 61,374; *ATC,* 93 FERC ¶ 61,335; *DATC,* 144 FERC ¶ 61,015).

[22] ComEd states that small excesses remain to be passed through in ComEd's accounting resulting from the pre-2007 use of the flow-through method. ComEd Transmittal at 8. Delmarva, ACE, and PEPCO state that shortfalls remain to be passed through in their accounting resulting from the pre-2005 use of the flow-through method. Delmarva Transmittal at 8; ACE Transmittal at 7; and PEPCO Transmittal at 8.

Exelon Companies state that both the flow-through and normalization methodologies will recover the proper amount of taxes from ratepayers over time. However, the switch from one methodology to another creates timing differences that lead to a difference between a utility's deferred tax account balance and its future tax liability. Thus, Exelon Companies propose to modify their Formula Rates using the *South Georgia* methodology to amortize the tax balances associated with flow-through ratemaking over the remaining life of the transmission assets in place at the time they implemented their Formula Rates.[23]

13. Exelon Companies state that the timing of their filings was influenced by a number of factors, in particular the desire to unlock as soon as possible customer benefits from the Tax Cuts and Jobs Act. Exelon Companies explain that they assume that recovery occurred for of an amortized portion of the FAS 109 amounts each year until their Formula Rate settlements in either 2005 or 2007, depending on the individual company. They further assert that per the Formula Rate settlements, recovery of the FAS 109 amounts were expressly excluded. Therefore, they now seek authorization for recovery of the unamortized portion of amounts from the dates the Formula Rates became effective and any new originations since the Formula Rates were effective.

14. Exelon Companies state that the rate impact from the Formula Rate revisions on the annual transmission revenue requirements for the Formula Rates will vary from year to year. Exelon Companies estimated the one-year impact of the Formula Rate revisions using 2017 data,[24] as shown in the following table:

Company	ADIT-related rate decrease from Tax Cuts and Jobs Act[25] ($ million)	Net rate increase from prior period ADIT amounts[26] ($ million)	Overall net rate reduction ($ million)	Annual revenue requirement ($ million)
ComEd	18	1	17	709
Delmarva	4.1	0.7	3.4	127.9
ACE	4.2	0.6	3.6	132.7
PEPCO	5.3	0.9	4.4	161.7

15. Exelon Companies assert that their filings are timely and should be accepted. Exelon Companies assert that the primary basis for the Commission's rejection of BGE's filing in the November 16 Order was that the BGE filing was untimely.[27] They point out that one issue raised in the November 16 Order was the suggestion that BGE was seeking recovery of ''decades'' old amounts that should have been recovered prior to the adoption of BGE's formula rates in 2005.[28] They state that BGE's rehearing request explained that BGE was not seeking recovery of these out-dated amounts and they likewise are not seeking recovery of out-dated amounts. In particular, Exelon Companies explain that they assumed that an amortized portion of the FAS 109 amounts were recovered each year until 2005 (for Delmarva, ACE and PEPCO) or 2007 (for ComEd) when the Formula Rates took effect, and they do not seek recovery of those amounts prior to 2005 or 2007, respectively. Exelon Companies state that they assumed that their black-box stated rates in place prior to the Formula Rates included recovery of FAS 109 amounts. Exelon Companies assert that this treatment is consistent with *Stingray,*[29] cited in the November 16 Order, in which the Commission held that it would assume that FAS 109 amounts were being amortized during the pendency of a settled stated rate that did not address the FAS 109 issue.

16. Exelon Companies argue that their Formula Rates were settled rates, and thus did not violate the ''next rate case'' rule in Order No. 144. Exelon Companies explain that the November 16 Order found that BGE should have addressed FAS 109 recovery in its 2005 formula rate because it was the ''next rate case'' concerning FAS 109 amounts.[30] Just as with BGE, Exelon Companies argue that the ''next rate case'' rule cannot be applied to Exelon Companies because their Formula Rates filings resulted in settlements that expressly excluded FAS 109 amounts from current rates, thus leaving the issue to be decided in some later proceeding. Exelon Companies argue that no provision in the settlement requires them to eliminate or reduce FAS 109 recovery, and it would be unlawful to read such a provision into the settlement.[31]

17. Exelon Companies also argue that Order No. 144 permits resolution of the FAS 109 issue by settlement, and recognizes that parties may reach a settlement that would defer litigation of the timing of tax recoveries. In support of this position, they point out that after Order No. 144 states that the applicants should address ratemaking treatment in the ''next rate case,'' it states that: ''The rule, of course, leaves undisturbed the ability of the parties to reach a settlement on any of the issues covered by the rule.'' [32] They also assert that the Commission explained in Order No. 144 that it wanted to ensure that ''agreement by the parties not to litigate the issue in future cases is preserved and

[23] *See, e.g.,* ComEd Transmittal Letter at 32 (citing *Duquesne Light Co.,* Docket No. ER13–1220–000 (April 26, 2013) (delegated order) (*Duquesne*); *PPL Elec. Util. Corp.,* Docket No. ER12–1397–000 (May 23, 2012) (delegated order) (*PPL*); *San Diego Gas & Elec. Co.,* 105 FERC ¶ 61,301 (2003)).

[24] *See* ComEd Transmittal at 47; Delmarva Transmittal at 42; ACE Transmittal at 40; and PEPCO Transmittal at 42.

[25] This column represents Exelon Companies' estimates of the benefits that customers will receive, beginning June 1, 2019, from excess ADIT from the Tax Cuts and Jobs Act. The methods for recovery of these excess ADIT amounts are being explored through the Commission's Notice of Inquiry.

[26] This column represents a one year example of the net rate increases resulting from the Exelon Companies' proposals. The net rate increases would occur each year over the remaining lives of the assets at issue.

[27] Exelon Companies state that because their amendments to their Formula Rates are essentially identical to BGE's, which the Commission rejected in the November 16 Order, Exelon Companies arguments in support of their amendments are similar to those which BGE submitted in its rehearing request of the November 16 Order. *See, e.g.,* ComEd Transmittal at 33.

[28] *Id.* at 34 (citing November 16 Order, 161 FERC ¶ 61,163 at P 19).

[29] *Id.* at 34 (citing November 16 Order, 161 FERC ¶ 61,163 at P 19 & n.25 (citing *Stingray Pipeline, Co.,* 50 FERC ¶ 61,159, at 61,469 (1990) (*Stingray*)).

[30] *Id.* at 35 (citing November 16 Order, 161 FERC ¶ 61,163 at PP 18–19). Order No. 144 specified that a rate applicant must make adjustments pertaining to reversals from prior flow-through or tax rate changes in ''the applicant's next rate case following the applicability of [Order No. 144].'' Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,519.

[31] ComEd Transmittal at 35–36.

[32] *Id.* at 36 (citing Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,519).

encouraged.'' [33] They assert that because this is the first rate case after settlement of the Formula Rates, Exelon Companies have not violated the ''next rate case'' rule.

18. Exelon Companies assert that the ''reasonable period of time'' standard in Order No. 144 applies to the period of time for normalization, and not the period of time in which the utility must make its rate filing to implement normalization. They assert that, in the November 16 Order, the Commission partially quoted and misconstrued a sentence in Order No. 144 when it stated that: ''In Order No. 144, the Commission specifically directed utilities 'to begin the process of making up deficiencies or eliminating excesses in their deferred tax reserves . . . within a reasonable period of time to be determined on a case-by-case basis.' '' [34] They state that the full sentence in Order No. 144 reads:

As revised, the final rule requires rate applicants to begin the process of making up deficiencies in or eliminating excesses in their deferred tax reserves so that, within a reasonable period of time to be determined on a case-by-case basis, they will be operating under a full normalization policy.[35]

19. Exelon Companies argue that this Order No. 144 language does not direct when utilities must make a rate case filing, as the Commission asserts in the November 16 Order, but instead it explains the standards for evaluation of ''rate applicants'' when their next rate case filing is made.[36] Exelon Companies assert that their proposal to normalize the recovery of deficient or excess amounts over the remaining life of the assets meets Order No. 144's requirement for seeking full normalization over a reasonable period of time. Exelon Companies also point out that the definition of ''rate applicant'' and other portions of Order No. 144 do not specify when the next rate case must be filed.[37] Exelon Companies also explain that subsequent cases clarify that recovery ''in a reasonable period of time'' meant recovery over the remaining life of the assets.[38] Exelon Companies therefore assert that, consistent with Order No. 144, this is the first rate case after their settlement of the Formula Rates in which the issue could be addressed, and their filings provide for recovery over the remaining life of the assets, which is a reasonable period of time for recovery.

20. Exelon Companies argue that, in the November 16 Order, the Commission ''suggested'' that BGE's filing violated the Commission's matching policy because it sought recovery of amounts long after the underlying assets have been retired or have stopped being depreciated.[39] They contend that, like BGE, they meet the matching test because the filings are tied to recovery over the remaining life of appropriately chosen assets.[40] They conclude there is no basis for concern that ''matching'' of costs and asset lives has somehow been violated.[41] Moreover, Exelon Companies argue that their use of the industry standard PowerTax software verifies that the Flow-Through Items regulatory asset is linked to assets that are still in service.[42]

21. Exelon Companies next argue that recovery of the amounts from 2005 (for Delmarva, ACE and PEPCO) or 2007 (for ComEd) and going forward is consistent with Order No. 144, with FAS 109 and the 1993 FAS 109 Guidance Letter, with the 2014 Staff Guidance on Formula Rate Updates, and with the orders in *PPL, Duquesne, VEPCO,* and *ITC.* In this regard, they briefly discuss each of these cases. They state that, in *PPL,* four years had elapsed since PPL had implemented its formula rate, and the entire regulatory asset amount, as of the date the formula rate was implemented, was authorized for recovery. In *Duquesne,* seven years had elapsed since its formula rate was filed, and the utility was similarly authorized to recover the amount as of the date of its formula rate. Regarding *ITC* and *VEPCO,* Exelon Companies state that these cases similarly involved a formulaic mechanism for recovery of an amortized amount, each year, of transmission-related FAS 109 amounts up through the date in which each year's rates are calculated. Unlike *PPL* and *Duquesne,* the adjustments in *ITC* and *VEPCO* also included new originating FAS 109 amounts that had been recorded after their formula rates were put in place. Taken together, Exelon Companies argue that these proceedings make it clear that formulaic recovery of FAS 109 amounts from prior to, and after, implementation of the formula rate is appropriate, which Exelon Companies argue is exactly what they propose here.

22. While conceding that the *PPL, Duquesne,* and *VEPCO* orders were delegated letter orders, Exelon Companies point out that the *ITC* order was not a delegated letter order and argue that the delegated orders should be given weight as they are consistent with *ITC.*[43]

23. Finally, Exelon Companies argue that recovery of the past expenses would not present a problem of retroactive ratemaking because on appeal of Order No. 144, the court held that a provision for recovery of deficient deferred taxes relating to prior years is not retroactive.[44] Exelon Companies assert that because customers' rates in past years did not reflect these expenses, if the FAS 109 amounts flow through rates, Exelon Companies' proposals will place customers in exactly the same position as if they had included a formulaic rate recovery of FAS 109 amounts in past rates.[45]

B. Deficiency Letter

24. On April 24, 2018, Commission staff issued a deficiency letter advising Exelon Companies that their February 23, 2018 filings were deficient and requiring additional information to evaluate their Formula Rate revisions.[46] Commission staff sought additional information from the Exelon Companies about when they changed to full tax normalization, whether the AFUDC Equity relates to current year's depreciation expense, the method used to allocate FAS 109 amounts to transmission-related components, past FAS 109 amortization collection in rate base, the Tax Reform Act of 1986, and an explanation for why the Exelon Companies decided to exclude FAS 109 recovery in their Formula Rates and why they delayed in seeking recovery.

25. On May 3, 2018, Exelon Companies filed motions for additional time to respond to the Deficiency Letter, so that their responses would be due on July 9, 2018.[47] On May 14, 2018, the

[33] *Id.* (citing Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,561).

[34] *Id.* at 37 (citing November 16 Order, 161 FERC ¶ 61,163 at P 19 (quoting Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560)).

[35] *Id.* at 37 (citing Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560).

[36] *Id.* at 38.

[37] *Id.*

[38] *Id.* at 39 (citing *Northern States Power Co.* (*Wisconsin*), Opinion No. 345, 50 FERC ¶ 61,377, at 62,148 (1990) (''Opinion No. 345''), and *Nat. Gas Pipeline of America,* Opinion No. 108, 13 FERC ¶ 61,266 (1980)).

[39] *See* ComEd Transmittal at 40 & n.85 (citing November 16 Order, 161 FERC ¶ 61,163 at P 20); Delmarva Transmittal at 35 & n.83; Atlantic City Transmittal at 33 & n.83; and PEPCO Transmittal at 35 & n.83.

[40] *See, e.g.,* ComEd Transmittal at 40.

[41] *Id.* at 41.

[42] *Id.*

[43] *Id.* at 42–43.

[44] *Id.* at 44 & n.98 (citing *Public Systems* v. *FERC,* 709 F.2d 73, 85 (D.C. Cir. 1983) (*Public Systems*)).

[45] *Id.* at 44.

[46] *PJM Interconnection, L.L.C.,* Deficiency Letter, Docket Nos. ER18–899–000, *et al.* (Apr. 24, 2018) (Deficiency Letter).

[47] ComEd Motion for Additional Time, Docket No. ER18–899–00 (filed May 3, 2018); Delmarva Motion for Additional Time, Docket No. ER18–903–

Continued

Commission granted Exelon Companies' motions.[48]

C. Deficiency Letter Responses

26. On July 9, 2018, Exelon Companies filed responses to the Commission staff's Deficiency Letter, which amended their filings.

27. In their response to the Deficiency Letter, the Exelon Companies largely reiterated arguments and pointed to data in their filed cases. In response to staff's question as to when full tax normalization had occurred at the retail level, the Exelon Companies explain that, prior to their Formula Rate filings, the Exelon Companies' rate filings historically resulted from black box settlements. According to the Exelon Companies, these black box settlements, prior to the implementation of Formula Rates, made it impossible to determine whether the [stated][49] rates incorporated full tax normalization. Exelon Companies contend that only after the adoption of the subject Formula Rates were they effectively approved to implement full tax normalization.

28. With respect to staff's question as to whether the AFUDC Equity includes prior years' depreciation expense, Exelon Companies explain that they propose to include *South Georgia* catchup provisions to recover all unrecovered FAS 109 amounts associated with AFUDC Equity. The Exelon Companies explain that they intend to track the relevant assets and their relevant lives and retirements using their PowerTax and PowerPlant software, which track each plant item and associated tax expense, and thus will allow a FAS 109 amortization that properly adjusts each year based on the remaining lives of the relevant assets.

29. In response to staff's request on the net plant allocation method used to determine the transmission-related component of FAS 109 regulatory asset, Exelon Companies explain that they generally use composite transmission depreciation rates or group rates by account. Exelon Companies explain that the ADIT reversal is calculated by multiplying the AFUDC Debt and Equity components in depreciation expense by the applicable composite income tax rate.

30. In response to staff's request as to whether there was any accumulated FAS 109 collections associated with prior flow-through items, the Exelon Companies cite to their Formula Rate settlements which specifically exclude FAS 109 amounts from rate base, and state that their proposed Formula Rates continue to exclude FAS 109 amounts, and thus FAS 109 does not impact rate base.

31. In response to staff's request about the Tax Reform Act of 1986, Exelon Companies explain that they assume that they have been refunding or recovering such amounts from their customers through stated rates (either retail or Commission rates). However, due to the fact that the stated rates prior to the effectiveness of their Formula Rates were black box settlements, there is no rate order that expressly spells out that such recovery is occurring.

32. With respect to why the Exelon Companies decided to exclude FAS 109 recovery from their Formula Rates, they explain that exclusion of FAS 109 amounts was the product of settlement. Nevertheless, they suggest that it was reasonable given that the Commission's accounting policies provide that recovery of FAS 109 amounts could only happen pursuant to a FERC rate filing addressing those amounts. Further, they explain that while it is clear today that recovery of such amounts can occur formulaicly, it was not clear at the time that such automatic flow through would be acceptable.

IV. Notices of Filings and Responsive Pleadings

A. Original Filings

33. Notice of ComEd's filing in Docket No. ER18–899–000 was published in the **Federal Register**, 83 FR 8986 (2018), with interventions and protests due on or before March 16, 2018. Timely motions to intervene were filed by FirstEnergy Service Company, Old Dominion Electric Cooperative, PPL Electric Utilities Corporation and Public Service Electric and Gas Company. The Illinois Commerce Commission (Illinois Commission) filed a notice of intervention and comments. On March 29, 2018, ComEd filed an answer.

34. Notice of Delmarva's filing in Docket No. ER18–903–000 was published in the **Federal Register**, 83 FR 8986 (2018), with interventions and protests due on or before March 16, 2018. Timely motions to intervene were filed by Delaware Municipal Electric Corporation, Inc. (DEMEC), Delaware Division of the Public Advocate, Maryland Office of People's Counsel (Md People's Counsel), FirstEnergy Service Company, Old Dominion Electric Cooperative, PPL Electric Utilities Corporation and Public Service Electric and Gas Company. DEMEC filed a timely protest. MD People's Counsel filed timely comments. On March 29, 2018, Delmarva filed an answer. On April 13, 2018, DEMEC filed an answer to the answer.

35. Notice of ACE's filing in Docket No. ER18–904–000 was published in the **Federal Register**, 83 FR 8986 (2018), with interventions and protests due on or before March 16, 2018. Timely motions to intervene were filed by FirstEnergy Service Company, the New Jersey Division of Rate Counsel (Rate Counsel), PPL Electric Utilities Corporation, Public Service Electric and Gas Company, and Vineland Municipal Electric Utility (Vineland). Rate Counsel and Vineland filed timely protests. On March 29, 2018, ACE filed an answer. On April 10, 2018, Rate Counsel filed an answer to the answer.

36. Notice of PEPCO's filing in Docket No. ER18–905–000 was published in the **Federal Register**, 83 FR 8986 (2018), with interventions and protests due on or before March 16, 2018. Timely motions to intervene were filed by FirstEnergy Service Company, MD People's Counsel, Office of the People's Counsel for the District of Columbia (DC People's Counsel), Old Dominion Electric Cooperative, PPL Electric Utilities Corporation Public Service Electric and Gas Company, and Southern Maryland Electric Cooperative, Inc. (SMECO). DC People's Counsel and MD People's Counsel filed timely comments. SMECO filed a timely protest. On March 29, 2018, PEPCO filed an answer. On April 13, 2018, SMECO filed an answer to the answer.

B. Deficiency Letter Responses

37. Notice of ComEd's Deficiency Letter response in Docket No. ER18–899–001 was published in the **Federal Register**, 83 FR 32,662 (2018), with interventions and protests due on or before July 30, 2018. None were filed.

38. Notice of Delmarva's Deficiency Letter response in Docket No. ER18–903–001 was published in the **Federal Register**, 83 FR 32,662 (2018), with interventions and protests due on or before July 30, 2018. DEMEC filed a timely protest. On August 13, 2018, Delmarva filed an answer.

39. Notice of ACE's Deficiency Letter response in Docket No. ER18–904–001 was published in the **Federal Register**, 83 FR 32,662 (2018), with interventions

00 (filed May 3, 2018); ACE Motion for Additional Time, Docket No. ER18–904–00 (filed May 3, 2018); and PEPCO Motion for Additional Time, Docket No. ER18–905–00 (filed May 3, 2018).

[48] Notice of Extension of Time, Docket No. ER18–899–000 (May 14, 2018); Notice of Extension of Time, Docket No. ER18–903–000 (May 14, 2018); Notice of Extension of Time, Docket No. ER18–904–000 (May 14, 2018); and Notice of Extension of Time, Docket No. ER18–905–000 (May 14, 2018).

[49] Under stated rates, utilities are assumed to be recovering all of their fixed costs, including any excess or deficiency in the deferred income tax accounts.

and protests due on or before July 30, 2018. None were filed.

40. Notice of PEPCO's Deficiency Letter response in Docket No. ER18–905–001 was published in the **Federal Register**, 83 FR 32,662 (2018), with interventions and protests due on or before July 30, 2018. DC People's Counsel filed timely comments. On August 13, 2018, PEPCO filed an answer.

V. Responsive Pleadings

A. ComEd Proceeding, Docket Nos. ER18–899–000 and ER18–899–001

41. The Illinois Commission filed comments in support of ComEd's filing and noted ComEd's assertion that the filing represents an overall rate reduction that will directly benefit customers. It urges the Commission to allow ComEd's Formula Rate to include any necessary adjustments so that ComEd's customers fully realize these savings in a timely manner.[50] In response, ComEd argues that the Commission should approve its filing without delay.

B. Delmarva Proceeding, Docket Nos. ER18–903–000 and ER18–903–001

1. Protest of DEMEC

42. DEMEC argues that Delmarva's proposal to recover FAS 109 amounts for prior periods (2005–2017) is contrary to the 2006 settlement of Delmarva's Formula Rate (2006 Settlement) and Commission precedent. DEMEC argues that contrary to Delmarva's claim that the 2006 Settlement left the issue of FAS 109 amount recovery to some later proceeding, there is no provision in the 2006 Settlement that expressly provides for addressing these amounts at some future date, and thus, Delmarva unlawfully seeks to read into the 2006 Settlement a provision that was not expressly contained in that 2006 Settlement.[51] DEMEC points out that the 2006 Settlement expressly proposed to remove FAS 109 amounts, and does not include any notice or agreement to retroactively refund to Delmarva deferred tax liabilities recorded as of December 31, 2004 or any other date. Further, DEMEC asserts that Delmarva's 2005 formula rate filing was the next rate case after Order No. 144 and FAS 109 was issued, since Delmarva did make a section 205 filing with its formula rate on January 31, 2005.[52] DEMEC argues that Order No. 144 did not permit utilities to forego explaining in their settlement agreements their intentions regarding implementation of Order No. 144.

43. DEMEC argues that Delmarva's filing inappropriately attempts to tie the reductions due to transmission customers as a result of the Tax Cuts and Jobs Act to an unjust and unreasonable request for retroactive recovery of deferred tax amounts that it did not preserve to recover in subsequent periods. DEMEC asserts that the Commission should summarily reject any aspect of Delmarva's filing that would permit recovery of deferred tax adjustments for prior periods, including any proposal for inclusion of the amortization of regulatory assets and amortization of prior flow-through amounts which were incurred in the past. DEMEC argues that Delmarva's proposal pertaining to Flow-Through Items violates the matching principle, as the Commission found in the November 16 Order.[53]

44. DEMEC asserts that even if Delmarva's filing is considered on a forward-looking basis, it is not consistent with Commission precedent, is lacking in adequate cost support, and contains various other errors that render it unjust and unreasonable. For these reasons, DEMEC asserts that Delmarva's filing should be set for hearing and settlement procedures and an FPA section 206 investigation should be opened to determine if further rate decreases would be appropriate.[54]

45. Specifically, DEMEC argues that the Commission's policy and guidance reflects the need to differentiate between unfunded versus funded ADIT balances and to exclude FAS 109 amounts absent a demonstrated impact on billing determinations and express Commission approval, noting the 2014 Staff Guidance on Formula Rate Updates.[55] DEMEC also asserts that Delmarva's proposal lacks cost support for its amortization periods and fails to pass back tax benefits to ratepayers in a reasonable amount of time.[56] For example, DEMEC suggests a five-year amortization period for Non-Protected Excess ADIT amounts, as the Commission proposed in its Notice of Inquiry.[57] Additionally, DEMEC asserts that Delmarva's filing fails to adjust the Account 190 ADIT amount to reflect the tax rate change from 35 percent to 21 percent, fails to exclude ADIT amounts related to the Net Operating Loss Carryforward, and fails to justify the removal of certain components from Attachment 5 of its Formula Rate.

46. DEMEC argues that Delmarva's request for including the AFUDC Equity amount in its income tax calculation will result in double recovery of costs. DEMEC explains that Delmarva's proposal would result in not only permitting Delmarva to recover the depreciation expense in rates which exceed depreciation expenses allowed by the Internal Revenue Service (IRS), but to also recover the income taxes associated with this over-recovery of depreciation expenses. Further, DEMEC argues the Commission should ensure that even on a prospective basis, Delmarva is not permitted to double recover costs associated with depreciation expense related income taxes.[58] DEMEC also argues that AFUDC Equity is a permanent tax difference, rather than a temporary tax difference, and that the Commission has required support to demonstrate that recovery of permanent tax differences is just and reasonable.[59]

47. DEMEC argues Delmarva's filing does not include a number of Tax Cuts and Jobs Act provisions that would further reduce Delmarva's transmission rates, including the following: (1) The Federal corporate rate reduction from 35 percent to 21 percent; (2) employee-related deductions; and (3) various other reductions. Additionally, DEMEC asserts that the Commission should require Delmarva to reflect the refunds caused by all the rate reductions resulting from the Tax Cuts and Jobs Act as of the effective date of the Tax Cuts and Jobs Act, which is January 1, 2018.[60]

2. Comments of MD People's Counsel

48. MD People's Counsel argues that the Commission should consider requiring Delmarva to include an interest provision for refunds from the Tax Cuts and Jobs Act. MD People's Counsel also argues that Delmarva's filing lacks sufficient details and supporting workpapers for MD People's Counsel to understand the impact and accuracy of Delmarva's ADIT calculations providing for flow-back of excess ADIT to customers or recovery of deficient ADIT from customers. MD People's Counsel notes that these were both issues raised in the Commission's Notice of Inquiry.

[50] Illinois Commission March 16, 2018 Comments at 1.

[51] DEMEC March 16, 2018 Protest at 8.

[52] *Id.* at 9–10.

[53] *Id.* at 12–13 (citing November 16 Order, 161 FERC ¶ 61,163 at P 20 & n.30 (citing Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,522)).

[54] *Id.* at 10–11.

[55] *Id.* at 11–12 (citing 2014 Staff Guidance on Formula Rate Updates (July 17, 2014) at 1–2).

[56] *Id.* at 15–16.

[57] *Id.* at 17 (citing Notice of Inquiry, FERC Stats. & Regs. ¶ 35,582 at P 17).

[58] *Id.* at 18.

[59] *Id.* at 19.

[60] *Id.* at 15.

49. MD People's Counsel disagrees with Delmarva that the FAS 109 mechanism for deferred tax assets qualifies for single-issue rate treatment.[61] MD People's Counsel explains that the Commission has limited the use of single-issue rate treatment to ''ADIT treatment in formula rates when such revisions are only considered mere differences in timing.'' [62] MD People's Counsel asserts that Delmarva's revisions to the treatment of FAS 109 deferred tax assets are more than differences in timing and represent a significant departure from previous Commission-approved accounting methods. MD People's Counsel also explains that Delmarva's Formula Rate protocols only allow single-issue rate treatment for certain issues, which does not include the proposed FAS 109 mechanism, and therefore Delmarva's next section 205 general rate cases are the appropriate venue to consider this change.

3. Answer of Delmarva

50. Delmarva responds that its request is permitted under the Commission's single-issue ratemaking policy, which allows ''limited revisions addressing [ADIT] treatment in formula rates when such revisions are only considered mere differences in timing.'' [63] Further, Delmarva asserts that severing the formula rate adjustments pertaining to the Tax Cuts and Jobs Act from other portions of Delmarva's proposal, as requested by the MD People's Counsel, would transform its filing into a new rate scheme and violate the FPA.[64] Delmarva asserts that DEMEC and MD People's Counsel have failed to demonstrate any problem with the Formula Rates, aside from issues raised in Delmarva's filing, and therefore the Commission should follow its single-issue ratemaking policy and grant Delmarva's request.[65]

51. Delmarva also disagrees with DEMEC's allegation that recovery of FAS 109 amounts would violate the 2006 Settlement Agreement and would result in retroactive ratemaking. Delmarva states that if the 2006 Settlement Agreement precluded future recovery of FAS 109 amounts as DEMEC asserts, then DEMEC's request—to recognize in rates excess/deficient deferred taxes arising from the Tax Cuts and Jobs Act effective January 1, 2018—would also be precluded.[66] Delmarva reiterates its previously stated positions on Order No. 144, FAS 109 and the 1993 FAS 109 Guidance Letter, the 2014 Staff Guidance on Formula Rate Updates, and the November 16 Order. In particular, Delmarva explains that since the issuance of Order No. 144, the Commission has recognized that deferred taxes are not like other rate elements that can only be recovered during the applicable test period rate year, but that the Commission allows accrual of deferred tax excesses and shortfalls until later rate years, with the recovery to be determined in later rate cases on a ''case by case basis.'' [67] Delmarva also points out that an appellate court has explicitly rejected the argument that later recovery of deferred taxes is retroactive ratemaking.[68]

52. Delmarva argues that its filing does not remove any components of Attachment 5 of Delmarva's Formula Rate and that DEMEC's assertions that it has deleted these components is erroneous.

53. Delmarva also argues that DEMEC's claim that rate recovery of FAS 109 amounts associated with the equity component of the AFUDC somehow amount to double recovery are incorrect. Delmarva states that DEMEC's claim seems to be premised on the fact that AFUDC Equity is a ''permanent tax difference'' rather than a ''temporary timing difference.'' Delmarva argues the Commission has repeatedly recognized that formula recovery of FAS 109 amounts associated with AFUDC Equity is appropriate and DEMEC has not addressed this precedent or provided a reason for the Commission to rule differently.[69]

54. Delmarva argues that DEMEC's challenges to the specifics of Delmarva's FAS 109 calculations [70] and to non-FAS issues [71] should be addressed as part of the Annual Update process.

4. DEMEC's Answer to the Answer

55. DEMEC reiterates that Delmarva has failed to provide cost support, workpapers or justification for its proposed amount and timing of its Excess/Deficient Deferred Taxes adjustment and associated amortization periods, AFUDC Equity permanent tax difference adjustment, and Flow-Through Items adjustment. DEMEC states that it cannot rely on the Annual Update process for this information, as the Annual Update process does not allow DEMEC to challenge the Formula Rate itself.

56. DEMEC asserts that Delmarva misstates the terms of the 2006 Settlement. DEMEC points out that Attachment H–3D of the Formula Rate only includes the instruction to exclude FAS 109 amounts from the Formula Rate.[72] DEMEC also argues that section 6.11 of the 2006 Settlement provides that the settling parties are not to rely on any term not expressly set forth in the 2006 Settlement. DEMEC argues that there is nothing in the 2006 Settlement that permits Delmarva to recover excluded FAS 109 amounts in future years. DEMEC therefore argues that Delmarva unravels the 2006 Settlement by now seeking recovery of FAS 109 amounts back to 2005. Further, DEMEC states that the Formula Rate protocols provide that the Annual Updates are final and no longer subject to change or challenge on the later of the passage of the challenge period or a final Commission order on the Annual Update, subject to judicial review.[73]

57. DEMEC reiterates that Delmarva's 2005 Formula Rate filing was the ''next rate case'' after Order No. 144 to obtain FAS 109 recovery, and Delmarva's current proposal, filed 13 years after its Formula Rate was implemented, was not filed within ''a reasonable period of time'' required by Order No. 144 to obtain FAS 109 recovery.[74] DEMEC argues that *Public Systems* does not support Delmarva's case, because Delmarva's filing is seeking to recover shortfalls in prior rates going back over 13 years and therefore Delmarva is engaged in retroactive ratemaking.[75] DEMEC therefore requests that the Commission reject Delmarva's proposal to recover deferred tax amounts back to 2005.

[61] MD People's Counsel March 16, 2018 Comments to Delmarva at 5–7.

[62] *Id.* at 5 (citing *Indicated RTO Owners,* 161 FERC ¶ 61,018, at P 14 (2017)).

[63] Delmarva March 29, 2018 Answer at 4 (citing *Indicated RTO Owners,* 161 FERC ¶ 61,018 at P 14).

[64] *Id.* at 12 & n.39 (citing *NRG Power Mktg., LLC* v. *FERC,* 862 F.3d 108 (D.C. Cir. 2017) (*NRG*) (rejecting Commission orders transforming a rate scheme in a section 205 filing into an entirely new rate scheme of the Commission's making)).

[65] *Id.* at 4–6.

[66] *Id.* at 6–7.

[67] *Id.* at 8.

[68] *Id.* at 8 & n.28 (citing *Public Systems,* 709 F.2d at 85).

[69] *Id.* at 14.

[70] Delmarva notes that, for example, DEMEC raises questions about whether Delmarva's FAS 109 accounting factors in the distinctions between ''funded'' and ''unfunded'' assets and liabilities. *Id.* at 14 & n.46 (citing DEMEC March 16, 2018 Protest at 11–12).

[71] Delmarva notes that DEMEC raises various questions about whether Delmarva will properly calculate its Formula Rate, such as whether Delmarva's rate base calculations will properly reflect Account 190 and whether its rates will include various tax deductions from the Tax Cuts and Jobs Act. *Id.* at 15–16 & n.48 (citing DEMEC March 16, 2018 Protest at 14, 19–20).

[72] DEMEC April 13, 2018 Answer to the Answer at 4. In particular, Attachment 1 of Attachment H–3D of Delmarva's Formula Rate states: ''Less FASB 109 Above if not separately removed.''

[73] *Id.* at 6.

[74] *Id.* at 5–6.

[75] *Id.* at 7–8.

58. DEMEC states that, contrary to Delmarva's assumption, DEMEC's argument about double recovery of AFUDC Equity is not based on a claim that the request represents a permanent tax difference.[76] Rather, DEMEC explains that the AFUDC Equity adjustments results from the fact that the IRS does not allow depreciation expense associated with AFUDC Equity to be deducted on the tax return, while the Commission does permit recovery of this depreciation expense in transmission rates.[77] DEMEC states that Delmarva includes AFUDC Equity as a part of its rate base, and it recovers depreciation associated with the AFUDC Equity as well as a return on it with associated income taxes at the full statutory tax rate. DEMEC asserts that Delmarva's proposal would permit Delmarva to recover the depreciation expense in rates, which exceed depreciation expenses allowed by the IRS, and also recover the income taxes associated with this over-recovery of depreciation expenses.[78]

59. DEMEC also asserts that Delmarva is incorrect that single-issue rate making is applicable to its filing, because its filing is not limited to addressing ADIT timing differences in the current or future test years. DEMEC argues that any proposed change to this component of the Formula Rate retroactive to 2005 would require investigation of the justness and reasonableness of the provisions of the existing Formula Rate that Delmarva has not proposed to change.[79]

5. DEMEC Protest of Deficiency Letter Response

60. DEMEC reiterates its position that the 2006 Settlement contains no provision that supports Delmarva's proposed treatment of FAS 109 amounts, AFUDC equity, and excess/deficient deferrals amounts. DEMEC maintains that recovery of these amounts for prior periods would be contrary to the filed rate doctrine, and that Delmarva's claims pertaining to recovery in the ''next rate case'' are contrary to relevant Commission precedent and guidance.[80]

61. DEMEC also argues that Delmarva's Deficiency Response amplifies the unreasonableness of its AFUDC equity proposal, because the proposal implicates potential double-recovery or previously bargained-for compromises. DEMEC restates that Delmarva's proposal runs afoul of the rationales articulated by the court in *Public Systems,* and that *PPL, Duquesne,* and *VEPCO* are inapt. DEMEC notes that Delmarva failed to respond to Commission staff's question regarding the retail rate orders approving Delmarva's full tax normalization and any catchup provisions similar to the *South Georgia* catchup provision. DEMEC asserts that Delmarva's reliance on discovery protocols in the annual update process for post-2005 originations is insufficient as it is Delmarva's burden to prove the reasonableness of its section 205 application.[81]

62. Finally, DEMEC emphasizes that Delmarva did not clarify whether the ''weighted average expected service lives'' it references in its Deficiency Response are equal to the lives used by Delmarva for depreciating the assets and amortizing the Investment Tax Credits. DEMEC requests that the Commission require Delmarva to do so.[82]

6. Delmarva Answer to DEMEC Protest of Deficiency Response

63. Delmarva reiterates its arguments that the 2006 Settlement expressly recognizes the existence of the FAS 109 regulatory asset or liability.[83]

64. With respect to DEMEC's concern that the AFUDC equity component of Delmarva's filing amounts to double recovery or over recovery, Delmarva argues that as the Commission explained in *Ameren,* the Commission's guiding principle is that it limits the allowance charged to ratepayers to an amount equal to the costs the company incurs in serving them.[84] Delmarva argues there is no serious dispute that the AFUDC Equity amounts at issue here, even those that originated pre-2005, are real costs incurred by Delmarva in serving ratepayers and thus, Delmarva is entitled to recover those costs.[85]

65. In response to DEMEC's argument that there is something unclear about the amortization proposed in the filing, Delmarva argues its filing was clear.[86] Delmarva asserts that as explained in the response to Question 2(iii), Delmarva will amortize post-2005 amounts based on the remaining lives of the relevant assets. For pre-2005 assets, Delmarva argues it proposes an amortization based on the average remaining life of all of its transmission assets as of 2005–25 years, which it argues is consistent with the methodologies the Commission accepted in *PPL* and *Duquesne.*[87] Delmarva asserts that if questions arise about whether Delmarva has properly implemented the rates in any rate year, those questions can be raised as part of the annual rate update process.[88]

C. ACE Proceeding, Docket Nos. ER18–904–000 and ER18–904–001

1. Protests of Vineland and Rate Counsel

66. Vineland concurs with the ACE Formula Rate amendments to the extent that they provide a mechanism to refund to customers the excess ADIT created when the Tax Cuts and Jobs Act reduced the ACE corporate tax rate.[89]

67. However, Vineland objects to ACE's proposal to amend its Formula Rate to recover deficient ADIT predating the Tax Cuts and Jobs Act. Vineland argues that the proposals by ACE on: (1) Excess/Deficient Deferred Taxes; (2) AFUDC Equity; and (3) Flow-Through Items were specifically considered and rejected in the BGE case. Vineland argues the same logic that led the Commission to reject those proposals in BGE should prevail here.[90]

68. Vineland argues that ACE's proposed amortization period for refund of the excess ADIT related to the Tax Cuts and Jobs Act, set forth in Exhibit D–2 of ACE's Filing, is not well documented and Vineland seeks Commission review and approval of the amortization period proposed. Vineland notes that ACE proposes a 35-year amortization period which it states equates to the average remaining book life of the assets that were initially taxed. Vineland seeks Commission review and confirmation that the amortization period is properly related to the transmission plant giving rise to the refund of excess ADIT brought about by the Tax Cuts and Jobs Act.[91]

69. Rate Counsel argues that as the changes sought by ACE are substantively identical changes to those sought previously—and unsuccessfully—by BGE, the Comission should summarily reject them.[92] Rate Counsel disagrees that the precedent cited by ACE—*Duquesne, PPL, VEPCO* and *ITC*—is applicable. Rate Counsel

[76] *Id.* at 11 (citing Delmarva March 29, 2018 Answer at 14).

[77] *Id.;* DEMEC March 16, 2018 Protest at 18.

[78] DEMEC April 13, 2018 Answer to the Answer at 11.

[79] *Id.*

[80] DEMEC July 30, 2018 Protest of Deficiency Letter Response at 6.

[81] *Id.* at 10–11.

[82] *Id.* at 11.

[83] Delmarva August 13, 2018 Answer to DEMEC Protest of Deficiency Response at 5.

[84] *Id.* at 13 (citing *Midcontinent Indep. Syst. Operator,* 163 FERC ¶ 61,163, at P 63 (2018) (*Ameren*)).

[85] *Id.*

[86] *Id.* at 13–14.

[87] *Id.* at 14.

[88] *Id.*

[89] Vineland March 16, 2018 Protest at 1–2.

[90] *Id.* at 2.

[91] *Id.* at 5–6.

[92] Rate Counsel March 16, 2018 Protest at 4.

argues that the *ITC* proceeding related to a 2011 tax change that occurred four years prior to the filing in that case and the *VEPCO* proceeding related to a 2013 tax change that occurred three years prior to the filing in that case. Rate Counsel states that in contrast, while the identity of the events that have given rise to the changes ACE wishes to implement are not obvious from ACE's filing, it appears that ACE—much like its affiliate BGE, which the Commission condemned for seeking recoveries related to pre-1976 plant—is here seeking recoveries associated with items dating back to the 1970s. Similarly, Rate Counsel argues ACE's reliance on other Commission letter orders, such as the one issued in *Wisconsin Power & Light Co.,* do not justify approval here.[93]

70. Rate Counsel notes that FAS 109, established in 1992, required public utilities to make changes to their balance sheet to account for the proper recording of (i) changes in tax laws or tax rates in the period that the change is enacted and reflected in the utilities' deferred tax accounts, (ii) a deferred tax liability for the equity component of AFUDC depreciation expense, and (iii) a deferred tax liability for any unfunded tax benefits previously flowed through to ratepayers. Rate Counsel notes that in implementing FAS 109, the Chief Accountant advised that if a utility's billing determinations would be affected by adoption of FAS 109, then the utility must file with the proper rate regulatory authorities before implementing the change in tariff billings. Thus, Rate Counsel argues that contrary to ACE's request here, filings implementing FAS 109 changes for billing purposes were to be prospective—not retrospective.[94]

71. Rate Counsel next argues that ACE, like BGE, failed to comply with the requirement to make a filing within a reasonable period of time. Rate Counsel argues ACE has previously recorded all amortizations of the FAS 109 regulatory assets and liabilities on its books and records for the period 2005–2017. Rate Counsel argues ACE's claim that it is making this adjustment to reverse the prior accounting treatment of amortizing the FAS 109 assets and liabilities for 2005–2017 period to ''properly match the ratemaking'' is illogical.[95] Rate Counsel argues ACE's existing transmission formula rate template *already* appropriately reflects the removal (*i.e.,* exclusion) of FAS 109's current year balance from ADIT.[96] Rate Counsel argues ACE has already properly excluded FAS 109 balances for ratemaking purposes in prior year periods, and has also properly amortized the FAS 109 assets and liabilities each year for the 2005–2017 period.[97]

72. Rate Counsel argues the 2006 Settlement Agreement did not contemplate that ACE would defer these FAS 109 amounts and seek recovery in a subsequent rate case. Rather, in the 2006 Settlement Agreement, the settling parties agreed on a revenue formula that was accepted as just and reasonable, and which specifically excluded the recovery of FAS 109 ADIT and annual amortization amounts.[98] Rate Counsel asserts that ACE has offered no basis that would justify a unilateral amendment of the settled formula rate.[99]

73. Rate Counsel asserts ACE cannot leverage the tax law change into a basis for belated recovery of unrelated dollars. While Rate Counsel agrees that a mechanism should be added to the formula to account for the flow back of prospective Excess/Deficient Deferred Income Taxes associated with federal income tax and state income tax rate changes, especially in light of the recent significant reduction of the federal income tax rate, Rate Counsel argues that it is not appropriate to include amortization of Excess/Deficient Income Taxes from *prior* periods. Rate Counsel argues that in addition to dating back as much as *44 years,* many of these items appear to be temporary in nature and thereby create only temporary timing differences. Rate Counsel argues ACE has not provided a detailed description of each of the ''Other Flow Through Items,'' nor a detailed explanation supporting a special formula adjustment to accommodate them. Rate Counsel argues ACE has also not demonstrated that transmission customers benefited from the prior flow-through. Therefore, Rate Counsel argues ACE has not demonstrated that the transmission customers should now fund the ''deficiency'' in deferred income tax liabilities.[100]

74. Rate Counsel argues that ACE's claim that all FAS 109 items must flow through the formula is unfounded and asserts FAS 109 includes numerous items, each of which needs Commission approval. Rate Counsel argues that a new line item can be added in Account 283 to record the excess deferred taxes related to the federal income tax rate change.[101]

75. Rate Counsel argues ACE has not demonstrated that the ten-year amortization period is appropriate for transmission customers. Rate Counsel argues the use of such a lengthy amortization period may cause cross-generational cost allocation issues.[102]

2. Answer of ACE

76. ACE filed in its answer nearly identical responses to Delmarva's answer in response to protesters' arguments on the following three issues: (1) Single-issue rate treatment; (2) the allegation that recovery of FAS 109 amounts would violate the 2006 Settlement Agreement and would result in retroactive ratemaking; and (3) severing formula rate adjustments pertaining to the Tax Cuts and Jobs Act from other portions of ACE's proposal.

77. ACE argues that Vineland's suggestion—that ACE seek Commission approval for each and every FAS 109 amount as it arises—would be burdensome and extreme because FAS 109 amounts arise frequently, thus requiring multiple section 205 filings for every such expense. ACE states that the Commission has repeatedly recognized that formula recovery of FAS 109 amounts is just and reasonable.[103]

78. ACE asserts that Rate Counsel failed to cite precedent that precludes ACE from correcting accounting errors, such as ACE's reversal of amortizations of FAS 109 amounts. ACE instead argues that *Duquesne* and *PPL* support its proposal to correct these amortizations to align rate treatment of FAS 109 amounts, and therefore Rate Counsel's argument should be summarily rejected.[104]

79. Finally, ACE argues that various challenges raised by Rate Counsel regarding numerical values in the proposal are more appropriately raised within the annual formula rate update and challenge process. ACE states that the formula rate protocols provide a robust process for obtaining discovery on and challenging particular items included in the annual rate update, and therefore the Commission should reject Rate Counsel's arguments without prejudice to their right to raise those issues in that forum.[105]

3. Rate Counsel's Answer to the Answer

80. Rate Counsel argues that contrary to ACE's claims, the ACE accounting

[93] *Id.* at 4.
[94] *Id.* at 5.
[95] *Id.* at 6.
[96] *Id.* at 6–7.
[97] *Id.* at 7.
[98] *Id.*
[99] *Id.* at 9.
[100] *Id.* at 11–13.
[101] *Id.* at 13.
[102] *Id.* at 14.
[103] ACE March 29, 2018 Answer at 12–13.
[104] *Id.* at 13–14.
[105] *Id.* at 15.

department did not make an error, but instead correctly amortized the FAS 109 amounts in ACE's books and records from 2006 through 2016, consistent with Generally Accepted Accounting Principles (GAAP).[106] Further, Rate Counsel argues that if ACE's intention was to defer FAS 109 amortizations from 2006–2016, then ACE should have requested authorization from the Commission to implement such accounting treatment.[107]

81. Rate Counsel also argues that contrary to ACE's claims, it is not asking the Commission to make an impermissible retroactive change to ACE's rates. To this point, Rate Counsel argues that the FAS 109 current balances, after reflecting all prior period amortizations and those amortizations that should have been expensed annually, are the appropriate basis for any current or future amortizations and only after the Commission approves each FAS 109 component.[108]

D. PEPCO Proceeding, Docket Nos. ER18–905–000 and ER18–905–001

1. Protest of SMECO

82. SMECO asserts that PEPCO's proposal to recover FAS 109 amounts from prior periods is not just and reasonable for four reasons. First, SMECO argues that PEPCO's proposal violates the filed rate doctrine and the rule against retroactive ratemaking. SMECO reasons that the 2006 Settlement Agreement adopted a formula rate template that specifically excluded these amounts and that PEPCO did not expressly reserve a right to defer these amounts for future recovery.[109] SMECO also contends that, contrary to PEPCO's assertion, the 2006 Settlement Agreement constituted the ''next rate case'' following Order No. 144.[110] Alternatively SMECO argues that to the extent PEPCO wanted to attempt to recover these FAS 109 amounts, it should have done so immediately after the rate moratorium (which resulted from settlement) that ended on June 1, 2009. SMECO notes that accepting PEPCO's proposal now would also contradict precedent set in the November 16 Order involving BGE.[111]

83. Secondly, SMECO notes that, for accounting purposes, PEPCO has already been amortizing FAS 109 regulatory assets and liabilities for the 2005–2017 period. SMECO states that PEPCO's proposal to reverse all these amortizations ''to properly match the ratemaking'' is illogical because PEPCO's formula rate already appropriately reflects the exclusion of FAS 109 current year balances from ADIT.[112]

84. Thirdly, SMECO argues that for PEPCO to properly seek rate recovery of prior FAS 109 amounts for AFUDC Equity Origination/Depreciation, it would have needed to create a deferred regulatory asset on its books to record the annual AFUDC Equity depreciation amount, which it did not. SMECO contends that PEPCO is effectively attempting to revise its books to create these deferred regulatory assets retrospectively.[113]

85. Finally, SMECO agrees that a mechanism in the formula rate is necessary to flow back Excess/Deficient Deferred Taxes associated with federal and state income tax changes. However, SMECO claims that PEPCO has not adequately supported its proposed amortization and that it is inappropriate to include amortization of Excess/Deficient Income Taxes from prior periods.[114]

86. SMECO alleges that many of the ''Other Flow Through Items'' appear to be temporary in nature, and that PEPCO has failed to sufficiently support its basis for making a special adjustment to income taxes in the formula rate for these items. SMECO maintains that, as with the other prior-period FAS 109 amounts, it is inappropriate for PEPCO to recover these amounts from prior periods in its current and future formula rates, and that PEPCO could have dealt with these items in the 2006 Settlement Agreement.[115]

87. SMECO states that the entire FAS 109 amounts (including deferred tax amounts from prior periods) do not need to be included in rates in order to effectuate the Tax Cuts and Jobs Act. SMECO argues that PEPCO can instead create a new line item in Account 283 to implement the excess deferred taxes related to the adjustment of the federal income tax rate, or that the regulatory liability balance for the excess deferred tax reserve recorded in Account 254 can be included as an adjustment to rate base.[116]

88. SMECO also argues that PEPCO has not supported its claim that the Flow-Through Items regulatory asset is linked to assets that are still in service. SMECO further argues that the Commission should reject PEPCO's attempt to shift the burden of proof regarding the reasonableness of its proposal to transmission customers via the formula rate protocols.[117] SMECO also notes that PEPCO does not address the overall tax rate change from 35 percent to 21 percent in its filing.[118]

89. SMECO argues that PEPCO has not sufficiently supported the amortization periods it proposes to apply for Excess Deferred Taxes Decrease/(Increase) to deferred tax assets for Protected Property Rate Base, Non-Protected Property Rate Base, Non-Protected Non-Property Rate Base, and Non-Protected Non-Rate Base balances. SMECO also specifically disputes PEPCO's proposed 10-year amortization period for Non-Protected Non-Property and Non-Protected Non-Rate Base items, alleging that this may cause intergenerational cost allocation issues, wherein the customers that contributed to the excess deferred income taxes may not necessarily be the same customers that receive the flow back of excess deferred income taxes.[119]

2. Comments of MD People's Counsel and DC People's Counsel

90. MD People's Counsel filed comments in response to PEPCO's filing that were identical to the comments it filed in response to Delmarva's filing.[120]

91. DC People's Counsel agrees with PEPCO's proposal to apply the average rate assumption method in calculating excess ADIT on Protected Property Rate Base balances, but requests that the Commission utilize its discretion to institute a shorter amortization period for excess ADIT on Non-Protected Rate Base and Non-Rate Base balances. DC People's Counsel specifically requests a 10-year amortization period for excess ADIT on Non-Protected Property Rate Base balances, and a 5-year amortization period for excess ADIT on Non-Protected Non-Property Rate Base and Non-Protected Non-Rate Base balances.[121]

92. DC People's Counsel argues that amending the formula rate to recover historical FAS 109 amounts and provide for automatic pass through of ongoing FAS 109 amounts is unnecessary to return tax savings to ratepayers resulting from the Tax Cuts and Jobs Act. DC People's Counsel notes that although PEPCO argues the instant case is the

[106] Rate Counsel April 10, 2018 Answer to the Answer at 3.

[107] *Id.* at 3–4.

[108] *Id.* at 4.

[109] SMECO March 16, 2018 Protest at 3–4.

[110] *Id.* at 5.

[111] *Id.* at 6–7.

[112] *Id.* at 8.

[113] *Id.* at 9.

[114] *Id.* at 10–11.

[115] *Id.* at 11–12.

[116] *Id.* at 12–13.

[117] *Id.* at 13.

[118] *Id.* at 14.

[119] *Id.* at 14–15.

[120] MD People's Counsel March 16, 2018 Comments to PEPCO at 1, 3–7.

[121] DC People's Counsel March 16, 2018 Comments to PEPCO at 5–6.

''next rate case'' following the 2006 Settlement Agreement, the requested 60-day schedule is insufficient to thoroughly explore the ramifications of PEPCO's proposal.[122] DC People's Counsel also states that it would be unwise to approve PEPCO's proposal until the Commission completes its review of ADIT issues implicated by the Tax Cuts and Jobs Act under Docket No. RM18–12–000.[123]

93. DC People's Counsel argues that PEPCO's proposal does not meet the Commission's criteria for single-issue treatment of ratemaking. DC People's Counsel states that the Commission has limited the use of single-issue treatment to ''ADIT treatment in formula rates when such revisions are only considered mere differences in timing,'' and that PEPCO's proposal represents a significant departure from previous Commission-approved accounting methods. DC People's Counsel further argues that the proposed treatment of FAS 109 amounts will likely result in changes in other component costs that warrant the Commission's full understanding, which is not possible in a single-issue rate case.[124]

3. Answer of PEPCO

94. PEPCO filed in its answer nearly identical responses to Delmarva's responses to protesters' arguments on the following three issues: (1) Single-issue rate treatment; (2) the allegation that recovery of FAS 109 amounts would violate the 2006 Settlement Agreement and would result in retroactive ratemaking; and (3) severing formula rate adjustments pertaining to the Tax Cuts and Jobs Act from other portions of ACE's proposal.

95. PEPCO asserts that SMECO failed to cite precedent that precludes PEPCO from correcting accounting errors, such as PEPCO's reversal of amortizations of FAS 109 amounts. PEPCO instead argues that *Duquesne* and *PPL* support its proposal to correct these amortizations to align rate treatment of FAS 109 amounts, and therefore SMECO's argument should be summarily rejected.[125]

96. Finally, PEPCO argues that various challenges raised by SMECO regarding numerical values in the proposal are more appropriately raised within the annual formula rate update and challenge process. PEPCO states that the formula rate protocols provide a robust process for obtaining discovery on and challenging particular items included in the annual rate update, and therefore the Commission should reject SMECO's arguments without prejudice to their right to raise those issues in that forum.[126]

4. SMECO's Answer to the Answer

97. SMECO argues that there is no provision in Attachment 1 of Attachment H–9A or any other portion of the settlement agreement or Formula Rate established as part of the 2006 Settlement that preserves PEPCO's ability to collect FAS 109 deferred tax amounts at a future date. Further, SMECO argues that Section 6.11 of the 2006 Settlement makes clear that the Settling Parties are not to rely on any term not expressly set forth in the Settlement by stating, ''none of the Settling Parties has relied upon any representation, express or implied, not contained in this Settlement.''[127] Additionally, SMECO argues that until PEPCO revised its formula rate protocols effective December 3, 2015, the formula rate protocols provided that PEPCO's annual updates would become final and no longer subject to change or challenge by any entity on the latter of the passage of the challenge period or final FERC order on the annual update, subject to judicial review.[128]

98. SMECO argues that PEPCO misstates the applicability of Order No. 144 and associated cases and Commission guidance to its filing in this proceeding. SMECO further argues that even if PEPCO's erroneous interpretation of the 2006 Settlement and the Order No. 144 precedent is considered in a light most favorable to PEPCO, recovering deferred tax liabilities thirteen years after they could have been captured in the Formula Rate since its implementation on 2005, is not a reasonable period.[129]

99. SMECO argues that it is not seeking to prevent PEPCO from recovering prior FAS 109 amounts due to ''erroneous accounting'' that has now been corrected. SMECO argues that while PEPCO describes it as an ''accounting error,'' PEPCO's amortization of FAS 109 amounts in fact reflects that PEPCO's accounting department recognized that PEPCO had not sought or received Commission approval for the deferral of FAS 109 amounts and must amortize the FAS 109 amounts as required under GAAP.[130]

100. SMECO argues PEPCO does not meet its FPA section 205 burden of proof in this proceeding when it argues that the issues SMECO has raised in its protest should be deferred to the annual update process. SMECO asserts that the issues it has raised are pertinent to the justness and reasonableness of PEPCO's Formula Rate revisions and should be addressed in the instant proceeding.[131]

5. DC People's Counsel Comments on Deficiency Letter Response

101. In its response to PEPCO's response to the Deficiency Letter, DC People's Counsel reiterates its opposition to PEPCO's proposal to recover FAS 109 deferred tax assets.[132]

102. DC People's Counsel states that PEPCO's current transmission Formula Rate plan does not include FAS 109 deferred tax assets. However, PEPCO's application proposes a modification to the Formula Rate plan that would include historical FAS 109 deferred tax assets in the Formula Rate plan dating back to December 31, 2004.[133] DC People's Counsel expresses concern regarding PEPCO's request to modify its Formula Rate plan to now include these historical FAS 109 deferred asset balances going back to December 31, 2004 and to provide for automatic pass through in formula-based transmission rates of similar deferred assets.[134]

103. DC People's Counsel concludes that the explanations provided in PEPCO's response are insufficient to justify inclusion of such FAS 109 deferred asset balances in PEPCO's revised Formula Rate plan at this time. Given PEPCO's history of ''black box'' settlements and the lengthy period (from mid-2005 through 2017) over which PEPCO has accumulated such balances, DC People's Counsel recommends excluding the FAS 109 deferred asset amortizations from the adjustment to PEPCO's transmission rates at this time, to allow for detailed scrutiny and analysis of those balances in a complete rate case.[135]

6. PEPCO Answer to DC People's Counsel Comments on Deficiency Response

104. PEPCO argues DC People's Counsel has not alleged, much less supported, an argument that formula elements outside of the proposed FAS 109 modifications are incorrect and that there is no basis for ordering a complete rate case that goes beyond the issues

[122] *Id.* at 7–8.

[123] *Id.* at 9.

[124] *Id.* at 9–10.

[125] PEPCO March 29, 2018 Answer at 13–14.

[126] *Id.* at 14.

[127] SMECO April 13, 2018 Answer to Answer at 3–4.

[128] *Id.* at 4.

[129] *Id.* at 6.

[130] *Id* at 7–8.

[131] *Id.* at 8.

[132] DC People's Counsel July 30, 2018 Comments on Deficiency Letter Response at 1–2.

[133] *Id.* at 5.

[134] *Id.* at 6.

[135] *Id.* at 7.

raised in PEPCO's filing.[136] PEPCO argues that the Commission accepted a single issue filing considering amendments to a formula rate to provide for rate recovery of FAS 109 amounts in May 2018 in *Ameren.*[137]

105. PEPCO argues the Commission's policy and precedent permitting rate flow through of FAS 109 amounts is clear and argues the Commission's recent ruling in its *Pipeline Tax Final Rule* describes and summarizes the Commission's relevant tax ratemaking policies, and makes clear that PEPCO's filing is well founded.[138] PEPCO argues the findings in the *Pipeline Tax Final Rule* concerning FAS 109 adjustments are directly applicable in this proceeding, because PEPCO's filing relies on the exact same policies and precedent. PEPCO argues that it is subject to the Commission's accounting rules that require accrual of FAS 109 amounts to a regulatory asset or liability, and the precedent providing for later rate pass through.[139]

106. With respect to DC People's Counsel's argument to accept certain aspects of PEPCO's filing, while rejecting others, PEPCO argues that neither the FPA nor Commission precedent permit the Commission to somehow sever the adjustments related to the Tax Cuts and Jobs Act from the other portion of the FAS 109 modifications in the filing. PEPCO argues that in doing so, it would transform the filing from a fair and evenhanded amendment intended to have taxes flowing through rates match actual tax liabilities over time into an entirely different rate scheme in which tax liabilities of the utility would not be adequately reflected in rates. Further, PEPCO argues there is no basis for rejecting, delaying, or otherwise preventing the effectiveness of the proposed FAS 109 amendments.[140]

VI. Discussion

A. Procedural Matters

107. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2018), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to the specific proceeding in which they intervened.

108. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.213(a)(2) (2018), prohibits an answer to a protest and an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers to the protests and the answers to the answers in the specific proceeding in which they were filed because they have provided information that assisted us in the decision-making process.

B. Substantive Matters

109. We find that Exelon Companies have not shown that their proposed Formula Rates provisions allowing for the recovery of previously incurred income tax amounts are just and reasonable and therefore we reject their filings. While we do not find Exelon Companies' proposal to refund deferred amounts related to the recent Tax Cuts and Jobs Act or its proposal to recover or return deferred income tax amounts on an ongoing basis to be unjust and unreasonable, we reject Exelon Companies' proposal as a whole, in recognition of Exelon Companies' statements that accepting only certain aspects of its proposal would ''transform this filing into an entirely new rate scheme.'' [141]

110. As described below, our rejection of the Exelon Companies' filings is without prejudice to Exelon Companies submitting new filings with a mechanism to refund or recover, as appropriate, deferred income tax excesses and deficiencies related to the recent Tax Cuts and Jobs Act and any future income tax changes, any new originations of past income tax changes, and taxes on AFUDC Equity associated with current and future years' depreciation expense.[142] As described below, we also announce a limited compliance period under Order No. 144 for other utilities to make section 205 filings to recover past ADIT in certain circumstances.

1. Timing of Exelon Companies Filings

111. As the Commission found in the November 16 Order involving BGE, we find that the deferred amounts Exelon Companies seek to recover here should have been captured when Exelon Companies' Formula Rates were implemented in 2005 (for Delmarva, ACE and PEPCO) and 2007 (for ComEd).[143] While Order No. 144 put ratepayers on notice that companies may make adjustments for recovery of certain tax deficiencies, the Commission required such adjustments to be made for the purpose of transitioning to full normalization in ''the applicant's next rate case following the applicability of the rule.'' [144] Exelon Companies' initial Formula Rate filings included line items that expressly excluded recovery of these items in their Formula Rates.[145] Exelon Companies thus failed to comply with the requirement in Order No. 144 that recovery should be addressed in the ''next rate case'' at the time they initially filed their Formula Rates.

112. Exelon Companies insist that they did not run afoul of this guidance because their Formula Rate filings in 2005 (for Delmarva, ACE and PEPCO) and 2007 (for ComEd) resulted in settlements [146] that expressly excluded FAS 109 amounts from current rates,[147] and the settlement for Delmarva, ACE and PEPCO included a rate moratorium preventing them from filing a further rate case until 2009.[148] While it is true that the Formula Rate proceedings in 2005 (for Delmarva, ACE and PEPCO) and 2007 (for ComEd) were resolved via settlements that expressly excluded FAS 109 amounts, we disagree with Exelon Companies' characterization of this exclusion as ''leaving the issue to be

[136] PEPCO August 13, 2016 Answer to DC People's Counsel Comments on Deficiency Letter Response at 5.

[137] *Id.* at 5 (citing *Ameren,* 163 FERC ¶ 61,163).

[138] *Id.* at 5–6 (citing *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate,* Order No. 849, FERC Stats. & Regs. ¶ 31,404 2018)).

[139] *Id.* at 7.

[140] *Id.* at 8.

[141] *E.g.,* ComEd Transmittal at n.8.

[142] Further, our action here is not intended to prejudge future action by the Commission in the Notice of Inquiry concerning the Tax Cuts and Jobs Act.

[143] November 16 Order, 161 FERC ¶ 61,163 at P 18.

[144] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,519. This requirement is reflected in the Commission's regulations regarding tax normalization, which state that, if the public utility has not provided deferred taxes in the same amount that would have accrued had tax normalization been applied for transactions occurring any time before the test period, or if tax rate changes cause the accumulated provision for deferred income to become deficient or in excess, the public utility is required to compute the income tax component in its cost of service by making provision for any excess or deficiency in deferred taxes. 18 CFR 35.24(c) (2018).

[145] For ComEd, see Formula Rate Filing, Docket No. ER07–583–000, Appendix A, Attachment H–13, at line 40 (filed Mar. 1, 2007) (line item for ''ADIT *net of FASB* 106 and *109*'') (emphasis added). For ACE, Delmarva and PEPCO, see Formula Rate Filing, Docket No. ER05–515–000, Appendix A, Attachments H–1, H–3 and H–9, at line 40 (filed Jan. 31, 2005) (line item for ''ADIT *net of FASB* 106 and *109*'') (emphasis added).

[146] Order No. 144 states that ''[t]he rule, of course, leaves undisturbed the ability of the parties to reach a settlement on any of the issues covered by the rule.'' Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,519.

[147] For ComEd, see Offer of Settlement, Docket No. ER07–583–000, (filed October 5, 2007) (Attachment H–13, at line 40 (line item for ''ADIT *net of FASB* 106 and *109*'') (emphasis added) and Attachment 1—ADIT Worksheet, which states: ''Less FASB 109 Above if not separately removed''). For ACE, Delmarva and PEPCO, see Offer of Settlement, Docket No. ER05–515–000, (filed March 20, 2006) (Attachments H–1, H–3 and H–9, at line 40 (line item for ''ADIT *net of FASB* 106 and *109*'') (emphasis added) and Attachment 1—ADIT Worksheets, which state: ''Less FASB 109 Above if not separately removed'').

[148] *E.g.,* Delmarva Transmittal at 19.

addressed in some later proceeding.'' [149] Exelon Companies argue that interpreting the settlements to require them to eliminate or reduce their FAS 109 regulatory assets, instead of deferring recovery for the future, reads extraneous provisions into the settlements.[150] However, the settlements did not expressly reserve deferred income tax issues, as Exelon Companies contend; rather, the settlements were silent on this point. The Exelon Companies' settlements were thus not analogous to the *Stingray* settlement, which expressly provided a compromise level of adjustment to deferred tax accounts.[151] Accordingly, in finding that the Exelon Companies' 2005 and 2007 Formula Rate cases constituted the ''next rate case'' for purposes of Order No. 144, we are not disregarding the settlement, but rather interpreting the references to line items being ''net of'' or ''less'' FAS 109 amounts to mean that the Exelon Companies did not intend to pursue recovery of these amounts, whether at the time of the settlement or 10 years later. Moreover, because Exelon Companies did not request recovery of FAS 109 amounts in their initial filings of their Formula Rate cases, Exelon Companies could not have deferred recovery of FAS 109 amounts for the next rate case unless they expressly addressed this issue in the settlements of their Formula Rates.

113. In addition, Exelon Companies failed to comply with the directive in Order No. 144 to begin the process of adjusting its deferred tax deficiencies and excesses ''so that, within a reasonable period of time to be determined on a case-by-case basis, [it would] be operating under a full normalization policy.'' [152] According to Exelon Companies, even after its 2005 and 2007 Formula Rate proceedings were resolved by settlement, and after the rate moratorium established in the settlements for Delmarva, ACE and PEPCO ended in 2009, this is the first rate case since to address these issues.[153] Exelon Companies still do not explain why they waited an additional nine and a half years to make their February 23, 2018 filings. And Exelon Companies' apparent conclusion that they could hold these amounts in reserve indefinitely conflicts with the language of Order No. 144. Order No. 144 also established that rate applicants must ''begin the process of making up deficiencies in or eliminating excesses in their deferred tax account reserves so that, *within a reasonable period of time to be determined on a case-by-case basis,* they will be operating under a full normalization policy.'' [154] We find that the ''reasonable period of time'' language was intended to work in conjunction with the ''next rate case'' requirement, not as an alternative. In other words, requiring applicants to begin the process of making up deficiencies or returning excesses so as to be operating under a full normalization policy ''within a reasonable period of time'' does not negate the requirement that applicants must seek recovery in their next rate case. As explained above, Exelon Companies failed to file for recovery in its next rate case as required by Order No. 144 or reserve the issue for future consideration through settlement. Having failed to meet that requirement, they cannot now claim that their filing would provide for recovery within a ''reasonable period of time.''

114. We further disagree with Exelon Companies' assertion that Order No. 144 did not impose any requirement on utilities to make a rate filing. Exelon Companies suggest that by using the term ''rate applicant,'' defined in the regulation text as a utility ''that makes a rate filing,'' the Commission was signaling in Order No. 144 that utilities need only begin the process of recovering deficiencies or refunding excesses *after* they filed a rate case, without imposing any requirements as to when that rate case must be filed.[155] Exelon Companies' reading is inconsistent with the intent of the quoted sentence, which requires rate applicants to begin the process ''so that, within a reasonable period of time to be determined on a case-by-case basis, they will be operating under a full normalization policy.'' [156] If, as the sentence suggests, the goal was for utilities to begin operating under a full normalization policy within a reasonable time, interpreting this ''reasonable period of time'' requirement to be triggered only after a rate case is filed with no parameters as to when the rate case must be filed defeats this purpose. Additionally, while Exelon Companies stress that Order No. 144 did not actually direct utilities to make a rate filing,[157] the Commission directed utilities to ''begin the process'' of making up deficiencies or eliminating excesses, and required a rate applicant to compute the income tax component in its cost of service by making provision for any excess or deficiency in its deferred tax reserves resulting both from the prior flow through treatment of timing differences and from tax rate changes, which would require a rate filing.[158] In sum, while the language in Order No. 144 recognizes that the reasonable timing for implementing tax normalization may vary and thus provides some flexibility, Exelon Companies' reading would render the timing purely discretionary.

115. Exelon Companies further assert that subsequent cases interpreting Order No. 144 have established that recovery in a ''reasonable period of time'' means that deferred tax amounts should be flowed back ''over the remaining life of the property that generated the deferred tax reserve.'' [159] However, we disagree with Exelon Companies' position that the Commission's use of a ''reasonable period of time'' referred solely to the time period to amortize the tax deficiencies.[160] Rather, the Commission expressed the intention in Order No. 144 that utilities take the necessary steps to ensure that they would be operating under a full normalization policy within a reasonable period of time, that to be operating under full normalization, the method to be used should be a Commission-approved method, and that provision for such differences be included in the income tax component of cost of service. While the choice of normalization method is

[149] *E.g.,* ComEd Transmittal at 35.

[150] *Id.* at 35–36.

[151] *Id.* at 34–35.

[152] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560.

[153] ComEd Transmittal at 39; Delmarva Transmittal at 34–35; ACE Transmittal at 33; PEPCO Transmittal at 35.

[154] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560 (emphasis added).

[155] ComEd Transmittal at 38; Delmarva Transmittal at 33; ACE Transmittal at 32; PEPCO Transmittal at 33.

[156] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560.

[157] ComEd Transmittal at 37–38; Delmarva Transmittal at 33; ACE Transmittal at 32; PEPCO Transmittal at 33.

[158] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560.

[159] ComEd Transmittal at 39; Delmarva Transmittal at 34; ACE Transmittal at 32–33; PEPCO Transmittal at 34 (citing Opinion No. 345, 50 FERC at 62,148, and *Nat. Gas Pipeline of America,* 13 FERC ¶ 61,266).

[160] In the proceedings underlying Opinion No. 345, intervenors used the term ''reasonable period of time'' to question whether the speed at which deficiencies would be flowed back to customers using the Average Rate Assumption Method (ARA Method) would comply with the policy expressed in Order No. 144. *See* Opinion No. 345, 50 FERC at 62,148. The Commission found that it was reasonable to flow back the two percent of deferred taxes related to timing differences using the ARA Method (required under the Tax Reform Act of 1986 for the other amounts), because the ARA Method provided a reasonable way to flow back deferred amounts ''over the remaining life of the assets that generated the deferred taxes'' and because the impact on customers would be so minor. *Id.* at 62,149. The Commission did not comment on intervenors' characterization of the term ''reasonable period of time'' nor apply Order No. 144 in reaching this result.

certainly relevant to this objective,[161] so is the timely proposal of provisions to recover deficiencies and excesses of deferred income tax (including the proposed choice of normalization method) to be adjudicated in the companies' next rate case. In other words, requiring applicants to select normalization methods that will ensure a timely transition to full normalization would be meaningless if the applicants can defer filing those proposed methods over the course of several rate cases.

116. In the November 16 Order, the Commission held that ''[c]ontrary to BGE's assertions, . . . utilities do not have unfettered discretion to defer these [deferred] tax amounts on their books for decades without timely seeking regulatory approval to collect them.'' [162] Exelon Companies take umbrage to the suggestion that they are seeking to recover decades-old amounts.[163] As Exelon Companies assert, deferred income taxes necessarily reflect a timing difference in the recognition of current income tax effects on the tax return and recognition on the books in future periods. However, as Exelon Companies accede, these items were amortized and recovery of these items was included in rates through black box settlements through 2005 (for Delmarva, ACE and PEPCO) and 2007 (for ComEd), then expressly excluded by Exelon Companies until their February 23, 2018 filings, more than a decade later. In other words, our concern is not that deferred income taxes are, by definition, collected over a period of time, but that the Exelon Companies are now seeking to recover amounts that should have been recovered between 2005 or 2007 and 2018.

117. In the November 16 Order, the Commission cited *Stingray* [164] for the proposition that recording a deferred tax liability does not guarantee that the utility will be able to recover this amount, as express approval is needed from the Commission.[165] Exelon Companies state that the Commission recognized in *Stingray* that there could be remaining unamortized amounts that were properly recoverable in rates on an ongoing basis in the years after the settlement.[166] Exelon Companies claim that they similarly assumed that an amortized portion of the FAS 109 regulatory asset was recovered in rates prior to 2005 (for Delmarva, ACE and PEPCO) and 2007 (for ComEd), and has limited their filings to seeking recovery of remaining balances and new accruals as of 2005 and 2007 respectively.[167] As we recognized in *Stingray,* recovery of remaining unamortized balances of regulatory deferrals is permissible on an ongoing basis, provided that the utility properly addresses the manner of recovery. Exelon Companies present no arguments in their applications that have persuaded us that deferred income tax amounts were reserved for future collection.

2. Matching

118. As the Commission explained in Order No. 144 [168] and in the November 16 Order,[169] the primary rationale for tax normalization is matching the costs of plant (*i.e.,* tax benefits from depreciation expense) to the periods to which they are allocated in rates. To operate properly, ''tax normalization allocates the tax benefits of an expense to the same time periods that the expense itself is allocated.'' [170] The Commission found in Order No. 144 that the properly applied tax normalization method was more equitable than the flow-through method, which, through its inequitable allocation of tax costs over time, distorted the Commission's pricing policies.[171]

119. In the cases before us, Exelon Companies argue that, in the November 16 Order, the Commission ''suggested'' that BGE's filing violated the Commission's matching policy because it sought recovery of amounts long after the underlying assets have been retired or have stopped being depreciated.[172] They contend that, like BGE, they meet the matching test because the filings are tied to recovery over the remaining life of appropriately chosen assets.[173] They conclude there is no basis for concern that ''matching'' of costs and asset lives has somehow been violated.[174]

120. In the November 16 Order, the Commission made a finding that ''[b]ecause BGE did not address the tax deficiency in a reasonable time, its proposal no longer has the requisite matching of the amortization period with the relevant transmission assets.'' Thus, the Commission found that it was ''not appropriate for BGE to propose, at this late date, a mechanism to recover years of accumulated deferred tax liability amounts.'' [175]

The Commission found it troublesome to allow recovery of these amounts for plant that was either fully depreciated or retired by the time BGE submitted its filing.[176]

121. Exelon Companies argue that their instant proposals, and BGE's proposal in Docket No. ER17–528, are all consistent with the Commission's matching policy. Exelon Companies' arguments, however, mischaracterize the Commission's matching policy. The Commission's matching policy does not, as suggested, hinge on whether the regulatory assets are ''linked to assets that are still in service.'' Exelon Companies' basis for contending that their proposals do not violate matching principles is that their use of the industry standard PowerTax software verifies that the Flow-Through Items regulatory asset is linked to assets that are still in service.[177] This ignores, however, that assets often can and do remain in service after the amortization period has expired and the assets are fully depreciated. This was an important factor in the Commission's findings in the November 16 Order that Exelon Companies' arguments ignore.

122. For example, Exelon Companies propose to recover the Flow-Through Items over the remaining life of the assets in place at the time they implemented their Formula Rates (*i.e.,* in 2005 or 2007). However, they have failed to show that these assets have not been fully depreciated and that they are still in service. The correct time period for recovery of the tax benefits from the depreciation expenses for these assets was over the remaining life of the assets in place at the time the switch to full normalization occurred (*i.e.,* in the 1970s). The Commission has never approved such a re-amortization period as proposed by the Exelon Companies for the regulatory assets at issue here, and nothing presented here convinces

[161] *See* Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560 (''Since the appropriateness of any method to accomplish the objective of full normalization at current tax rates has not been analyzed by the Commission on a generic basis, the Commission is, at this time, requiring resolution of this problem on a case-by-case basis.'').

[162] November 16 Order, 161 FERC ¶ 61,163 at P 19.

[163] ComEd Transmittal at 34–35; Delmarva Transmittal at 30; ACE Transmittal at 28–29; PEPCO Transmittal at 30.

[164] *Stingray,* 50 FERC ¶ 61,159.

[165] November 16 Order, 161 FERC ¶ 61,163 at P 19.

[166] ComEd Transmittal at 34–35; Delmarva Transmittal at 30; ACE Transmittal at 29–30; and PEPCO Transmittal at 30.

[167] *Id.*

[168] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,522.

[169] November 16 Order, 161 FERC ¶ 61,163 at n.30.

[170] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,522.

[171] *Id.*

[172] ComEd Transmittal at 40 & n.85 (citing November 16 Order, 161 FERC Stats. & Regs. ¶ 61,163 at P 20).

[173] *Id.* at 40.

[174] *Id.* at 41.

[175] November 16 Order, 161 FERC ¶ 61,163 at P 21.

[176] *Id.* P 20.

[177] *Id.*

us that this would be appropriate. Further, with regard to AFUDC Equity, the Exelon Companies propose to develop new *South Georgia* tax provisions for each year's new AFUDC Equity origination and adjust the amortization for any retirements or changes in depreciation rates. However, *South Georgia* catch-up provisions are not supposed to change unless the tax rates change.

123. Exelon Companies also propose to recover accumulated amounts associated with AFUDC Equity that has already been depreciated.[178] However, to ensure consistency with the matching principle, only the additional taxes associated with the relevant year's depreciation of AFUDC Equity are eligible for recovery.[179]

3. Prior Precedent

124. We find unpersuasive the arguments by Exelon Companies that recovery of the amounts from 2005 or 2007 and going forward is consistent with Order No. 144, FAS 109 and the 1993 FAS 109 Guidance Letter, the 2014 Staff Guidance on Formula Rate Updates, and the orders in *PPL, Duquesne, VEPCO,* and *ITC.*

125. In support of their argument, Exelon Companies briefly discuss each of these cases. They state that, in *PPL,* four years had elapsed since PPL had implemented its formula rate, and the entire regulatory asset amount, as of the date the formula rate was implemented, was authorized for recovery. In *Duquesne,* they state that seven years had elapsed since its formula rate was filed, and the utility was similarly authorized to recover the amount as of the date of its formula rate. Regarding *ITC* and *VEPCO,* Exelon Companies state that these cases similarly involved a formulaic mechanism for recovery of an amortized amount, each year, of transmission-related FAS 109 amounts up through the date in which each year's rates are calculated. Unlike *PPL* and *Duquesne,* Exelon Companies state that the adjustments in *ITC* and *VEPCO* also included new originating FAS 109 amounts that had been recorded after their formula rates were put in place. Taken together, Exelon Companies argue that these proceedings make it clear that formulaic recovery of FAS 109 amounts from prior to, and after, implementation of the formula rate is appropriate, which, Exelon Companies argue, is exactly what they propose here.

126. In addition, while conceding that the *PPL, Duquesne,* and *VEPCO* orders were delegated letter orders, Exelon Companies point out that *ITC* was not a delegated letter order and argues the delegated orders should be given weight as they are consistent with *ITC.*[180] These same arguments were also raised on rehearing in Docket No. ER17–528–002. Consistent with the November 16 Order and rehearing order being issued concurrently in that proceeding, we disagree with the Exelon Companies for the reasons stated in the November 16 Order, the rehearing order and reasons discussed below. As we stated in the November 16 Order, the records in the *ITC* and *VEPCO* proceedings ''do not reflect that either VEPCO or ITC requested a *South Georgia* catch-up provision to recover prior period accumulated amounts related to AFUDC Equity.'' [181]

127. First, we note that three of the orders relied on by Exelon Companies are delegated letter orders, which do not establish binding precedent on the Commission.[182] Nor are we convinced that the Commission's finding in *ITC* provides support for Exelon Companies' proposals. While *ITC* did involve a request to recover AFUDC Equity deficiencies, the record in this case does not support BGE's claim that the recovery granted in this proceeding included deferred amounts. *ITC* did not directly address this issue, merely finding that ''[t]he proposed Attachment O revisions and related depreciation rates provide for a more accurate annual revenue requirement for the ITC Companies.'' [183]

128. Exelon Companies also contend that, while *PPL, Duquesne, ITC* and *VEPCO* did not expressly address AFUDC Equity, the catchup provisions in these cases were calculated based on their entire FAS 109 balances and recovery provisions would have included the cumulative AFUDC Equity amounts among other things. The implementation of FAS 109 standards for regulatory purposes should be revenue neutral because the regulatory assets and regulatory liabilities are offsetting book keeping entries. In *Idaho Power Co.,*[184] the Commission summarily removed the FAS 109 amounts from rate base because the proposed amounts in rate base were not revenue neutral and did not result in equal and offsetting changes to total assets and liabilities. We also noted that accumulated FAS 109 amounts only relate to future cash flows, which are not appropriately included in rate base. However, to the extent that *PPL* and *Duquesne* did accept offsetting amounts of FAS 109 regulatory assets and liabilities in *South Georgia* calculations for transitions from the flow-through practices of the Pennsylvania Public Utility Commission, they should not have affected the calculation and would not have included amounts for prior AFUDC Equity amortization. In contrast, Exelon Companies' proposed *South Georgia* amendments—which are not revenue neutral—are amortized over the average remaining life of the plant in service, as calculated using their PowerTax and PowerPlant software, as of the effective date of their Formula Rate, and include in the catch-up provision amounts for AFUDC Equity amortization for prior period depreciation since the inception of their formula rates. By contrast, Commission accounting policies and precedents provide that FAS 109 amortizations are to be collected concurrently with the collection of the associated depreciation expense in rates.

129. Finally, Exelon Companies argue that recovery of the past expenses would not present a problem of retroactive ratemaking because, on appeal of Order No. 144, the court held that a provision for recovery of deficient deferred taxes relating to prior years is not retroactive.[185] In this regard Exelon Companies argue that, because customers' rates in past years did not reflect these expenses, if the FAS 109 amounts flow through rates, Exelon Companies proposals will place customers in exactly the same position as if they had included a formulaic rate recovery of FAS 109 amounts in past rates.[186] As discussed above, while we recognize that deficient deferred taxes, by their nature, will be recovered over a period of years, our concern is that the

[178] In response to the Deficiency Letter, Exelon Companies explain that the requisite formulaic data inputs to determine the taxes associated with the current year's depreciation expense (*i.e.,* gross accumulated AFUDC Equity in transmission plant, depreciation rates and applicable income tax rates) do exist, but the proposed tax adjustments for the tax effects associated with AFUDC Equity do not match their current year's depreciation expense.

[179] November 16 Order, 161 FERC ¶ 61,163 at P 20.

[180] *See, e.g.,* ComEd Transmittal at 42–43.

[181] November 16 Order, 161 FERC ¶ 61,163 at P 22.

[182] We will not repeat our discussion from our order on rehearing in BGE (being issued concurrently with this order) citing numerous cases upholding the long-standing principle that delegated letter orders do not establish binding Commission precedent. Nor will we repeat here the basis for our conclusion that, even if we assumed arguendo that *PPL, Duquesne,* and *VEPCO* constitute binding precedent, they would not require the Commission to accept BGE's proposal. However, that same logic applies equally here.

[183] *ITC,* 153 FERC ¶ 61,374.

[184] 115 FERC ¶ 61,281, at P 27 (2006) (*Idaho Power*).

[185] ComEd Transmittal at 44 & n.98 (citing *Public Systems,* 709 F.2d at 85).

[186] *Id.* at 44.

Exelon Companies are seeking to recover amounts that should have been recovered in prior periods.

4. Guidance

130. We note that our rejection of Exelon Companies' filings for the reasons stated herein does not prohibit them from recovering all prior period tax deficiencies and AFUDC Equity. To the extent that public utilities have undepreciated AFUDC Equity, even if the related assets were placed into service in prior years, they may file to recover the tax effect on an ongoing basis if properly supported under FPA section 205. In addition, we note that several of the Exelon Companies experienced recent tax increases at the state level (*e.g.,* increases in the Illinois state income tax rate occurred in 2011 and 2015, and increases in the Maryland state corporate income tax rate occurred in 2001 and 2008), and a portion of the deficient ADIT may still be eligible for recovery, given the lengthy amortization period associated with excess or deficient ADIT.[187] Should Exelon Companies seek recovery of such amounts, they should fully support these amounts by providing detailed workpapers, as well as provide for the reduction of the associated ADIT liabilities from rate base.

131. Exelon Companies may submit, for example, new FPA section 205 filings with a mechanism to refund or recover, as appropriate, deferred income tax excesses and deficiencies related to the recent Tax Cuts and Jobs Act and any future income tax changes, any new originations of past income tax changes, and taxes on AFUDC Equity associated with current and future years' depreciation expense. Should Exelon Companies seek recovery of ADIT amounts in new FPA section 205 filings, they may obtain such recovery or refund of excess or deficient ADIT to be calculated as of the effective date in the new filings.

5. Limited Compliance Period

132. We take this opportunity to provide guidance on what would constitute a ''reasonable period of time'' to file for recovery under Order No. 144. Consistent with the requirement in Order No. 144 that FAS 109 recovery for ADIT excesses and deficiencies should at least be addressed in the ''next rate case,'' we announce a limited period in which public utilities may file to recover past ADIT if the public utility did not file a rate case subsequent to the Commission's issuance of Order No. 144 or if the public utility properly preserved[188] its right to recover past ADIT through settlement terms.[189] If one of these two conditions are met, we will permit a public utility to make a FPA section 205 filing to revise its formula rate provisions to allow for the refund or recovery of all previously incurred income tax amounts as a result of full tax normalization within one year after this order is published in the **Federal Register**, i.e. this one-year time period continues to constitute ''a reasonable period of time'' under Order No. 144 to file for recovery.

133. Regarding the recovery of ADIT amounts incurred in the future after the expiration of this limited compliance period, we also clarify that it is the Commission's expectation that public utilities will make FPA section 205 filings to recover such ADIT amounts within two years after they are incurred.

The Commission orders:

The revisions to Exelon Companies' Formula Rates are hereby rejected, as discussed in the body of this order.

By the Commission.

Issued: September 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19994 Filed 9–13–18; 8:45 am]

BILLING CODE 6717–01–P

[187] The guidance that we are providing does not address Flow Through Items. While Exelon Companies have not specified the date on which they adopted full normalization, we do not expect that, if Exelon Companies had begun amortization as of the date on which full normalization occurred, ADIT associated with the adoption of full normalization remains to be recovered.

[188] By ''properly preserved,'' we mean that the settlement of the ''next rate case'' included terms that expressly reserved the right of the utility to file to recover past ADIT in a future rate case.

[189] While we find Exelon Companies did not expressly reserve recovery of deferred income tax amounts for future consideration in their settlements, we note that Order No. 144 permits a company to reserve in a settlement such issues for future consideration. Order No. 144 states that ''[t]he rule, of course, leaves undisturbed the ability of the parties to reach a settlement on any of the issues covered by the rule.'' Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,519. Reading this sentence in the context of the rule, parties may reach a settlement on any of the issues concerning the ratemaking method for deferred income tax recovery, and if the Commission approves the settlement, it complies with Order No. 144.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–46–001]

Notice of Applications; Adelphia Gateway, LLC

Take notice that on August 31, 2018, Adelphia Gateway, LLC (Adelphia), 1415 Wyckoff Road Wall, New Jersey 07719, filed an amendment to its January 12, 2018 application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's rules and regulations requesting certificate authority to reflect an increase in its design capacity on Zone North A from 175,000 dekatherms per day (Dth/d) to 250,000 Dth/d. In light of the increased Zone North A design capacity, Adelphia proposes to modify its initial transportation rates in the *pro forma* FERC Gas Tariff. Adelphia also proposes to amend the Usage-2 Rate under Rate Schedule FTS to reflect the 100 percent load factor rates, all as more fully described 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to William P. Scharfenberg, Assistant General Counsel, Adelphia Gateway, LLC, 1415 Wyckoff Road, Wall, NJ 07719, or call (732) 938–1134, or email: *WScharfenberg@NJResources.com.*

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 proceedings for this project should, on or before the comment date stated below 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 or 385.211) and the Regulations under the NGA (18 CFR 157.10). 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 5 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order 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.

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 commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on September 28, 2018.

Dated: September 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19996 Filed 9–13–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0501; FRL–9983–76–OAR]

Proposed Information Collection Request; Comment Request; Information Collection Request for Green Power Partnership and Combined Heat and Power Partnership; EPA ICR Number 2173.07 (Renewal), OMB Control No. 2060–0578

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Information Collection Request for Green Power Partnership and Combined Heat and Power Partnership'' (EPA ICR Number 2173.07 (Renewal), OMB Control No. 2060–0578) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through March 31, 2019. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before November 13, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0501, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epamail.epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. 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: Christopher Kent, Climate Protection Partnerships Division, Office of Atmospheric Programs, MC 6202A Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–343–9046; fax number: 202–343–2208; email address: *kent.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: In 2002, EPA's Energy Supply and Industry Branch (ESIB) launched two partnership programs with industry and other stakeholders: The Green Power Partnership (GPP) and the Combined Heat and Power Partnership (CHPP). These voluntary partnership programs, along with others in the ESIB, encourage organizations to invest in clean, efficient energy technologies, including renewable energy and combined heat and power. To continue to be successful, it is critical that EPA collect information from these program stakeholders to ensure these organizations are meeting their clean energy goals and to assure the credibility of these voluntary non-regulatory programs.

EPA has developed this ICR to obtain authorization to collect information from organizations participating in the GPP and CHPP, and other ESIB voluntary programs. Organizations that join these programs voluntarily agree to the following respective actions: (1) Designating a Green Power or CHP liaison and filling out a Partnership Agreement or Letter of Intent (LOI) respectively, (2) for the GPP, reporting to EPA, on an annual basis, their progress toward their green power commitment via a 3-page reporting form; (3) for the CHP Partnership, reporting to EPA information on their existing CHP projects, new project development, and other CHP-related

activities via a one-page reporting form (for projects) or via an informal email or phone call (for other CHP-related activities). In addition to these actions, organizations may voluntarily apply for recognition to the programs' established annual recognition events, which require submitting additional information. EPA uses the data obtained from its Partners to assess the success of these programs in achieving their national energy and greenhouse gas (GHG) reduction goals. Partners are organizational entities that have volunteered to participate in either Partnership program.

Respondents/affected entities: Entities potentially affected by this action are company, institutional, and public-sector organizations that voluntarily participate in the EPA's Green Power Partnership (GPP) or Combined Heat and Power Partnership (CHPP). These include both service and goods providing industries, educational institutions and non-governmental organizations, commercial and industrial organizations, and local, state, or federal government agencies.

Forms: EPA–430–K–013, EPA–430–F–05–034; EPA–5900–353.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 6,871 (total).

Frequency of response: Annually, on occasion, one time.

Total estimated burden: 6,598 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $731,382 (per year), includes annualized capital or operation & maintenance costs.

Changes in estimates: There is minimal decrease in hours in the total estimated respondent burden compared with the ICR currently approved by OMB. Since the last ICR renewal, both the GPP and CHPP have introduced program efficiencies to reduce program burden and simplified collection forms into pre-populated spreadsheets or documents. As a result of these changes, the average number of hours per Partner has decreased from 3.2 hours to 2.87 hours, but the total hourly burden for Partners still increased because of an increase in the number of Partners. For perspective on the magnitude of Partner growth, the number of Partners at the end of 2008 was 1,308, whereas by year-end 2018 there was an estimated 1959 (GPP has 1546, and CHP has 413). The previous ICR also overestimated the growth of both programs and as such, the out year's number of respondents was larger than the program actually achieved. The GPP program is also re-evaluating program requirements which may have an impact on the number of respondents in the future. EPA will update the estimated respondent burden before submission to OMB for review.

Dated: September 4, 2018.

Carolyn Snyder,

Director, Climate Protection Partnership Division.

[FR Doc. 2018–20036 Filed 9–13–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9041–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–5632 or *https://www.epa.gov/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 09/03/2018 Through 09/07/2018

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. 20180209, Final, GSA, MD, 2018 Master Plan for the Consolidation of the U.S. FDA HQ Final Environmental Impact Statement, Review Period Ends: 10/15/2018, Contact: Paul Gyamfi 202–440–3405

EIS No. 20180210, Final, USN, VA, Atlantic Fleet Training and Testing, Review Period Ends: 10/15/2018, Contact: Todd Kraft 757–836–2943

EIS No. 20180211, Adoption, NIGC, CA, Final Environmental Impact Statement—Wilton Rancheria, Review Period Ends: 10/15/2018, Contact: Austin Badger 202–632–7003

Dated: September 10, 2018.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2018–19923 Filed 9–13–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0139]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including Whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before October 15, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy

Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0139.

Title: Application for Antenna Structure Registration.

Form Number: FCC Form 854.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit entities, not-for-profit institutions, and State, local, or Tribal governments.

Number of Respondents and Responses: 2,400 respondents; 57,100 responses.

Estimated Time per Response: .33 hours to 2.5 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third-party disclosure reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 2, 4(i), 303, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 303, and 309(j), section 102(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332(C), and section 1506.6 of the regulations of the Council on Environmental Quality, 40 CFR 1506.6.

Total Annual Burden: 25,682 hours.

Total Annual Cost: $1,176,813.

Privacy Act Impact Assessment: Yes. This information collection contains personally identifiable information on individuals which is subject to the Privacy Act of 1974. Information on the FCC Form 854 is maintained in the Commission's System of Records, FCC/WTB–1, ''Wireless Services Licensing Records.'' These licensee records are publicly available and routinely used in accordance of subsection b of the Privacy Act, 5 U.S.C. 552a(b), as amended. Taxpayer Identification Numbers (TINs) and materials that are afforded confidential treatment pursuant to a request made under 47 CFR 0.459 of the Commission's rules will not be available for public inspection.

Nature and Extent of Confidentiality: Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules. The Commission has in place the following policy and procedures for records retention and disposal: Records will be actively maintained as long as the entity remains a tower owner. Paper records will be archived after being keyed or scanned into the Antenna Structure Registration (ASR) database and destroyed when twelve (12) years old.

Needs and Uses: The purpose of FCC Form 854 (Form 854) is to register antenna structures that are used for radio communication services which are regulated by the Commission; to make changes to existing antenna structure registrations or pending applications for registration; or to notify the Commission of the completion of construction or dismantlement of such structures, as required by Title 47 of the Code of Federal Regulations, Chapter 1, Sections 1.923, 1.1307, 1.1311, 17.1, 17.2, 17.4, 17.5, 17.6, 17.7, 17.57 and 17.58.

Any person or entity proposing to construct or alter an antenna structure that is more than 60.96 meters (200 feet) in height, or that may interfere with the approach or departure space of a nearby airport runway, must notify the Federal Aviation Administration (FAA) of proposed construction. The FAA determines whether the antenna structure constitutes a potential hazard and may recommend appropriate painting and lighting for the structure. The Commission then uses the FAA's recommendation to impose specific painting and/or lighting requirements on radio tower owners and subject licensees. When an antenna structure owner for one reason or another does not register its structure, it then becomes the responsibility of the tenant licensees to ensure that the structure is registered with the Commission.

Section 303(q) of the Communications Act of 1934, as amended, gives the Commission authority to require painting and/or illumination of radio towers in cases where there is a reasonable possibility that an antenna structure may cause a hazard to air navigation. In 1992, Congress amended Sections 303(q) and 503(b)(5) of the Communications Act to make radio tower owners, as well as Commission licensees and permittees responsible for the painting and lighting of radio tower structures, and to provide that non-licensee radio tower owners may be subject to forfeiture for violations of painting or lighting requirements specified by the Commission.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–20019 Filed 9–13–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meetings

TIME AND DATE: September 19, 2018; 10:00 a.m.

PLACE: 800 N. Capitol Street NW, First Floor Hearing Room, Washington, DC.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Fact Finding No. 28—Interim—Briefing by Commissioner Rebecca F. Dye
2. Regulatory Reform Task Force Update
3. Demonstration of *www.fmc.gov* Redesign

CONTACT PERSON FOR MORE INFORMATION: Rachel Dickon, Secretary, (202) 523–5725.

Rachel Dickon,

Secretary.

[FR Doc. 2018–20151 Filed 9–12–18; 4:15 pm]

BILLING CODE 6731–AA–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 October 2, 2018.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Stephen B. Clark, Pittsburg, Illinois;* to acquire shares of Main Street Bancshares, Inc., Harrisburg, Illinois, and thereby indirectly acquire shares of Grand Rivers Community Bank, Grand Chain, Illinois.

Board of Governors of the Federal Reserve System, September 11, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–20022 Filed 9–13–18; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan 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 application also will 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 HOLA (12 U.S.C. 1467a(e)). 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 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). 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 October 10, 2018.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *1895 Bancorp of Wisconsin, MHC;* to become a mutual savings and loan holding company; and 1895 Bancorp of Wisconsin, Inc., to become a mid-tier stock savings and loan holding company by acquiring 100 percent of PyraMax Bank, FSB, all of Greenfield, Wisconsin.

Board of Governors of the Federal Reserve System, September 11, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–20023 Filed 9–13–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Board of Scientific Counselors Office of Public Health Preparedness and Response

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is seeking nominations for membership on the BSC OPHPR. The BSC OPHPR consists of 11 experts in fields associated with business, crisis leadership, emergency response and management, engineering, epidemiology, health policy and management, informatics, laboratory science, medicine, mental and behavioral health, public health law, public health practice, risk communication and social science.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. Nominees will be selected based on expertise in the fields of engineering, medicine, emergency response, and risk communication. Members may be invited to serve for four-year terms.

Selection of members is based on candidates' qualifications to contribute to the accomplishment of BSC OPHPR objectives (*https://www.cdc.gov/phpr/bsc/index.htm*).

DATES: Nominations for membership on the BSC OPHPR must be received no later than October 15, 2018. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be emailed to the OPHPR BSC Coordinator, *OPHPR.BSC.Questions@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Rebecca Hall, MPH, BSC Coordinator, OPHPR, CDC, 1600 Clifton Rd., MS D–44, Atlanta, GA, 30329–4027. Telephone (404) 718–4772; email *bqu5@cdc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for BSC OPHPR membership each year, and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in September, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.

Nominees must be U.S. citizens. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address).
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. (Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, NIH, FDA, etc.).

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–20017 Filed 9–13–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting of the Advisory Board on Radiation and Worker Health (ABRWH). This meeting is open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the audio conference (information below). The audio conference line has 150 ports for callers.

DATES: The meeting will be held on October 17, 2018, 11:00 a.m. to 1:00 p.m. EDT.

ADDRESSES: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the pass code is 9933701.

FOR FURTHER INFORMATION CONTACT: Theodore Katz, MPA, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, Telephone (513)533–6800, Toll Free 1(800)CDC–INFO, Email *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, rechartered under Executive Order 13811 on February 12, 2018, and will terminate on September 30, 2020.

Purpose: This Advisory Board is charged with a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Considered: The agenda will include discussions on: Work Group and Subcommittee Reports; Update on the Status of SEC Petitions; Plans for the December 2018 Advisory Board Meeting; and Advisory Board Correspondence. Agenda items are subject to change as priorities dictate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and: The Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–20015 Filed 9–13–18; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), Subcommittee on Procedures Review (SPR), National Institute for Occupational Safety and Health (NIOSH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Subcommittee for Procedure Reviews (SPR) of the Advisory Board on Radiation and Worker Health (ABRWH). This meeting is open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the audio conference (information below). The audio conference line has 150 ports for callers.

DATES: The meeting will be held on October 31, 2018, 10:30 a.m. to 3:30 p.m. ET.

ADDRESSES: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the pass code is 9933701.

FOR FURTHER INFORMATION CONTACT: Theodore Katz, MPA, Designated

Federal Officer, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30329, Telephone (513) 533–6800, Toll Free 1 (800) CDC–INFO, Email *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, rechartered on February 12, 2018, pursuant to Executive Order 13708, and will terminate on September 30, 2019.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. SPR is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor (Oak Ridge Associated Universities—ORAU).

Matters to be Considered: The agenda will include discussions on the following dose reconstruction procedures: (a) Procedures associated specifically with the following sites: Norton Company, Paducah, Blockson Chemical Company, DuPont Deepwater Works, Huntington Pilot Plan, Y–12, Aliquippa Forge, Hooker Electrochemical Plant; (b) procedures associated with Atomic Weapons Employers generally; and, (c) general procedures for dose reconstructions. Agenda items are subject to change as priorities dictate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–20016 Filed 9–13–18; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CE19–001, Injury Control Research Centers; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CE19–001, Injury Control Research Centers; October 30 and November 2, 2018, 8:30 a.m.–5:00 p.m., EDT, in the original FRN.

The Georgian Terrace, 659 Peachtree St. NE, Atlanta, GA 30308 which was published in the **Federal Register** on August 23, 2018, Volume 83, Number 164, pages 42655–42656.

The meeting is being amended to change the location and time to the Sheraton Atlanta Hotel, 165 Courtland Street NE, Atlanta, GA 30303; October 30–November 2, 2018, 8:00 a.m.–5:30 p.m., EDT. The meeting is closed to the public.

FOR FURTHER INFORMATION CONTACT: Mikel L. Walters, M.A., Ph.D., Scientific Review Official, NCIPC, CDC, 4770 Buford Highway NE, Mailstop F–63, Atlanta, Georgia 30341, (404) 639–0913; *mwalters@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–20024 Filed 9–13–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Intent To Award a Single-Source Supplement; Notice

ACTION: Announcing the Intent to Award a Single-Source Supplement to provide the National Aging Network with timely, relevant, high quality opportunities to further enhance their knowledge and skills related to nutrition services.

SUMMARY: The Administration for Community Living (ACL) announces the intent to award a single-source supplement to the current cooperative agreement held by Meals on Wheels America for the project *Enhancing the Knowledge and Skills of the Aging Network.*

FOR FURTHER INFORMATION CONTACT: For further information or comments regarding this program supplement, contact Keri Lipperini, U.S. Department of Health and Human Services, Administration for Community Living, Administration on Aging, Office of Nutrition and Health Promotion Programs, 202–795–7422, email *keri.lipperini@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this supplement is to: (1) Support the development and dissemination of resources for experienced and inexperienced Aging Network Nutrition Program providers; and (2) enhance peer-learning opportunities for State Units on Aging (SUAs), Area Agencies on Aging (AAAs), and Nutrition Program providers.

The administrative supplement for FY 2018 will be in the amount of $175,242, bringing the total award for FY 2018 to $400,001.

The additional funding will not be used to begin new projects, but it will be used to enhance existing efforts. The grantee will continue to provide appropriate, quality nutrition-related

resources, address new opportunities to embed nutrition services within the home and community-based service systems, and engage successfully in emerging models of integrated health care.

Program Name: Enhancing the Knowledge and Skills of the Aging Network.

Recipient: Meals on Wheels America.

Period of Performance: The supplement award will be issued for the second year of a three year project period of Sept 1, 2017 to August 31, 2020.

Total Award Amount: $400,001 in FY 2018.

Award Type: Cooperative Agreement Supplement.

Statutory Authority: The Older Americans Act (OAA) of 1965, as amended, Public Law 114–144.

Basis for Award: Meals on Wheels America (MOWA) is currently funded to carry out the objectives of this project through its current project entitled, *National Resource Center on Nutrition and Aging* for the period of September 1, 2017 through August 31, 2020. Since the project's implementation, the grantee has made satisfactory progress toward its approved work plan. The supplement will enable the grantee to carry their work even further, enhancing the support they provide to the Aging Network Nutrition Program Providers. The additional funding will not be used to begin new projects or activities, but rather to enhance efforts specific to tribal populations and congregate meal settings.

MOWA is uniquely positioned to complete the work called for under this project. They have an already established infrastructure and are a known and trusted organization in the Aging Network. Prior to this current award, MOWA competed and was awarded the *National Nutrition Center* for 6 years. They have an established presence within much of the Aging Network. Under this current award period, they are providing educational opportunities for the Aging Network Nutrition Program Providers, including webinars and live trainings. They have a comprehensive, interactive web-based repository (*www.nutritionandaging.org*) with tools and resources, including—but not limited to—issues briefs, policy and practice models, and toolkits. They have also presented to the Aging Network locally and on a national level. They have reached thousands of providers using their: (1) Comprehensive database of SUAs, AAAs, and other Nutrition Program Providers; and (2) Leadership Academy, which provides expert consultation around nutrition program delivery and the use of technology to enhance services. In addition, they have developed partnerships with organizations, universities, and other entities to provide education and support for the Aging Network.

Establishing an entirely new grant project at this time would be potentially disruptive to the current work already well under way. More importantly, it could cause confusion among the Aging Network Nutrition Program Providers, which could have a negative effect on training and support opportunities. If this supplement were not provided, the project would be unable to address the significant unmet educational needs of the Aging Network Nutrition Program Providers.

Dated: September 5, 2018.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2018–19925 Filed 9–13–18; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0456]

Appropriate Use of Voluntary Consensus Standards in Premarket Submissions for Medical Devices; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Appropriate Use of Voluntary Consensus Standards in Premarket Submissions for Medical Devices.'' Voluntary consensus standards can be a valuable resource for industry and FDA staff because such standards can increase predictability, streamline premarket review, provide clearer regulatory expectations, and facilitate market entry for safe and effective medical products. FDA developed this document to provide guidance to industry and FDA reviewers about the appropriate use of voluntary consensus standards in the preparation and evaluation of premarket submissions for medical devices. This guidance applies to all articles that meet the definition of a ''device'' under the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: The announcement of the guidance is published in the **Federal Register** on September 14, 2018.

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

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2014–D–0456 for ''Appropriate Use of Voluntary Consensus Standards in Premarket Submissions for Medical Devices.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

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

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Appropriate Use of Voluntary Consensus Standards in Premarket Submissions for Medical Devices'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Scott Colburn, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5514, Silver Spring, MD 20993–0002, 301–796–6287; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

In 1996, Congress passed the National Technology Transfer and Advancement Act (NTTAA) (Pub. L. 104–113). The NTTAA codified guidance previously issued by the Office of Management and Budget (OMB), which had established a policy to use voluntary consensus standards in lieu of government-unique standards except where voluntary consensus standards are inconsistent with law or otherwise impractical. Section 514(c) of the FD&C Act provides FDA the authority to recognize voluntary consensus standards and accept declarations of conformity to such standards (see 21 U.S.C. 360d(c)).

Voluntary consensus standards can be a valuable resource for industry and FDA staff because such standards can increase predictability, streamline premarket review, provide clearer regulatory expectations, and facilitate market entry for safe and effective medical products. The Agency developed this document to provide guidance to industry and FDA staff about the appropriate use of voluntary consensus standards in the preparation and evaluation of premarket submissions for medical devices. This guidance applies to all articles that meet the definition of a ''device'' under section 201(h) of the FD&C Act (21 U.S.C. 321(h)).

FDA considered comments received on the draft guidance that appeared in the **Federal Register** of May 13, 2014 (79 FR 27311). FDA revised the guidance as appropriate in response to the comments. This guidance supersedes: (1) ''Guidance for Industry and FDA Staff; Recognition and Use of Consensus Standards,'' issued on September 17, 2007; (2) ''Frequently Asked Questions on Recognition of Consensus Standards,'' issued on September 17, 2007; and (3) ''Guidance for Industry and for FDA Staff: Use of Standards in Substantial Equivalence Determinations,'' issued on March 12, 2000.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Appropriate Use of Voluntary Consensus Standards in Premarket Submissions for Medical Devices.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Appropriate Use of Voluntary Consensus Standards in Premarket Submissions for Medical Devices'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1770 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the following FDA regulations, guidance, and form have been approved by OMB as listed in the following table:

21 CFR part. guidance, or FDA form	Topic	OMB control No.
807, subpart E and Form FDA 3654	Premarket Notification	0910–0120
814, subparts A through E	Premarket Approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff''.	Q-Submissions	0910–0756
820	Current Good Manufacturing Practice; Quality System Regulation.	0910–0073
312	Investigational New Drug Regulation	0910–0014
601	Biologics License Application	0910–0338

Dated: September 10, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–19989 Filed 9–13–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–2936]

Recognition and Withdrawal of Voluntary Consensus Standards; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of the draft guidance entitled ''Recognition and Withdrawal of Voluntary Consensus Standards.'' This draft guidance identifies the principles FDA uses for recognizing a standard, and it explains the extent of recognition and other supplementary information. It provides information on how you may request recognition as well as circumstances under which FDA may withdraw recognition. This draft guidance also responds to a provision of the 21st Century Cures Act (Cures Act) by updating published guidance on these topics. This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by November 13, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance. Submit either electronic or written comments on the collection of information by November 13, 2018.

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–2018–D–2936 for ''Recognition and Withdrawal of Voluntary Consensus Standards.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

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

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Recognition and Withdrawal of Voluntary Consensus Standards'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Scott Colburn, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5514, Silver Spring, MD 20993–0002, 301–796–6287, or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's standards recognition program furthers the aim of international harmonization because the same standards (or international equivalents) are relied upon by sponsors to meet other countries' regulatory requirements when appropriate. This draft guidance describes the procedures that FDA follows and the actions FDA may take during its review and evaluation of requests for standards recognition or the withdrawal of recognition. This draft guidance provides further clarity and explanation about the regulatory framework, policies, and practices when evaluating requests for recognition. This draft guidance also responds to section 3053 of the Cures Act by updating published guidance on these topics (Pub. L. 114–255). When final, this draft guidance will supersede the guidance ''CDRH Standard Operating Procedures for the Identification and Evaluation of Candidate Consensus Standards for Recognition,'' issued on September 17, 2007.

FDA generally considers for recognition voluntary consensus standards, which are created by standards development organizations that follow a consensus process. A document issued by the Office of Management and Budget (OMB) entitled ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' commonly called OMB Circular A–119, defines the attributes or elements of a consensus process (Ref. 1). This draft guidance explains those elements and how they pertain to FDA's consideration of a standard for recognition.

The draft guidance describes the process leading up to and including recognition. We list common purposes to recognize voluntary consensus standards as well as the essential information that FDA will provide in the supplemental information sheet for the recognition of a standard. This draft guidance also discusses when FDA may withdraw recognition.

You may also request that FDA recognize a specific voluntary consensus standard. This draft guidance recommends the information you would submit to do so, and it summarizes the actions we may take to act on such a request.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on recognition and withdrawal of voluntary consensus standards. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This draft guidance is also available at *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Recognition and Withdrawal of Voluntary Consensus Standards'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 616 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the 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 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.

Request for Recognition of a Voluntary Consensus Standard

OMB Control Number 0910—NEW

The draft guidance for industry and FDA staff entitled ''Recognition and Withdrawal of Voluntary Consensus Standards'' provides guidance to industry and FDA staff about the procedures the Center for Devices and Radiological Health follows when a request for recognition of a voluntary consensus standard is received. The guidance outlines justifications for why a standard may be recognized wholly, partly, or not at all, as well as reasons

and rationales for withdrawing a standard. The guidance also provides that any interested party may request recognition of a standard. The draft guidance recommends that for recognition of a standard the request should, at a minimum, contain the following information:

- Name and electronic or mailing address of the requestor;
- Title of the standard;
- Any reference number and date;
- Proposed list of devices for which a declaration of conformity should routinely apply;
- Basis for recognition, *e.g.,* including the scientific, technical, regulatory, or other basis for such request; and
- A brief identification of the testing or performance or other characteristics of the device(s) or process(es), that would be addressed by a declaration of conformity.

Based on previous requests for recognition of standards, we estimate that FDA will receive nine requests annually. We estimate that each request will take less than 1 hour to prepare.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Request for recognition of a voluntary consensus standard	9	1	9	1	9

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

V. Reference

The following reference is on display with the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *https://www.regulations.gov.* FDA has verified the website address, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. OMB, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' Circular A–119 (revised). January 22, 2016. Available at: *https://www.nist.gov/sites/default/files/revised_circular_a-119_as_of_01-22-2016.pdf.*

Dated: September 10, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–19993 Filed 9–13–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–2565]

510(k) Third-Party Review Program; Draft Guidance for Industry, Food and Drug Administration Staff, and Third-Party Review Organizations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''510(k) Third-Party Review Program; Draft Guidance for Industry, Food and Drug Administration Staff, and Third-Party Review Organizations.'' This draft guidance provides a comprehensive look into FDA's current thinking regarding the 510(k) Third-Party (3P) Review Program authorized under the Federal Food, Drug, and Cosmetic Act (FD&C Act). Under the FDA Reauthorization Act of 2017 (FDARA), FDA was directed to issue draft guidance on the factors that will be used in determining whether a class I or class II device type, or subset of such device types, is eligible for review by an accredited person. The 3P Review Program is intended to allow review of devices by 3P Review Organizations to provide manufacturers of these devices an alternative review process that allows FDA to best utilize our resources on higher risk devices. This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by December 13, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance. Submit either electronic or written comments on the collection of information by November 13, 2018.

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–2016–D–2565 for ''510(k) Third-Party Review Program.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be

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

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

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

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''510(k) Third-Party Review Program'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Gregory Pishko, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5659, Silver Spring, MD 20993–0002, 240–402–6635.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's implementation of section 523 of the FD&C Act (21 U.S.C. 360m) establishes a process for recognition of qualified third parties to conduct the initial review of premarket notification (510(k)) submissions for certain low-to-moderate risk devices eligible under the 3P Review Program. Under FDARA (Pub. L. 115–52), the criteria used to establish device eligibility in the 3P Review Program changed and FDA was directed to issue draft guidance on the factors that will be used in determining whether a class I or class II device type, or subset of such device types, is eligible for review by an accredited person. The objectives of this draft guidance are: (1) To describe the factors FDA will use in determining device type eligibility for review by 3P Review Organizations; (2) to outline FDA's process for the recognition, re-recognition, suspension, and withdrawal of recognition for 3P Review Organizations; and (3) to ensure consistent quality of work among 3P Review Organizations through Medical Device User Fee Amendments IV commitments authorized under FDARA. This draft guidance also outlines FDA's current thinking on leveraging the International Medical Device Regulators Forum's requirements for the Medical Device Single Audit Program.

Upon issuance, this draft guidance will replace the draft guidance entitled ''510(k) Third-Party Review Program—Draft Guidance for Industry, Food and Drug Administration Staff, and Third-Party Review Organizations'' (81 FR 62744) issued on September 12, 2016.

This draft guidance, when finalized, will supersede ''Implementation of Third-Party Programs Under the FDA Modernization Act of 1997; Final Guidance for Staff, Industry, and Third Parties'' issued on February 2, 2001, and ''Guidance for Third Parties and FDA Staff; Third-Party Review of Premarket Notifications'' issued on September 28, 2004.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the ''510(k) Third-Party Review Program.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance document is also available at *https://www.regulations.gov.* Persons unable to download an electronic copy of ''510(k) Third-Party Review Program'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 17–028 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

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 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.

510(k) Third-Party Review Program (Formerly Medical Devices; Third-Party Review Under the Food and Drug Administration Modernization Act)

OMB Control Number 0910–0375—Revision

Information collections (ICs) associated with the 510(k) Third-Party Review Program have been approved under OMB control number 0910–0375, ''Medical Devices; Third-Party Review Under the Food and Drug Administration Modernization Act.'' When finalized, the draft guidance entitled ''510(k) Third-Party Review Program; Draft Guidance for Industry, Food and Drug Administration Staff, and Third-Party Review Organizations'' will necessitate revisions to the burden estimates in OMB control number 0910–0375.

Section 210 of the Food and Drug Administration Modernization Act (FDAMA) established section 523 of the FD&C Act (21 U.S.C. 360m), directing FDA to accredit persons in the private sector to review certain premarket notifications (510(k)s). Participation in this third-party review program by accredited persons is entirely voluntary. A third party wishing to participate will submit a request for accreditation to FDA. Accredited third-party reviewers have the ability to review a manufacturer's 510(k) submission for selected devices. After reviewing a submission, the reviewer will forward a copy of the 510(k) submission, along with the reviewer's documented review and recommendation, to FDA. Third-party reviewers should maintain records of their 510(k) reviews and a copy of the 510(k) for a reasonable period of time, usually a period of 3 years.

Respondents to this information collection are businesses or other for-profit organizations.

FDA estimates the burden of this IC as follows:

Estimated Annual Reporting Burden

Requests for accreditation (initial): On average, the Agency has received one application for accreditation for 3P review per year. There is no change to this IC from the currently approved burden estimate.

Requests for accreditation (re-recognition): We have added an IC for re-recognition requests to be consistent with the guidance which states that requests for re-recognition will be handled in the same manner as initial recognition requests. Based on the estimated number of 3P Review Organizations (7) and the frequency of re-recognition (3 years), we expect to receive approximately 2 re-recognition requests per year. We expect the average burden per response to be the same as an initial request (24 hours).

510(k) reviews conducted by accredited third parties: Based on FDA's recent experience with this program, we estimate the number of 510(k)s submitted for third-party review to be 147 annually; approximately 21 annual reviews for each of the 7 3P Review Organizations. This IC has been adjusted based on current trends, however, there is no program change to this IC.

Complaints: The guidance recommends that the 3P Review Organization should forward to FDA information on any complaint (*e.g.,* whistleblowing) it receives about a 510(k) submitter that could indicate an issue related to the safety or effectiveness of a medical device or a public health risk. Therefore, we have added an IC for complaints to the reporting burden. We expect to receive one forwarded complaint per year. Based on similar information collections, we estimate the average burden per complaint to be 0.25 hours (15 minutes).

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Requests for accreditation (initial) [3]	1	1	1	24	24
Requests for accreditation (re-recognition) [5]	2	1	2	24	48
510(k) reviews conducted by accredited third parties [4]	7	21	147	40	5,880
Complaints [5]	1	1	1	0.25	1
Total					5,952

[1] There are no capital costs or operating and maintenance costs associated with this IC.
(15 minutes)

Estimated Annual Recordkeeping Burden

510(k) Reviews: 3P Review Organizations should retain copies of all 510(k) reviews and associated correspondence. Based on FDA's recent experience with this program, we estimate the number of 510(k)s submitted for 3P review to be 147 annually; approximately 21 annual reviews for each of the 7 3P Review Organizations. We estimate the average burden per recordkeeping to be 10 hours. The estimated number of records and recordkeepers have been adjusted based on current trends, however, there is no program change to this IC.

Records regarding qualifications to receive FDA recognition as a 3P Review Organization: Under section 704(f) of the FD&C Act (21 U.S.C. 374(f)), a 3P Review Organization must maintain records that support their initial and continuing qualifications to receive FDA recognition, including documentation of the training and qualifications of the 3P Review Organization and its personnel; the procedures used by the 3P Review Organization for handling confidential information; the compensation arrangements made by the 3P Review Organization; and the procedures used by the 3P Review Organization to identify and avoid conflicts of interest. Additionally, the draft guidance states that 3P Review Organizations should retain information on the identity and qualifications of all personnel who contributed to the technical review of each 510(k) submission and other relevant records. Therefore, we have added an IC for ''Records regarding qualification to receive FDA recognition as a 3P Review Organization.'' Because most of the burden of compiling the records is expressed in the reporting burden for requests for accreditation, we estimate the maintenance of such records to be 1 hour per recordkeeping annually.

Recordkeeping system regarding complaints: Section 523(b)(3)(E)(iv) of the FD&C Act requires 3P Review Organizations to agree in writing that they will promptly respond and attempt to resolve complaints regarding their activities. The draft guidance

recommends that 3P Review Organizations establish a recordkeeping system for tracking the submission of those complaints and how those complaints were resolved, or attempted to be resolved. Therefore, we have added an IC for ''Recordkeeping system regarding complaints.'' Based on our experience with the program and the recommendations in the guidance, we estimate the average burden per recordkeeping to be 2 hours.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
510(k) reviews [3]	7	21	147	10	1,470
Records regarding qualifications to receive FDA recognition as a 3P Review Organization [4]	7	1	7	1	7
Recordkeeping system regarding complaints [4]	7	1	7	2	14
Total					1,491

[1] There are no capital costs or operating and maintenance costs associated with this IC.

We revised our estimates for OMB control number 0910–0375 by adding new ICs, changing the title of the ICR, and adjusting the existing ICs based on current trends. Despite the addition of new ICs, the estimated burden reflects an overall decrease of 5,581 hours. We attribute this adjustment to a decrease in the number of submissions we received over the last few years.

The draft guidance also refers to previously approved ICs found in FDA regulations. The ICs in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the ICs regarding 3P Review of medical devices under FDAMA have been approved under OMB control number 0910–0375; the ICs for the device appeals processes have been approved under OMB control number 0910–0738; the ICs in the guidance document ''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff'' have been approved under OMB control number 0910–0756.

Dated: September 10, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–19992 Filed 9–13–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Product-Specific Guidances; Draft and Revised Draft Guidances for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of additional draft and revised draft product-specific guidances. The guidances provide product-specific recommendations on, among other things, the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website. The guidances identified in this notice were developed using the process described in that guidance.

DATES: Submit either electronic or written comments on the draft guidance by November 13, 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–2007–D–0369 for ''Product-Specific Guidances; Draft and Revised Draft Guidances for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)). Submit written requests for single copies of the draft guidances 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. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance documents.

FOR FURTHER INFORMATION CONTACT: Wendy Good, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4714, Silver Spring, MD 20993–0002, 240–402–9682.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific guidances and provide a meaningful opportunity for the public to consider and comment on those guidances. Under that process, draft guidances are posted on FDA's website and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final guidances or publishes revised draft guidances for comment. Guidances were last announced in the **Federal Register** on July 20, 2018. This notice announces draft product-specific guidances, either new or revised, that are posted on FDA's website.

II. Drug Products for Which New Draft Product-Specific Guidances Are Available

FDA is announcing the availability of a new draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 1—NEW DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Abemaciclib
Albuterol sulfate
Allopurinol; Lesinurad
Amantadine hydrochloride
Amphetamine aspartate; Amphetamine sulfate; Dextroamphetamine saccharate; Dextroamphetamine sulfate
Azelaic acid
Benznidazole
Brigatinib
Brimonidine tartrate; Timolol maleate
Chlorzoxazone
Ciprofloxacin hydrochloride
Dapagliflozin propanediol; Saxagliptin hydrochloride
Delafloxacin meglumine
Desonide
Deutetrabenazine
Diazepam
Efinaconazole
Enasidenib mesylate
Glecaprevir; Pibrentasvir
Ibuprofen; Pseudoephedrine hydrochloride
Ivermectin
Lamotrigine
Luliconazole
Midostaurin
Miltefosine
Morphine sulfate
Neratinib maleate
Olaparib
Olive oil; Soybean oil
Oxycodone hydrochloride
Penciclovir

TABLE 1—NEW DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS—Continued

Perflutren
Pilocarpine hydrochloride
Pitavastatin magnesium
Pitavastatin sodium
Pregabalin
Secnidazole
Sofosbuvir; Velpatasvir; Voxilaprevir
Spironolactone
Sulfur hexafluoride lipid-type a microspheres
Talc
Tavaborole

III. Drug Products for Which Revised Draft Product-Specific Guidances Are Available

FDA is announcing the availability of revised draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 2—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Acetazolamide
Chlorpromazine hydrochloride
Doxorubicin hydrochloride
Morphine sulfate
Nicotine polacrilex (multiple Reference Listed Drugs)
Nisoldipine
Oxycodone
Raltegravir potassium
Tacrolimus (multiple strengths)

For a complete history of previously published **Federal Register** notices related to product-specific guidances, go to *https://www.regulations.gov* and enter Docket No. FDA–2007–D–0369.

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These draft guidances, when finalized, will represent the current thinking of FDA on, among other things, the product-specific design of BE studies to support ANDAs. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

IV. Electronic Access

Persons with access to the internet may obtain the draft guidances at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: September 10, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–20018 Filed 9–13–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Office of Minority Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting conducted as a telephone conference call. This call will be open to the public. Preregistration is required for both public participation and comment. Any individual who wishes to participate in the call should email *OMH-ACMH@hhs.gov* by October 11, 2018. Instructions regarding participating in the call and how to provide verbal public comments will be given at the time of preregistration. Information about the meeting is available from the designated contact and will be posted on the website for the Office of Minority Health (OMH), *www.minorityhealth.hhs.gov.* Information about ACMH activities can be found on the OMH website under the heading *About OMH.*

DATES: The conference call will be held on October 16, 2018, 1 p.m. to 3 p.m. EST.

ADDRESSES: Instructions regarding participating in the call will be given at the time of preregistration.

FOR FURTHER INFORMATION CONTACT: Violet Woo, Designated Federal Officer, Advisory Committee on Minority Health, Office of Minority Health, Department of Health and Human Services, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Phone: 240–453–8222; fax: 240–453–8223; email *OMH-ACMH@hhs.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Public Law 105–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health on improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of the OMH.

The topics to be discussed during the teleconference include finalizing recommendations regarding innovative systems of care, barriers to effective data collection, and primary prevention related serious mental illness; discussing the framework and speakers for the following disparities-themed report that will include recommendations; and discussing the agenda for the next meeting. The recommendations will be given to the Deputy Assistant Secretary for Minority Health.

This call will be limited to 125 participants. The OMH will make every effort to accommodate persons with special needs. Individuals who have special needs for which special accommodations may be required should contact Professional and Scientific Associates at (703) 234–1700 and reference this meeting. Requests for special accommodations should be made at least ten (10) business days prior to the meeting.

Members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to two minutes per speaker during the time allotted. Individuals who would like to submit written statements should email, mail, or fax their comments to the designated contact at least seven (7) business days prior to the meeting.

Any members of the public who wish to have electronic or printed material distributed to ACMH members should email *OMH-ACMH@hhs.gov* or mail their materials to the Designated Federal Officer, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852, prior to close of business on October 11, 2018.

Dated: September 5, 2018.

Violet Woo,

Designated Federal Officer, Advisory Committee on Minority Health.

[FR Doc. 2018–20040 Filed 9–13–18; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–0801]

Certificate of Alternative Compliance for the TUG JUDY MORAN Hull 123

AGENCY: Coast Guard, DHS.

ACTION: Notification of issuance of a certificate of alternative compliance.

SUMMARY: The Coast Guard announces that the U. S. Coast Guard First District Prevention Division has issued a certificate of alternative compliance from the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), for the TUG JUDY MORAN, Hull 123. We are issuing this notice because its publication is required by statute. Due to the construction and placement of the vessel's side lights and stern lights, TUG JUDY MORAN cannot fully comply with the light, shape, or sound signal provisions of the 72 COLREGS without interfering with the vessel's design and construction. This notification of issuance of a certificate of alternative compliance promotes the Coast Guard's marine safety mission.

DATES: The Certificate of Alternative Compliance was issued on 26 July, 2018.

FOR FURTHER INFORMATION CONTACT: For information or questions about this notice call or email Mr. Kevin Miller, First District Towing Vessel/Barge Safety Specialist, U.S. Coast Guard; telephone (617) 223–8272, email *Kevin.L.Miller2@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The United States is signatory to the International Maritime Organization's International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), as amended. The special construction or purpose of some vessels makes them unable to comply with the light, shape, or sound signal provisions of the 72 COLREGS. Under statutory law, however, specified 72 COLREGS provisions are not applicable to a vessel of special construction or purpose if the Coast Guard determines that the vessel cannot comply fully with those requirements without interfering with the special function of the vessel.[1]

The owner, builder, operator, or agent of a special construction or purpose vessel may apply to the Coast Guard District Office in which the vessel is being built or operated for a determination that compliance with alternative requirements is justified,[2] and the Chief of the Prevention Division would then issue the applicant a certificate of alternative compliance (COAC) if he or she determines that the vessel cannot comply fully with 72 COLREGS light, shape, and sound signal provisions without interference with the vessel's special function.[3] If the Coast Guard issues a COAC, it must publish notice of this action in the **Federal Register**.[4]

[1] 33 U.S.C. 1605.

[2] 33 CFR 81.5.

[3] 33 CFR 81.9.

[4] 33 U.S.C. 1605(c) and 33 CFR 81.18.

The First District Prevention Department, U.S. Coast Guard, certifies that the TUG JUDY MORAN, Washburn & Doughty Hull 123, is a vessel of special construction or purpose, and that, with respect to the position of the vessels side lights, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS, without interfering with the normal operation, construction, or design of the vessel. The First District Prevention Division further finds and certifies that the vessel's sidelights (13′ 5″ from the vessel's side mounted on the pilot house) and the vessel's stern light and towing lights (3′ 6″ aft of frame 20) are in the closet possible compliance with the applicable provisions of the 72 COLREGS.[5]

This notice is issued under authority of 33 U.S.C. 1605(c) and 33 CFR 81.18.

Dated: September 11, 2018.

Richard J. Schultz,

Captain, U.S. Coast Guard, Chief, Prevention Division, First Coast Guard District.

[FR Doc. 2018–20049 Filed 9–13–18; 8:45 am]

BILLING CODE 9110–04–P

[5] 33 U.S.C. 1605(a); 33 CFR 81.9.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7002–N–11]

60-Day Notice of Proposed Information Collection: Continuum of Care Program Assistance Grant Application

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date: November 13, 2018.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Sherri Boyd, Senior Program Specialist, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7264, Washington, DC 20410; telephone (202) 402–6070 (This is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Boyd.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Continuum of Care Program Application.

OMB Approval Number: 2506–0112.

Type of Request: Revision of a currently approved collection.

Form Number: Certification of Lobbying.

Description of the need for the information and proposed use: The regulatory authority to collect this information is contained in 24 CFR part 578, and is authorized by the McKinney-Vento Act, as amended by S. 896 The Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009 (42 U.S.C. 11371 *et seq.*) which states that ''The Secretary shall award grants, on a competitive basis, and using the selection criteria described in section 427, to carry out eligible activities under this subtitle for projects that meet the program requirements under section 426, either by directly awarding funds to project sponsors or by awarding funds to unified funding agencies.'' (SEC.422(a))

The CoC Program Application (OMB 2506–0112) is the second phase of the information collection process to be used in HUD's CoC Program Competition authorized by the HEARTH Act. During this phase, HUD collects information from the state and local Continuum of Cares (CoCs) through the CoC Consolidated Application which is comprised of the CoC Application, and the Priority Listing which includes the individual project recipients' project applications.

The CoC Consolidated Grant Application is necessary for the selection of proposals submitted to HUD (by State and local governments, public housing authorities, and nonprofit organization) for the grant funds available through the Continuum of Care Program, in order to make decisions for the awarding CoC Program funds.

Respondents (*i.e.* affected public): Nonprofit organizations, states, local governments, and instrumentalities of state and local governments, and Public Housing Authorities.

Estimated Number of Respondents: 4,577 applicants.

Estimated Number of Responses: 8,869 applications.

Frequency of Response: 1 response per year.

Average Hours per Response: 22.75 hours.

Total Estimated Burdens: 201,779.87 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 4, 2018.

Lori Michalski,

Acting General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2018–20031 Filed 9–13–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2018–0024; FXIA16710900000–178–FF09A30000]

Foreign Endangered Species; Marine Mammals; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA) and foreign or native species for which the Service has jurisdiction under the Marine Mammal Protection Act (MMPA). With some exceptions, the ESA and the MMPA prohibit activities with listed species unless Federal authorization is acquired that allows such activities. The ESA and MMPA also require that we invite public comment before issuing permits for endangered species or marine mammals.

DATES: We must receive comments by October 15, 2018.

ADDRESSES:

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *http://www.regulations.gov* in Docket No. FWS–HQ–IA–2018–0024.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2018–0024.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2018–0024; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2104, via email at *DMAFR@fws.gov,* or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Please make your requests or comments as specific as possible, confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments on *http://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment via *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and section 104(c) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA and MMPA prohibit activities with listed species unless Federal authorization is acquired that allows such activities. Permits issued under section 10 of the ESA allow activities for scientific purposes or to enhance the propagation or survival of the affected species.

Concurrent with publishing this notice in the **Federal Register,** we are forwarding copies of the marine mammal applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

III. Permit Applications

We invite the public to comment on the following applications.

A. Endangered Species

Applicant: St. Catherine's Island, Midway, GA; Permit No. 89124A

The applicant requests re-issuance of a captive-bred wildlife registration under 50 CFR 17.21(g) for ring-tailed lemurs (*Lemur catta*), to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Trophy Applicants

Each of the following applicants requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

Applicant: Thomas Spell, Simpsonville, SC; Permit No. 63017C

Applicant: Gene McQuown, Dallas, TX; Permit No. 69233C

B. Marine Mammals

Applicant: Sea to Shore Alliance, Sarasota, FL; Permit No. 37808A

The applicant requests authorization to renew and amend their permit to take and import both wild and formerly captive West Indian manatees (*Trichechus manatus*) that are being released into the wild for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

IV. Next Steps

If we issue permits to any of the applicants listed in this notice, we will

publish a notice in the **Federal Register.** You may locate the notice announcing the permit issuance date by searching *http://www.regulations.gov* for the permit number listed above in this document (*e.g.,* 12345A).

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and their implementing regulations.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2018–20010 Filed 9–13–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2018–0017; FXIA16710900000–178–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is acquired that allows such activities. The ESA also requires that we invite public comment before issuing permits for endangered species.

DATES: We must receive comments by October 15, 2018.

ADDRESSES: *Obtaining Documents:* The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *http://www.regulations.gov* in Docket No. FWS–HQ–IA–2018–0017.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2018–0017.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2018–0017; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2104, via email at *DMAFR@fws.gov,* or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Please make your requests or comments as specific as possible, confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments on *http://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment via *http://www.regulations.gov*, your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is acquired that allows such activities. Permits issued under section 10 of the ESA allow activities for scientific purposes or to enhance the propagation or survival of the affected species.

III. Permit Applications

We invite the public to comment on the following applications.

Applicant: Gorilla Doctors, Baltimore, MD; Permit No. 77544C

The applicant requests a permit to import scientific samples from wild mountain gorillas (*Gorilla beringei beringei*), eastern lowland gorillas (*Gorilla beringei graueri*), western lowland gorillas (*Gorilla gorilla gorilla*), bonobos (*Pan paniscus*), common chimps (*Pan troglodytes*), and L'hoest's monkeys (*Cercopithecus l'hoesti*) from the Democratic Republic of the Congo, Rwanda, and Uganda, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Trophy Applicants

The following applicants requests permits to import a sport-hunted trophies of male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

Applicant: Carolyn Kimbro, Smyrna, GA; Permit No. 77185C

Applicant: Mark Pirkle, Blanket, TX; Permit No. 76772C

Applicant: Stewart Schanzenbach, Grand Forks, ND; Permit No. 73080C

Applicant: Bruce Pultz, Watertown, NY; Permit No. 63052C

Applicant: Timothy Cerow, Watertown, NY; Permit No. 63051C

Applicant: Geoffrey Corn, Springfield, CO; Permit No. 70482C

Applicant: David Sanson, Walnut Creek, CA; Permit No. 73144C

Applicant: Janelle Manion, Anchorage, AK; Permit No. 74740C

Applicant: Matthew Severs, Park City, KY; Permit No. 75883C

Applicant: Stephen Leblanc, Parker, CO; Permit No. 75904C

Applicant: AnnMarie Meyer, Macomb, IL; Permit No. 75905C

Applicant: Brian Johnson, Tucson, AZ; Permit No. 69508C

Applicant: Mark Hettervig, Oregon City, OR; Permit No. 69673C

Applicant: Ernest Dosio, Lodi, CA; Permit No. 62557C

Applicant: Christian Rothermel, Mohnton, PA; Permit No. 54295C

IV. Next Steps

If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance date by searching *http://www.regulations.gov* for the permit number listed above in this document (*e.g.,* #####X).

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2018–20009 Filed 9–13–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2018–0077; FXIA16710900000–178–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for endangered species.

DATES: We must receive comments by October 15, 2018.

ADDRESSES: *Obtaining Documents:* The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *http://www.regulations.gov* in Docket No. FWS–HQ–IA–2018–0077.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2018–0077.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2018–0077; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2104, via email at *DMAFR@fws.gov,* or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Please make your requests or comments as specific as possible, and explain the basis for your comments. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments on *http://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is acquired that allows such activities. Permits issued under section 10 of the ESA allow activities for scientific purposes or to enhance the propagation or survival of the affected species. Regulations regarding permit issuance under the ESA are in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications:

Applicant: Zoological Society of San Diego, San Diego, CA; Permit No. 98983C

The applicant requests a permit to export one captive-bred male giant panda (*Ailuropoda melanoleuca*) to China Conservation and Research Center for the Giant Panda, Dujiangyan City, China, for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

Applicant: Zoological Society of San Diego, San Diego, CA; Permit No. 98985C

The applicant requests a permit to re-export one captive-bred female giant panda (*Ailuropoda melanoleuca*) to China Conservation and Research Center for the Giant Panda, Dujiangyan City, China, for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

IV. Next Steps

If we issue either of the permits listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *http://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 98983C, you would go to *regulations.gov* and search for ''98983C''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2018–20008 Filed 9–13–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2018–0031; FXIA16710900000–178–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is acquired that allows such activities. The ESA also requires that we invite public comment before issuing permits for endangered species.

DATES: We must receive comments by October 15, 2018.

ADDRESSES:

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *http://www.regulations.gov* in Docket No. FWS–HQ–IA–2018–0031.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2018–0031.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2018–0031; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2104, via email at *DMAFR@fws.gov,* or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Please make your requests or comments as specific as possible, confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments on *http://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment via *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comment on permit applications before final action is taken. With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is acquired that allows such activities. Permits issued under section 10 of the ESA allow activities for scientific purposes or to enhance the propagation or survival of the affected species.

III. Permit Applications

We invite the public to comment on the following applications.

Applicants: Erich D. Jarvis and Olivier Fedrigo, Rockefeller University, New York, NY; Permit No. 43635C

The applicants request a permit to import biological samples of all endangered vertebrate species worldwide for the purposes of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: North Carolina State University, Raleigh, NC; Permit No. 53023C

The applicant requests a permit to import hawksbill sea turtle (*Eretmochelys imbricata*) biological samples for the purposes of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Robert Temple, East Stroudsburg, PA; Permit No. 66265C

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the golden parakeet (*Guarouba guarouba*) to enhance species propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Viktoria Oelze, University of California Santa Cruz, Santa Cruz, CA; Permit No. 70671C

The applicant requests a permit to import 70 hair samples derived from wild chimpanzees (*Pan troglodytes verus*) from the Max Planck Institute for Evolutionary Anthropology, Leipzig, Germany, to enhance the propagation or survival of the species through scientific research. This notification is for a single import.

Applicant: Regents of University of Minnesota, St. Paul, MN; Permit No. 78622C

The applicant requests a permit to import one non-viable egg from a Galapagos hawk (*Buteo galapagoensis*) from the Galapagos, Ecuador, for the purpose of scientific research. This notification is for a single import.

Applicant: Indiana University–Purdue University Fort Wayne, Fort Wayne, IN; Permit No. 59230C

The applicant requests a permit to import 10 skin biopsy samples derived from wild leatherback sea turtles (*Dermochelys coriacea*) from the Goldring-Gund Marine Biology Station, Playa Grande, Santa Cruz, Costa Rica, for scientific research. This notification is for a single import.

Applicant: Noel Garcia, Sterling, VA; Permit No. 60345C

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the golden parakeet (*Guarouba guarouba*) to enhance species propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Rancho Santa Ana Botanic Garden, Claremont, CA; Permit No. 15316B

The applicant requests renewal of a permit to export and reimport nonliving museum/herbarium specimens of endangered and threatened species (excluding animals) previously legally accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Field Museum of Natural History, Chicago, IL; Permit No. 698170

The applicant requests renewal of a permit to export and reimport nonliving museum specimens of endangered and threatened species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Trophy Applicants

Each of the following applicants requests a permit to import a sport-hunted trophy of a male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

Applicant: James Wilson, Meridian, ID; Permit No. 79707C

Applicant: Louis Wickas, Gallipolis, OH; Permit No. 78075C

Applicant: Scott Goeddel, Waterloo, IL; Permit No. 80972C

Applicant: Ray Penner, North Newton, KS; Permit No. 80975C

IV. Next Steps

If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register.** You may locate the notice announcing the permit issuance date by searching *http://www.regulations.gov* for the permit number listed above in this document (*e.g.,* Permit No. 12345A).

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2018–20011 Filed 9–13–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVE02000–L5110.0000–GN.0000–LV.EM.F1503680–15X MO# 4500119719]

Notice of Availability of the Draft Environmental Impact Statement for the Rossi Mine Expansion Project, Elko County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the Rossi Mine Expansion Project. This notice announces the availability of the Draft EIS and the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft EIS for the Rossi Mine Expansion Project within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings and any other public involvement activities at least 15 days prior to the close of the comment period through public notices, media releases and/or mailings.

ADDRESSES: You may submit comments related to the Rossi Mine Expansion Project by any of the following methods:

- *Email: blm_nv_eldo_rossimine_project_eis@blm.gov;*
- *Fax:* 775–753–0347; or
- *Mail:* Bureau of Land Management, Rossi Mine Expansion Project, Attention: Janice Stadelman, Project Manager, 3900 Idaho Street, Elko, Nevada 89801.

Copies of the Draft EIS for the Rossi Mine Expansion Project are available at the BLM Elko District Office, located at the address above; at the BLM's NEPA eplanning website at *https://go.usa.gov/xnRCr;* or through eplanning on the BLM's website at *http://www.blm.gov/nv.*

FOR FURTHER INFORMATION CONTACT: Janice Stadelman, Project Manager, at telephone, 775–753–0346; address, 3900 Idaho Street, Elko, NV 89801; or email, *blm_nv_eldo_rossimine_project_eis@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, seven 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 Draft EIS addresses the direct, indirect, and cumulative environmental impacts of the proposed action and alternatives. Halliburton Energy Services proposes a modification to their plan of operations for the Rossi Mine Project. The existing infrastructure would continue to be used, but would be expanded to support the continuation of the open pit mining

operation and surface exploration activities for barite. The proposed action would increase the disturbance to a total of approximately 2,063 acres of public and private land, including 896 acres of previously approved or existing disturbance and 1,167 acres of new land disturbance. Of the 2,063 acres of surface disturbance, approximately 209 acres consists of private land and the remaining 1,854 acres are public land administered by the BLM. The proposed expansion would employ an estimated 433 people.

The proposed action includes the expansion of the existing plan of operations boundary, expansion of the existing open pits, development of new open pits, expansion of the existing waste rock disposal facilities, construction of new waste rock disposal facilities, expansion or modification of ancillary facilities, expansion and development of new roads, re-alignment of segments of the Boulder Valley Road and Antelope-Boulder Connector Road, installation of new power distribution lines, the continuation of surface exploration, and reclamation activities. The proposed expansion is projected to add eight years to the mine's life. The Project is located on the northern end of the Carlin Trend in Elko County, approximately 25 miles north of the community of Dunphy and 28 aerial miles northwest of the town of Carlin, Nevada.

The Notice of Intent to prepare an EIS was published in the **Federal Register** on September 9, 2015 (80 FR 54319). Scoping meetings, news release and mailings were used to solicit comments and identify key issues to be analyzed. Tribal governments with interest in this project were also contacted to discern their issues and concerns, and to conduct government-to-government consultation. During the scoping period, the BLM received 12 comment submittals (*e.g.,* letters, emails, comment forms), resulting in a total of 131 comments and questions. Key issues identified by individuals, groups, and government entities include potential impacts to sage-grouse and wildlife, cultural resources and traditional cultural properties, access, noise, surface and ground water, air quality, and support for the project. The BLM is the lead Federal agency for this EIS. Cooperating agencies include the Nevada Department of Wildlife, the Nevada Department of Conservation and Natural Resources Sagebrush Ecosystem Technical Team, the United States Fish and Wildlife Service, the Elko County Board of Commissioners, and the United States Environmental Protection Agency.

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.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Jill C. Silvey,

District Manager, Elko District Office.

[FR Doc. 2018–19940 Filed 9–13–18; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Adoption and Recirculation of the Final Environmental Impact Statement for the Wilton Rancheria Fee-to-Trust and Casino Project

AGENCY: National Indian Gaming Commission, Department of the Interior.

ACTION: Notice of adoption and recirculation of the final environmental impact statement for the Wilton Rancheria Fee-to-Trust and Casino Project.

SUMMARY: The National Indian Gaming Commission (NIGC) is adopting the Bureau of Indian Affairs (BIA), Department of the Interior, December 2016 Final Environmental Impact Statement (the ''BIA EIS'') for the Wilton Rancheria (Tribe) Fee-to-Trust and Casino Project in Elk Grove, California. The NIGC is adopting the BIA EIS to satisfy the NIGC's National Environmental Policy Act (NEPA) obligations related to the Tribe's request for the NIGC Chairman's approval of a gaming management agreement between the Tribe and BGM Co, Inc. (BGM).

DATES: The NIGC will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency (EPA) of its Notice of Availability of the BIA EIS (EPA Notice) in the **Federal Register**.

ADDRESSES: An electronic copy of the BIA EIS, among other documents, is available for download from *http://www.wiltoneis.com.* Electronic copies are also available on CD at the NIGC Sacramento Region Office located at 801 I Street Suite 489, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Austin Badger, National Indian Gaming Commission, Office of the General Counsel; 1849 C Street NW, Mail Stop #1621, Washington, DC 20240. Phone: 202–632–7003. Facsimile: 202–632–7066. Email: *info@nigc.gov.*

SUPPLEMENTARY INFORMATION: As described in the BIA EIS, the Tribe's casino resort project (2017 Approved Project) includes management of the gaming facility by a professional management company on behalf of the Tribe. The NIGC Chairman's approval is necessary for the management agreement to take effect. The Tribe has therefore requested that the NIGC Chairman approve a management agreement between the Tribe and BGM which would allow BGM to manage the Tribe's gaming facility on the Tribe's trust property in Elk Grove, California (Proposed Action).

The environmental effects of the 2017 Approved Project, including management by a professional management company, were fully analyzed and chosen as the Preferred Alternative in the BIA EIS and approved in the BIA's January 19, 2017 Record of Decision (BIA ROD) for the acquisition in trust by the United States of land in the City of Elk Grove, California, for the Tribe. The adequacy of the BIA EIS is the subject of a judicial action which is not final, *Stand Up For California!, et al.,* v. *United States Department of Interior, et al.,* Civil Action No. 1:17-cv-00058 (D.D.C. filed Jan. 11, 2017). Electronic copies of the BIA EIS and BIA ROD, among other documents, are available for download from *http://www.wiltoneis.com.*

The BIA ROD included mitigation for any significant environmental impacts resulting from the 2017 Approved Project by recommending that the Tribe implement mitigation measures set out in the Mitigation Monitoring and Enforcement Plan (MMEP), which was Attachment IV to the BIA ROD. The NIGC was consulted during the preparation of the BIA EIS but did not serve as a cooperating agency in the development of the BIA EIS.

Subsequent to the release of the BIA EIS and BIA ROD, the Tribe made several modifications to the casino resort project (2018 Modified Project). The NIGC therefore directed preparation of a Supplemental Information Report (SIR) to evaluate the 2018 Modified Project and the adequacy of the BIA EIS to address NIGC NEPA compliance requirements in its consideration of the Proposed Action. The SIR concluded that the 2018 Modified Project does not include any substantial changes to the

2017 Approved Project relevant to environmental concerns and that no significant new circumstances or information relevant to environmental concerns and bearing on the 2018 Modified Project and its impacts exist. The SIR further concluded that the BIA EIS appears adequate to meet the NIGC's NEPA compliance requirements and that a supplemental environmental impact statement is not required. An electronic copy of the SIR is available for download from *http://www.wiltoneis.com.*

The Council on Environmental Quality (CEQ) regulations implementing NEPA strongly encourage agencies to reduce paperwork and duplication, 40 CFR 1500.4. One of the methods identified by CEQ to accomplish this goal is through the adoption by one agency of environmental documents prepared by other agencies, 40 CFR 1500.4(n), 1500.5(h), and 1506.3. In instances where the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement, 40 CFR 1506.3(b).

The NIGC has conducted an independent review of the BIA EIS, BIA ROD, and SIR for the purpose of determining whether the NIGC could adopt the BIA EIS pursuant to 40 CFR 1506.3. First, the NIGC's review concluded that the actions encompassed by the 2018 Modified Project are substantially the same as the actions documented as the 2017 Approved Project in the BIA EIS and BIA ROD. Second, the NIGC assessed whether a supplemental environmental impact statement is required. As supported by the SIR, the NIGC concluded that there are (1) no significant new circumstances or information relevant to environmental concerns or bearing on the Proposed Action and (2) no substantial changes to the Proposed Action relevant to environmental concerns. Thus, a supplemental environmental impact statement is not required. Third, the BIA EIS meets the standards of the CEQ regulations, 40 CFR parts 1500–1508. Therefore, the NIGC can adopt the BIA EIS and recirculate it as a final statement.

In accordance with the Environmental Protection Agency's (EPA) requirements regarding the filing of environmental impact statements, the NIGC has provided EPA with electronic copies of the BIA EIS. EPA will publish a notice of availability of the BIA EIS in the **Federal Register** consistent with its usual practices. Because of the multivolume size of the BIA EIS and its continued availability on *http://www.wiltoneis.com,* the NIGC is not republishing the document under a new title. To do so would be costly, defeat CEQ's goals of reducing paperwork and duplication of effort, and be of little or no additional value to other agencies or the public. The review period for the adoption of the BIA EIS shall extend for 30 calendar days following publication of the EPA Notice.

The final stage in the environmental review process under NEPA is the issuance of a ROD describing the agency's decision and the basis for it. Under the timelines included in the CEQ regulation, 40 CFR 1506.10, a ROD cannot be issued by an agency earlier than thirty days after EPA publishes its **Federal Register** notice notifying the public of the availability of the final EIS. Any ROD issued by the NIGC will be consistent with 40 CFR 1505.2.

Accordingly, the NIGC is adopting and recirculating the BIA EIS and has concluded that no supplemental or additional environmental review is required to support the Proposed Action.

Authority: This notice is published in accordance with 25 U.S.C. 2711 and Section 1506.3 of the Council of Environmental Quality Regulations (40 CFR parts 1500–1508) implementing the procedural requirements of NEPA, as amended (42 U.S.C. 4321, *et seq.*).

Dated: September 11, 2018.

Christinia Thomas,

Chief of Staff (Acting).

[FR Doc. 2018–20042 Filed 9–13–18; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–26421; PPWOCRADI0, 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 September 1, 2018, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by October 1, 2018.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, 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 September 1, 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:

MAINE

Androscoggin County

Lewiston Commercial Historic District, 1–39 Lisbon, 157–249 Main, 35 Ash & 103 Park Sts., Lewiston, SG100003009

Kennebec County

Tiffany Chapel, 544 Tiffany Rd., Sidney, SG100003010

Penobscot County

United Baptist Church, 53 Main Rd., Charleston, SG100003011

WISCONSIN

Ozaukee County

J.M. ALLMENDINGER (Steambarge) Shipwreck, (Great Lakes Shipwreck Sites of Wisconsin MPS), 2.5 mi. SSE of Concordia U. in L. Michigan, Mequon, MP100003012

Authority: Section 60.13 of 36 CFR part 60

Dated: September 4, 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. 2018–20006 Filed 9–13–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–26368; PPWOCRADI0, 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 August 25, 2018, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by October 1, 2018.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, 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 August 25, 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:

CALIFORNIA

Los Angeles County

Beverly Fairfax Historic District, Roughly bounded by N. Gardner & Vista Sts., Beverley Blvd., Rosewood, Melrose & N Fairfax Aves., Los Angeles, SG100002993

Napa County

St. Helena Public Cemetery, 2461 Spring St., St. Helena, SG100002994

San Diego County

Ramona Main Street Colonnade, CA 67/78—Main St., Ramona, SG100002995

CONNECTICUT

Middlesex County

Cypress Cemetery, 100 College St., Old Saybrook, SG100003006

IOWA

Johnson County

First Unitarian Church, 10 S Gilbert St., Iowa City, SG100002996

MICHIGAN

Oakland County

Newberry, Milo Prentice, House, 705 Bloomer Rd., Rochester, SG100002997

OHIO

Cuyahoga County

Reidy Bros. & Flanigan Building, 11730 Detroit Ave., Lakewood, SG100002999

SOUTH CAROLINA

Dorchester County

St. George Rosenwald School, (Rosenwald School Building Program in South Carolina, 1917–1932), 205 Ann St., St. George, MP100003000

Florence County

Griffin Motor Company, 329 N Irby St., Florence, SG100003001

Richland County

Columbia Historic District II (Boundary Increase II and Boundary Decrease), 1328 Blanding St., Columbia, BC100003002

VIRGINIA

Richmond Independent City

St. Luke Building (Boundary Increase), 902–904 St. James St., Richmond (Independent City), BC100003005

WISCONSIN

Vilas County

St. Peter's Catholic School, 115 S 3rd St., Eagle River, SG100003008

Additional documentation has been received for the following resources:

SOUTH DAKOTA

Buffalo County

Long View Stock Farm, 22182 361st Ave., Gann Valley vicinity, AD100002808

VIRGINIA

Richmond Independent City

St. Luke Building, 900 St. James St., Richmond (Independent City), AD82004589

WISCONSIN

Door County

Murphy Farms Number 1, 7195, 7199, 7203, 7207, 7212, & 7213 Horseshoe Bay Rd., Egg Harbor, AD12000314

Authority: Section 60.13 of 36 CFR part 60.

Dated: August 27, 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. 2018–20004 Filed 9–13–18; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Obstructive Sleep Apnea Treatment Mask Systems and Components Thereof, DN 3340;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Fisher & Paykel Healthcare Limited on September 10, 2018. The complaint

alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of obstructive sleep apnea treatment mask systems and components thereof. The complaint names as respondents: ResMed Corp. of San Diego, CA; ResMed Inc. of San Diego, CA and ResMed Limited of Australia. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond during the 60-day review period pursuant to 19 U.S.C. § 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues should be filed no later than by close of business nine calendar days after the date of publication of this notice in the **Federal Register**. Complainant may file a reply to any written submission no later than the date on which complainant's reply would be due under § 210.8(c)(2) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(c)(2)).

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3340'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures) [1] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 11, 2018.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2018–20005 Filed 9–13–18; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–488 and 731–TA–1199–1200 (Review)]

Large Residential Washers From Korea and Mexico; Scheduling of a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty and countervailing duty orders on large residential washers from Korea and Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: September 7, 2018.

FOR FURTHER INFORMATION CONTACT: Drew Dushkes (202–205–3229), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 (*https://www.usitc.gov*). The public record for

these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On April 9, 2018, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews should proceed (83 FR 18347, April 26, 2018); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's website.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on December 20, 2018, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on Thursday, January 17, 2019, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 10, 2019. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on January 16, 2019, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is January 8, 2019. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is January 25, 2019. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before January 25, 2019. On February 15, 2019, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 19, 2019, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.
Issued: September 10, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–19987 Filed 9–13–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Alcami Carolinas Corporation

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before October 15, 2018. Such persons may also file a written request for a hearing on the application on or before October 15, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on July 2, 2018, Alcami Carolinas Corporation, 1726 North 23rd Street, Wilmington, North Carolina 28405–1822 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to import the listed controlled substances in bulk form for the manufacturing of capsules/tablets for Phase II clinical trials.

Approval of permit applications will occur only when the registrant's activity is consistent with what is authorized under 21 U.S.C. 952(a)(2).

Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: September 5, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–20001 Filed 9–13–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number: 1110–0068]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection: Records Modification Form (FD–1115)

AGENCY: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, 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. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until November 13, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C–2, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306 (facsimile: 304–625–5093) or email *glbrovey@ic.fbi.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted via email to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Records Modification Form.

(3) *Agency form number:* FD–1115.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: This form is utilized by criminal justice and affiliated judicial agencies to request appropriate modification of criminal history information from an individual's record.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 43,584 respondents are authorized to complete the form which would require approximately 10 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 19,882 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: September 11, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–20003 Filed 9–13–18; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On September 7, 2018, the Department of Justice lodged a proposed partial consent decree with the United States District Court for the District of Hawaii in *United States of America* v. *Azure Fishery LLC et al.,* Civil Action No. 1:18–cv–00339.

The complaint in this Clean Water Act (''CWA'') case was filed against the defendants on the same day as the lodging of the consent decree. The complaint alleges claims against the Hawaii-based longline fishing companies Azure Fishery LLC and Linh Fishery LLC and individuals Hanh Nguyen, Khang Dang, Andy Hoang, and Tuan Hoang. The complaint addresses illegal discharges of oil from the commercial longline fishing vessel *Jaxon T,* now known as the *St. Joseph,* as well as related violations of the Coast Guard's pollution control regulations, including failure to provide sufficient capacity to retain oily bilge waste on board the vessel. The complaint alleges that Azure Fishery LLC, company members and managers Hanh Nguyen and Khang Dang, and vessel operator Andy Hoang are each liable for civil penalties stemming from violations of the CWA, 33 U.S.C. 1321. The United States seeks injunctive relief from these same defendants and Linh Fishery LLC, which is the current owner of the vessel. The complaint also includes a claim under the Federal Debt Collection Procedures Act, 28 U.S.C. 3001 *et seq.,* against Linh Fishery LLC, Hanh Nguyen, Khang Dang, and Tuan Hoang concerning the fraudulent conveyance of the *Jaxon T* after the Coast Guard discovered the violations.

Under the proposed partial consent decree, defendants Nguyen and Dang will pay a total of $475,000. Under the terms of the CWA, the penalties paid for these violations will be deposited in the federal Oil Spill Liability Trust Fund managed by the National Pollution Funds Center. In addition, the settling defendants will perform corrective measures to remedy the violations and prevent future violations in their fleet of twenty-five longline fishing vessels. Required actions include: (1) Making repairs to vessels to reduce the quantity of oily waste generated during fishing voyages; (2) providing crewmembers with training on the proper handling of oily wastes; (3) documenting proper oily waste management and disposal after returning to port; and (4) submitting compliance reports to the Coast Guard and to the Department of Justice.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *Azure Fishery LLC et al.,* D.J. Ref. No. 90–5–1–1–11849. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed 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 proposed 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 $14.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–19969 Filed 9–13–18; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Unemployment Compensation for Federal Employees Handbook No. 391

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL's), Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled ''Unemployment Compensation for Federal Employees Handbook No. 391.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by November 13, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Derrick Holmes by telephone at (202) 693–3205, TTY 1–877–889–5627 (these are not toll-free numbers), or by email at *Holmes.Derrick@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, Room S–4520, 200 Constitution Avenue NW, Washington, DC 20210, by email at *Holmes.Derrick@dol.gov,* or by Fax at (202) 693–3975.

FOR FURTHER INFORMATION CONTACT: Candace Edens by telephone at (202) 693–3195 (this is not a toll-free number) or by email at *Edens.Candace@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Title 5 U.S.C. 8506 states that ''[E]ach agency of the United States and each wholly or partially owned instrumentality of the United States shall make available to State agencies which have agreements, or to the Secretary of Labor, as the case may be, such information concerning the Federal service and Federal wages of a Federal employee as the Secretary considers practicable and necessary for the determination of the entitlement of the Federal employee to compensation under this subchapter.'' The information shall include the findings of the employing agency concerning:

(1) Whether or not the Federal employee has performed Federal service;

(2) the periods of Federal service;

(3) the amount of Federal wages; and

(4) the reasons for termination of Federal service.

State Workforce Agencies (SWAs) administer the Unemployment Compensation for Federal Employees (UCFE) program in accordance with the same terms and provisions of the paying State's unemployment insurance law, which apply to unemployed claimants who worked in the private sector. SWAs must be able to obtain certain information (wage and separation data) about each claimant filing claims for UCFE benefits to enable them to determine his/her eligibility for benefits. DOL has prescribed forms to enable SWAs to obtain this necessary information from the individual's Federal employing agency. Each of these forms is essential to the UCFE claims process and the frequency of use varies depending upon the circumstances involved. The UCFE forms are: ETA–931, ETA–931A, ETA–933, ETA–934, and ETA–935. The law (5 U.S.C. 8501, *et seq.*), authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0179.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Type of Review: Extension without changes.

Title of Collection: Unemployment Compensation for Federal Employees Handbook No. 391.

Form(s): ETA–931, ETA–931A, ETA–933, ETA–934, and ETA–935.

OMB Control Number: 1205–0179.

Affected Public: State Workforce Agency.

Estimated Number of Respondents: 53.

Frequency: On occasion.

Total Estimated Annual Responses: 296,123.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 23,120.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Rosemary Lahasky,

Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2018–20027 Filed 9–13–18; 8:45 am]

BILLING CODE 4510–FW–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report of Rescissions Proposals Pursuant to the Congressional Budget and Impoundment Control Act of 1974

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of monthly cumulative report pursuant to the Congressional Budget and Impoundment Control Act of 1974.

SUMMARY: Pursuant to the Congressional Budget and Impoundment Control Act of 1974, OMB is issuing a monthly cumulative report (for September 2018) from the Director detailing the status of rescission proposals that were previously transmitted to the Congress on May 8, 2018, and amended by the supplementary message transmitted on June 5, 2018.

DATES: Release Date: September 10, 2018.

ADDRESSES: The September 2018 cumulative report is available on-line on the OMB website at: *https://www.whitehouse.gov/omb/budget-rescissions-deferrals/.*

FOR FURTHER INFORMATION CONTACT: Jessica Andreasen, 6001 New Executive Office Building, Washington, DC 20503, Email address: *jandreasen@omb.eop.gov,* telephone number: (202) 395–1066. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

John Mulvaney,

Director.

[FR Doc. 2018–19986 Filed 9–13–18; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (18–068)]

Earth Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Advisory Committee (ESAC). This Committee functions in an advisory capacity to the Director, Earth Science Division, in the NASA Science Mission Directorate. The meeting will be held for the purpose of soliciting, from the science community and other persons, scientific and technical information relevant to program planning.

DATES: Thursday, October 4, 2018, 3:30 p.m.–4:30 p.m., Eastern Time.

ADDRESSES: This meeting will take place telephonically. Any interested person must use a touch-tone phone to participate in this meeting. Any interested person may call the USA toll

free number 1–888–577–8996, passcode 2196080.

FOR FURTHER INFORMATION CONTACT: Ms. KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, fax (202) 358–2779, or *khenderson@nasa.gov.*

The agenda for the meeting includes the following topic:

—Earth Science program annual performance review according to the Government Performance and Results Act Modernization Act.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2018–19953 Filed 9–13–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–053]

Advisory Committee on the Presidential Library-Foundation Partnerships

AGENCY: National Archives and Records Administration.

ACTION: Notice of charter renewal.

SUMMARY: The National Archives and Records Administration (NARA) is renewing the charter for the Advisory Committee on the Presidential Library-Foundation Partnerships. The General Services Administration approved this committee in NARA's ceiling of Federal advisory committees.

DATES: The committee's charter is renewed for two years.

ADDRESSES: National Archives Building at 700 Pennsylvania Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miranda Andreacchio by telephone at 202–357–5496.

SUPPLEMENTARY INFORMATION: In accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), NARA has determined that renewing the charter for the Advisory Committee on the Presidential Library-Foundation Partnerships is in the public interest, due to the unique perspective and valuable advice Committee members provide on establishing and administering Presidential Libraries.

NARA's Committee Management Officer (CMO) is Miranda Andreacchio.

Miranda J. Andreacchio,

Committee Management Officer.

[FR Doc. 2018–20000 Filed 9–13–18; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–059]

Advisory Committee on Presidential Library-Foundation Partnerships

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of advisory committee meeting.

SUMMARY: We are announcing the following Federal advisory committee meeting.

DATES: Wednesday, September 26, 2018, from 9:00 a.m. to 12:00 noon.

ADDRESSES: Gerald R. Ford Presidential Museum; DeVos Learning Center; 303 Pearl Street NW; Grand Rapids, MI.

FOR FURTHER INFORMATION CONTACT: Denise LeBeck, by mail at National Archives and Records Administration; 8601 Adelphi Road, Suite 2200; College Park, MD 20721, by telephone at 301–837–3250, or by email at *denise.lebeck@nara.gov.*

SUPPLEMENTARY INFORMATION: We are announcing this meeting in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2. The purpose of the meeting is to discuss Presidential Library program and public-private partnership between Presidential Libraries and Presidential Foundations topics. The meeting will be open to the public.

Meeting attendees enter through the Gerald R. Ford Presidential Museum's front door (Pearl Street entrance). There is free parking available in the Museum's visitor parking lot. If full, there are commercial parking lots and metered street parking nearby.

Miranda J. Andreacchio,

Committee Management Officer.

[FR Doc. 2018–20007 Filed 9–13–18; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** at 83 FR 22566, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.* Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW, Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton at (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: DUE Project Data Form.

OMB Control No.: 3145–0201.

Abstract: The DUE Project Data Form (NSF 1295) is a component of all grant proposals submitted to NSF's Division of Undergraduate Education. This form collects information needed to direct proposals to appropriate reviewers and to report the estimated collective impact of proposed projects on institutions, students, and faculty members. Requested information includes the discipline of the proposed project, collaborating organizations involved in the project, the academic level on which the project focuses (*e.g.,* lower-level undergraduate courses, upper-level undergraduate courses), characteristics of the organization submitting the proposal, special audiences (if any) that the project would target (*e.g.,* women, minorities, persons with disabilities), strategic foci (if any) of the project (*e.g.,* research on teaching and learning, international activities, integration of research and education), and the number of students and faculty at different educational levels who would benefit from the project.

Respondents: Investigators who submit proposals to NSF's Division of Undergraduate Education.

Estimated Number of Annual Respondents: 2,300.

Burden on the Public: 20 minutes (per response) for an annual total of 767 hours.

Dated: September 10, 2018.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–19957 Filed 9–13–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Geosciences (1755).

Date and Time: October 17, 2018, 8:30 a.m.–5:00 p.m. EDT; October 18, 2018, 8:30 a.m.–2:00 p.m. EDT.

Place: National Science Foundation, 2415 Eisenhower Avenue, Room 2030, Alexandria, Virginia 22314.

Type of Meeting: Open.

Contact Person: Melissa Lane, National Science Foundation, Room C 8000, 2415 Eisenhower Avenue, Virginia 22314; Phone 703–292–8500.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight on support for geoscience research and education including atmospheric, geo-space, earth, ocean and polar sciences.

Agenda

October 17, 2018

- Directorate and NSF activities and plans
- Budget Updates
- Committee Discussion on Follow-On Report to Dynamic Earth
- COV Reports

October 18, 2018

- Division Meetings
- Meeting with the NSF Director and COO
- Summary of AC OPP Spring Meeting and Upcoming Fall Meeting
- Action Items/Planning for Spring 2019 Meeting

Dated: September 11, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–19990 Filed 9–13–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Committee on Equal Opportunities in Science and Engineering (CEOSE) Advisory Committee Meeting (#1173).

Date and Time: October 18, 2018; 1:00 p.m.–5:30 p.m.; October 19, 2018; 8:30 a.m.–3:30 p.m.

Place: National Science Foundation (NSF), 2415 Eisenhower Avenue, Alexandria, VA 22314.

To help facilitate your entry into the building, please contact Una Alford (*ualford@nsf.gov* or 703–292–7111) on or prior to October 16, 2018.

Type of Meeting: Open.

Contact Person: Dr. Bernice Anderson, Senior Advisor and CEOSE Executive Secretary, Office of Integrative Activities (OIA), National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. Contact Information: 703–292–8040/*banderso@nsf.gov.*

Minutes: Meeting minutes and other information may be obtained from the CEOSE Executive Secretary at the above address or the website at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp.*

Purpose of Meeting: To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning broadening participation in science and engineering.

Agenda

- Opening Statement and Chair Report by the CEOSE Chair
- NSF Executive Liaison Report
- Briefing: Sexual Harassment of Women: Climate, Culture and Consequences in STEM
- Presentation: NSF INCLUDES Updates
- Presentation: Building the Capacity and Competitiveness of MSIs—New Efforts
- Discussion: Reviewing the 2017–2018 Biennial Report to Congress
- Presentation: Office of Diversity and Inclusion: Policies, Resources, and Practices
- Reports and Updates from the CEOSE Liaisons and the Federal Liaisons
- Meeting with NSF Director and Chief Operating Officer
- Panel/Discussion: Future Directions

Dated: September 11, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–19991 Filed 9–13–18; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219; NRC–2018–0175]

Exelon Generation Company, LLC; Oyster Creek Nuclear Generating Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of exemptions in response to a March 22, 2018, request from Exelon Generation Company, LLC (Exelon or the licensee), for the Oyster Creek Nuclear Generating Station (Oyster Creek). One exemption would permit the licensee to use funds from the

Oyster Creek decommissioning trust fund (DTF or the Trust) for irradiated fuel management activities and site restoration. Another exemption would allow the licensee to use withdrawals from the Trust for these activities without prior notification to the NRC. The NRC staff is issuing a final Environmental Assessment (EA) and final Finding of No Significant Impact (FONSI) associated with the proposed exemptions.

DATES: The environmental assessment and finding of no significant impact referenced in this document is available on September 14, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0175 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0175. Address questions about NRC dockets in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John G. Lamb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3100; email: *John.Lamb@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of exemptions from sections 50.82(a)(8)(i)(A) and 50.75(h)(1)(iv) of title 10 of the *Code of Federal Regulations* (10 CFR) for Renewed Facility Operating License No. DPR–16, issued to Exelon for Oyster Creek, located in Ocean County, New Jersey. The licensee requested the exemptions by letter dated March 22, 2018 (ADAMS Accession No. ML18081A201). The exemptions would allow the licensee to use funds from the Trust for irradiated fuel management and site restoration activities without prior notice to the NRC, in the same manner that funds from the Trust are used under 10 CFR 50.82(a)(8) for decommissioning activities. In accordance with 10 CFR 51.21, the NRC prepared the following environmental assessment (EA) that analyzes the environmental impacts of the proposed action. Based on the results of this EA, which are provided in Section II, and in accordance with 10 CFR 51.31(a), the NRC has determined not to prepare an environmental impact statement for the proposed licensing action, and is issuing a final FONSI.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would partially exempt Exelon from meeting the requirements set forth in 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv). Specifically, the proposed action would allow Exelon to use funds from the Trust for irradiated fuel management and site restoration activities not associated with radiological decontamination and would exempt Exelon from meeting the requirement for prior notification to the NRC for these activities.

The proposed action is in accordance with the licensee's application dated March 22, 2018.

Need for the Proposed Action

By letter dated February 14, 2018 (ADAMS Accession No. ML18045A084), Exelon informed the NRC that it plans to permanently ceased power operations at Oyster Creek no later than October 31, 2018.

As required by 10 CFR 50.82(a)(8)(i)(A), decommissioning trust funds may be used by the licensee if the withdrawals are for legitimate decommissioning activity expenses, consistent with the definition of decommissioning in 10 CFR 50.2. This definition addresses radiological decontamination and does not include activities associated with irradiated fuel management or site restoration. Similarly, the requirements of 10 CFR 50.75(h)(1)(iv) restrict the use of decommissioning trust fund disbursements (other than for ordinary and incidental expenses) to decommissioning expenses until final decommissioning has been completed. Therefore, partial exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) are needed to allow Exelon to use funds from the Trust for irradiated fuel management and site restoration activities.

Exelon stated that Table 2 of the application dated March 22, 2018, demonstrates that the DTF contains the amount needed to cover the estimated costs of radiological decommissioning, as well as spent fuel management and site restoration activities. The adequacy of funds in the Trust to cover the costs of activities associated with irradiated fuel management, site restoration, and radiological decontamination through license termination is supported by the Oyster Creek Post-Shutdown Decommissioning Activities Report submitted by Exelon in a letter dated May 21, 2018 (ADAMS Accession No. ML18141A775). The licensee stated that it needs access to the funds in the Trust in excess of those needed for radiological decontamination to support irradiated fuel management and site restoration activities not associated with radiological decontamination.

The requirements of 10 CFR 50.75(h)(1)(iv) further provide that, except for decommissioning withdrawals being made under 10 CFR 50.82(a)(8) or for payments of ordinary administrative costs and other incidental expenses of the Trust, no disbursement may be made from the Trust until written notice of the intention to make a disbursement has been given to the NRC at least 30 working days in advance of the intended disbursement. Therefore, an exemption from 10 CFR 50.75(h)(1)(iv) is needed to allow Exelon to use funds from the Trust for irradiated fuel management and site restoration activities without prior NRC notification.

In summary, by letter dated March 22, 2018, Exelon requested exemptions to allow Trust withdrawals, without prior written notification to the NRC, for irradiated fuel management and site restoration activities.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the environmental impacts of the proposed action.

The proposed action involves exemptions from requirements that are

of a financial or administrative nature and that do not have an impact on the environment. The NRC has completed its evaluation of the proposed action and concludes that there is reasonable assurance that adequate funds are available in the Trust to complete all activities associated with decommissioning and irradiated fuel management and site restoration. There is no decrease in safety associated with the use of the Trust to fund activities associated with irradiated fuel management and site restoration. Section 50.82(a)(8)(v) of 10 CFR requires a licensee to submit a financial assurance status report annually between the time of submitting its decommissioning cost estimate and submitting its final radiation survey and demonstrating that residual radioactivity has been reduced to a level that permits termination of its license. Section 50.82(a)(8)(vi) of 10 CFR requires that if the remaining balance, plus expected rate of return, plus any other financial surety mechanism does not cover the estimated costs to complete the decommissioning, additional financial assurance must be provided to cover the cost of completion. These annual reports provide a means for the NRC to monitor the adequacy of available funding. Since the exemptions would allow Exelon to use funds from the Trust that are in excess of those required for radiological decontamination of the site and the adequacy of funds dedicated for radiological decontamination are not affected by the proposed exemptions, there is reasonable assurance that there will be no environmental impact due to lack of adequate funding for decommissioning.

The proposed action will not significantly increase the probability or consequences of radiological accidents. Additionally, the NRC staff has concluded that the proposed changes have no direct radiological impacts. There would be no change to the types or amounts of radiological effluents that may be released, therefore, no change in occupational or public radiation exposure from the proposed changes. There are no materials or chemicals introduced into the plant that could affect the characteristics or types of effluents released offsite. In addition, the method of operation of waste processing systems will not be affected by the exemption. The proposed exemption will not result in changes to the design basis requirements of structures, systems, and components (SSCs) that function to limit or monitor the release of effluents. All the SSCs associated with limiting the release of effluents will continue to be able to perform their functions. Moreover, no changes would be made to plant buildings or the site property from the proposed changes. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed changes would have no direct impacts on land use or water resources, including terrestrial and aquatic biota, as they involve no new construction or modification of plant operational systems. There would be no changes to the quality or quantity of nonradiological effluents and no changes to the plant's National Pollutant Discharge Elimination System permits would be needed. In addition, there would be no noticeable effect on socioeconomic conditions in the region, no environment justice impacts, no air quality impacts, and no impacts to historic and cultural resources from the proposed changes. Therefore, there are no significant nonradiological environment impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies or Persons Consulted

No additional agencies or persons were consulted regarding the environmental impact of the proposed action. On August 10, 2018, the State of New Jersey representatives were notified of the EA and FONSI.

III. Finding of No Significant Impact

The licensee has proposed exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv), which would allow Exelon to use funds from the Trust for irradiated fuel management and site restoration activities, without prior written notification to the NRC. The proposed action would not significantly affect plant safety, would not have a significant adverse effect on the probability of an accident occurring, and would not have any significant radiological or nonradiological impacts. The reason the human environment would not be significantly affected is that the proposed action involves exemptions from requirements that are of a financial or administrative nature and that do not have an impact of the human environment. Consistent with 10 CFR 51.21, the NRC conducted the EA for the proposed action, and this FONSI incorporates by reference the EA included in Section II. Therefore, the NRC concludes that the proposed action will not have significant effects on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Other than the licensee's letter dated March 22, 2018, there are no other environmental documents associated with this review. This document is available for public inspection as indicated section I.

Previous considerations regarding the environmental impacts of operating Oyster Creek Nuclear Generating Station, in accordance with its renewed operating license, is described in the ''Final Environmental Statement for Oyster Creek Nuclear Generating Station,'' dated December 1974, and NUREG–1437, Supplement 28, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Oyster Creek Nuclear Generating Station,'' Volumes 1 and 2, Final Report, dated January 2007.

IV. Availability of Documents

Date	Title	ADAMS accession No.
3/22/2018	Letter from Exelon to NRC titled ''Request for Exemption from 10 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv)''.	ML18081A201

Date	Title	ADAMS accession No.
2/14/2018	Letter from Exelon to NRC titled ''Certification of Permanent Cessation of Power Operations for Oyster Creek Nuclear Generating Station''.	ML18045A084
5/21/2018	Letter from Exelon to NRC titled ''Oyster Creek Nuclear Generating Station—Post-Shutdown Decommissioning Activities Report''.	ML18141A775
12/1974	Final Environmental Statement for Oyster Creek Nuclear Generating Station	ML072200150
1/2007	NUREG–1437, Supplement 28, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Oyster Creek Nuclear Generating Station,'' Volumes 1 and 2.	ML070100234 ML070100258

Dated at Rockville, Maryland, this 10th day of September 2018.

For the Nuclear Regulatory Commission.

John G. Lamb,

Senior Project Manager, Special Projects and Process Branch, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–19976 Filed 9–13–18; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84069; File No. SR–NYSEAMER–2018–43]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.23E, Obligations of Market Makers

September 10, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 28, 2018, NYSE American LLC (the ''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.23E, Obligations of Market Makers. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to codify existing practice by harmonizing Rule 7.23E, Obligations of Market Makers, with similar rules of its affiliates, the New York Stock Exchange, Inc. (''NYSE''),[4] NYSE Arca, Inc. (''NYSE Arca''),[5] and NYSE National LLC (''NYSE National'') [6]. Specifically, the Exchange proposes to add language to paragraphs (a)(1)(B)(iii) and (iv) of Exchange Rule 7.23E to state that for purposes of each paragraph, rights and warrants will be considered Tier 2 NMS Stocks. This text was inadvertently not included in each paragraph when Exchange Rule 7.23E was first adopted.[7]

In sum, Exchange Rule 7.23E(a)(1) sets forth the two-side quoting obligations of market makers and requires that the price of the bid (offer) interest shall be not more than the Designated Percentage away from the then current National Best Bid (Offer), or if no National Best Bid (Offer), not more than the Designated Percentage away from the last reported sale from the responsible single plan processor. In the event that the National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale) increases (decreases) to a level that would cause the bid (offer) interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale) or if the bid (offer) is executed or cancelled, the Market Maker shall enter new bid (offer) interest at a price not more than the Designated Percentage away from the then current National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.

Exchange Rules 7.23E(a)(1)(B)(iii) and (iv) include definitions for the terms ''Designated Percentage'' and ''Defined Limit.'' Pursuant to paragraph (a)(1)(B)(iii) of Exchange Rule 7.23E, the ''Designated Percentage'' shall be 8% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan (''Tier 1 NMS Stocks''), 28% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan (''Tier 2 NMS Stocks'') with a price equal to or greater than $1.00, and 30% for Tier 2 NMS Stocks with a price lower than $1.00, except that between 9:30 a.m. and 9:45 a.m. Eastern Time and between 3:35 p.m. Eastern Time and the close of Core Trading Hours, the Designated Percentage shall be 20% for Tier 1 NMS Stocks, 28% for Tier 2 NMS Stocks with a price equal to or greater than $1.00, and 30% for Tier 2 NMS Stocks with a price lower than $1.00.

Pursuant to paragraph (a)(1)(B)(iv) of Exchange Rule 7.23E, the ''Defined Limit'' shall be 9.5% for Tier 1 NMS Stocks, 29.5% for Tier 2 NMS Stocks with a price equal to or greater than $1.00, and 31.5% for Tier 2 NMS Stocks with a price lower than $1.00, except that between 9:30 a.m. and 9:45 a.m. Eastern Time and between 3:35 p.m. Eastern Time and the close of Core Trading Hours, the Defined Limit shall be 21.5% for Tier 1 NMS Stocks, 29.5% for Tier 2 NMS Stocks with a price equal to or greater than $1.00, and 31.5% for Tier 2 NMS Stocks with a price lower than $1.00.

[4] *See* NYSE Rule 104(a)(1)(B)(iii) and (iv).

[5] *See* NYSE Arca Rule 7.23–E(a)(1)(B)(iii) and (iv).

[6] *See* NYSE National Rule 7.23(a)(1)(B)(iii) and (iv).

[7] *See* Securities Exchange Act Release No. 80577 (May 2, 2017), 82 FR 21446 (May 8, 2017) (SR–NYSEMKT–2017–04).

The Exchange proposes to add the following sentence to the end of subparagraphs (a)(1)(B)(iii) and (iv) of Exchange Rule 7.23E: For purposes of this paragraph, rights and warrants will be considered Tier 2 NMS Stocks. Because rights and warrants are not subject to the Limit Up-Limit Down Plan, but are subject to market maker quoting requirements, the Exchange proposes to provide that for purposes of Rule 7.23E(a)(1)(B)(iii) and (iv), rights and warrants would be considered Tier 2 NMS Stocks. This sentence is included in similar rules of the Exchange's affiliates, NYSE,[8] NYSE Arca,[9] and NYSE National[10] and was inadvertently not included when Exchange Rule 7.23E was first adopted.[11]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change would further harmonize the definition of the terms ''Designated Percentage'' and ''Defined Limit'' under Exchange Rule 7.23E(a)(1)(B) with the definition of those same terms under the rules of its affiliates[14] by inserting language that was inadvertently excluded when Exchange Rule 7.23E was adopted. The proposed rule change should, therefore, provide for consistency among similar rules of the Exchange and its affiliates, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system and, in general, protecting 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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would not have any impact on competition since it simply seeks to further harmonize the text of Exchange Rule 7.23E(a)(1)(B) with the rules of its affiliates[15] by inserting language that was inadvertently excluded when Exchange Rule 7.23E was adopted.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17] Because the foregoing proposed rule 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 if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given 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,[18] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAMER–2018–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2018–43. 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–NYSEAMER–2018–43 and should be submitted on or before October 5, 2018.

[8] *See* NYSE Rule 104(a)(1)(B)(iii) and (iv).

[9] *See* NYSE Arca Rule 7.23–E(a)(1)(B)(iii) and (iv).

[10] *See* NYSE National Rule 7.23(a)(1)(B)(iii) and (iv).

[11] *See supra* note 7.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See supra* notes 4, 5, and 6.

[15] *Id.*

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] The Exchange has satisfied this requirement.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19970 Filed 9–13–18; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that a public roundtable will be held in Baltimore, MD on Thursday, September 20, 2018 from 6:00–7:30 p.m. (ET).

PLACE: The roundtable will be held at the Reginald F. Lewis Museum of Maryland African American History & Culture, 830 E Pratt Street, Baltimore, MD 21202.

STATUS: The roundtable will be open to the public. Seating for public observers will be on a first-come, first-served basis. Doors will open at 5:30 p.m. and the event will begin at 6:00 p.m. Visitors will be subject to security checks. A transcript of the roundtable will be made available in the comment file for the Commission's proposed rulemaking package regarding the standards of conduct for investment professionals.

MATTERS TO BE CONSIDERED: On April 18, 2018, the Commission voted to propose a package of rulemakings and interpretations designed to enhance the quality and transparency of investors' relationships with investment advisers and broker-dealers while preserving access to a variety of types of advice relationships and investment products. On April 24, 2018, Chairman Jay Clayton issued a statement announcing that he had asked SEC staff to put together a series of roundtables focused on the retail investor to be held in different cities across the country. The roundtables are intended to gather information directly from those investors most affected by the Commission's rulemaking.

The Baltimore roundtable is open to the public. This Sunshine Act notice is being issued because a quorum of the Commission may attend the roundtable.

The agenda for the meeting includes a discussion with Chairman Clayton, Commissioners Kara Stein, Robert Jackson and Elad Roisman, and senior SEC staff regarding the Commission's proposed Regulation Best Interest and the proposed restriction on the use of certain names or titles; a discussion regarding the Commission's proposed Form CRS Relationship Summary, including effective disclosure and design.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: September 12, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–20179 Filed 9–12–18; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33223; 812–14919]

Wealthn LLC and TigerShares Trust

September 11, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; and (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure.

APPLICANTS: TigerShares Trust (the ''Trust''), a Delaware statutory trust, which will register under the Act as an open-end management investment company with multiple series, and Wealthn LLC (the ''Initial Adviser''), a Delaware limited liability company, which will register as an investment adviser under the Investment Advisers Act of 1940.

FILING DATES: The application was filed on June 11, 2018 and amended on August 15, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 8, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090; Applicants: 3532 Muirwood Drive, Newtown Square, PA 19073.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds (''ETFs'').[1] Fund

[1] Applicants request that the order apply to the Initial Fund and any additional series of the Trust, and any other existing or future open-end management investment company or existing or future series thereof (each, included in the term ''Fund''), each of which will operate as an ETF and will track a specified index comprised of domestic and/or foreign equity securities and/or domestic and/or foreign fixed income securities (each, an ''Underlying Index''). Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the

shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant,'' which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond closely to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[2]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c-1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Securities Exchange Act of 1934, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions, and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part

Initial Adviser (each of the foregoing and any successor thereto, an ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested order, a ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Each Self-Indexing Fund will post on its website the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–20047 Filed 9–13–18; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15678; Florida Disaster Number FL–00139 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Florida, dated 09/04/2018.

Incident: Toxic Algal Blooms.

Incident Period: 06/01/2018 and continuing.

DATES: Issued on 09/04/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 06/04/2019.

ADDRESS: 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 Administrator's EIDL declaration, applications for economic injury 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: Lee, Martin

Contiguous Counties:

Florida: Charlotte, Collier, Glades, Hendry, Okeechobee, Palm Beach, Saint Lucie

The Interest Rates are:

	Percent
Businesses and 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 economic injury is 156780.

The State which received an EIDL Declaration # is FLORIDA.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: September 4, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–19981 Filed 9–13–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15675; Florida Disaster Number FL–00138 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Florida, dated 9/4/2018.

Incident: Red Tide Algal Bloom.

Incident Period: 11/01/2017 and continuing.

DATES: Issued on 09/04/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 06/04/2019.

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 Administrator's EIDL declaration, applications for economic injury 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: Lee, Manatee, Sarasota

Contiguous Counties:

Florida: Charlotte, Collier, Desoto, Glades, Hardee, Hendry, Hillsborough, Polk

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.385
Non-Profit Organizations Without Credit Available Elsewhere	2.500

The number assigned to this disaster for economic injury is 156750.

The State which received an EIDL Declaration # is FLORIDA

(Catalog of Federal Domestic Assistance Number 59008)

Dated: September 4, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–19982 Filed 9–13–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15679; California Disaster Number CA–00294 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 09/04/2018.

Incident: Ferguson Fire.

Incident Period: 07/13/2018 through 08/19/2018.

DATES: Issued on 09/04/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 06/04/2019.

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 Administrator's EIDL declaration, applications for economic injury 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: Mariposa
Contiguous Counties:
California:
Madera, Merced, Stanislaus, Tuolumne

The Interest Rates are:

	Percent
Businesses and 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 economic injury is 156790.

The State which received an EIDL Declaration # is CALIFORNIA.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: September 4, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–19979 Filed 9–13–18; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2018–0034]

Rescission of Social Security Rulings 62–47, 65–33c, 66–19c, 67–54c, 68–47c, 71–23c, 72–14c, 72–31c, 82–19c, and 86–10c

AGENCY: Social Security Administration.

ACTION: Notice of rescission of social security rulings.

SUMMARY: The Acting Commissioner of Social Security gives notice of the rescission of Social Security Rulings (SSR): SSR 62–47; SSR 65–33c; SSR 66–19c; SSR 67–54c; SSR 68–47c; SSR 71–23c; SSR 72–14c; SSR 72–31c; SSR 82–19c; SSR 86–10c.

DATES: This rescission is applicable on September 14, 2018.

FOR FURTHER INFORMATION CONTACT: Dan O'Brien, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 597–1632. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: Through SSRs, we make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

We are rescinding the following SSRs:

- SSR 62–47—Representation of Claimant by Counsel—Fees for Services;
- SSR 65–33c—Section 206.—Representation of Claimant—Fee for Services—Violation;
- SSR 66–19c—Sections 205(b) and (g) and 206(a).—Judicial Review—Attorney's Fee Fixed by Administration;
- SSR 67–54c—Section 206.—Representation of Claimant—Fixing amount of Attorneys's [sic] Fees—Administrative and Court Proceedings;
- SSR 68–47c—Section 206(a).—Representation of Claimant—Attorney's Fees—Authority to Regulate and Approve Amount;
- SSR 71–23c—Section 206.—Representation of Claimant—Fair and Impartial Hearing;
- SSR 72–14c—Section 206(a) (42 U.S.C. 406(a)).—Representation of Claimant—Determination of Attorney's Fees—Administrative Proceedings;
- SSR 72–31c—Section 206(a) and (b) (42 U.S.C. 406(a) and (b)).—Representation of Claimant Favorable Award of Benefits to Claimant—Determination of Attorney's Fee;
- SSR 82–19c—Sections 205(b), (g), and (h) and 206(a) (42 U.S.C. 405(b), (g), and (h) and 406 (a)) Judicial Review—Attorney's Fee Fixed by Administration—Constitutionality;
- SSR 86–10c—Section 206(a) of the Social Security Act (42 U.S.C. 406(a)) Judicial Review—Attorney's Fee Fixed by Administration—Constitutionality.

These SSRs date from the early 1960s through the early 1980s, when the agency published them as policy interpretations binding on all components of the agency. We are rescinding these SSRs, which address due process rights to counsel; fees for representational services; and judicial review of representative fees, because the information provided therein either reflects well-established legal principles and is already reflected clearly in the Social Security Act or regulations, or has since been clarified in our regulations and subregulatory guidance. *See* 20 CFR 404.903(f), 404.938(b)(2) 416.1403(a)(6), 416.1438(b)(2) and 20 CFR Ch. III, Pt. 404, Subpt. R, 20 CFR and Pt. 416, Subpt. O, SSR 90–3c, POMS GN 03900, and HALLEX I–1–1, I–1–2. As such, these SSRs are redundant, outdated, or obsolete.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security Disability Insurance, 96.002 Social Security Retirement Insurance, 96.004 Social Security Survivors Insurance, and 96.006 Supplemental Security Income)

Nancy A. Berryhill,

Acting Commissioner of Social Security.

[FR Doc. 2018–20050 Filed 9–13–18; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Delegation of Authority No. 455]

Delegation of Authority to the Under Secretary of State for Arms Control and International To Concur With the Use the Afghanistan Security Forces Fund

By virtue of the authority vested in the Secretary of State, including section 1 of the State Department Basic Authorities Act (22 U.S.C. 2651a) and section 1513 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181) (FY 2008 NDAA), along with a similar concurrence authority contained in the Afghanistan Security Forces Fund (ASFF) heading of the Department of Defense Appropriations Act, 2018 (Div. C, Pub L. 115–141) (FY 2018 DoD Appropriations Act), I hereby delegate to the Under Secretary of State for Arms Control and International Security, to the extent authorized by law, the authority to concur with the Secretary of Defense's use of the ASFF authority, pursuant to section 1513 of the FY 2008 NDAA and the ASFF heading of the FY 2018 DoD Appropriations Act.

Notwithstanding this delegation of authority, any function or authority delegated herein may be exercised by the Secretary or the Deputy Secretary. Any reference in this delegation of authority to any statute shall be deemed to be a reference to such statute as amended from time to time, and shall be deemed to apply to any provision of law that is the same or substantially the same as such statute.

This delegation of authority shall be published in the **Federal Register**.

Dated: August 21, 2018.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2018–20061 Filed 9–13–18; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Delegation of Authority No. 453]

Delegation of Authority to the Under Secretary of State for Arms Control and International Security To Concur With the Use of the Coalition Support Fund, Including the Coalition Readiness Support Program

By virtue of the authority vested in the Secretary of State, including section 1 of the State Department Basic Authorities Act (22 U.S.C. 2651a) and section 1233 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181) (FY 2008 NDAA), I hereby delegate to the Under Secretary of State for Arms Control and International Security, to the extent authorized by law, the authority to concur with the Secretary of Defense's use of the Coalition Support Fund, including the Coalition Readiness Support Program, pursuant to section 1233 of the FY 2008 NDAA.

Notwithstanding this delegation of authority, any function or authority delegated herein may be exercised by the Secretary or the Deputy Secretary. Any reference in this delegation of authority to any statute shall be deemed to be a reference to such statute as amended from time to time, and shall be deemed to apply to any provision of law that is the same or substantially the same as such statute.

This delegation of authority shall be published in the **Federal Register**.

Dated: August 21, 2018.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2018–20060 Filed 9–13–18; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Delegation of Authority No. 458]

Delegation of Authority to the Under Secretary of State for Arms Control and International Security To Concur With the Use of Security Assistance for Baltic Nations for a Joint Program for Interoperability and Deterrence Against Aggression

By virtue of the authority vested in the Secretary of State, including section 1 of the State Department Basic Authorities Act (22 U.S.C. 2651a) and section 1279D of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91) (FY 2018 NOAA), I hereby delegate to the Under Secretary of State for Arms Control and International Security, to the extent authorized by law, the authority to concur with the Secretary of Defense's use of the authority to provide security assistance for Baltic nations for a joint program for interoperability and deterrence against aggression, pursuant to section 1279D of the FY 2018 NDAA.

Notwithstanding this delegation of authority, any function or authority delegated herein may be exercised by the Secretary or the Deputy Secretary. Any reference in this delegation of authority to any statute shall be deemed to be a reference to such statute as amended from time to time, and shall be deemed to apply to any provision of law that is the same or substantially the same as such statute.

This delegation of authority shall be published in the **Federal Register**.

Dated: August 21, 2018.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2018–20057 Filed 9–13–18; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Delegation of Authority No. 452]

Delegation of Authority to the Under Secretary of State for Arms Control and International Security To Concur With the Use of the Southeast Asia Maritime Security Initiative Authority

By virtue of the authority vested in the Secretary of State, including section 1 of the State Department Basic Authorities Act (22 U.S.C. 2651a) and section 1263 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92) (FY 2016 NDAA), I hereby delegate to the Under Secretary of State for Arms Control and International Security, to the extent authorized by law, the authority to concur with the Secretary of Defense's use of the Southeast Asia Maritime Security Initiative authority, pursuant to section 1263 of the FY 2016 NDAA.

Notwithstanding this delegation of authority, any function or authority delegated herein may be exercised by the Secretary or the Deputy Secretary. Any reference in this delegation of authority to any statute shall be deemed to be a reference to such statute as amended from time to time, and shall be deemed to apply to any provision of law that is the same or substantially the same as such statute.

This delegation of authority shall be published in the **Federal Register**.

Dated: August 21, 2018.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2018–20056 Filed 9–13–18; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Delegation of Authority No. 459]

Delegation of Authority to the Director of the Office of U.S. Foreign Assistance Resources Under Section 7076(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018

By virtue of the authority vested in the Secretary of State, including section 1 of the State Department Basic Authorities Act (22 U.S.C. 2651a) and section 7076(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018 (Division K, Pub. L. 115–141) (FY 2018 SFOAA), I hereby delegate to the Director of the Office of U.S. Foreign Assistance Resources, to the extent authorized by law, the authority to determine whether the obligation of up to 10 percent of the funds contained in a spend plan required by section 7076(b) of the FY 2018 SFOAA is necessary to avoid significant programmatic disruption.

Notwithstanding this delegation of authority, any function or authority delegated herein may be exercised by the Secretary or the Deputy Secretary. Any reference in this delegation of authority to a statute shall be deemed to be a reference to such statute as amended from time to time and shall be deemed to apply to any provision of law that is the same or substantially the same as such statute.

This delegation of authority shall be published in the **Federal Register**.

Dated: September 5, 2018.

Michael R. Pompeo,

Secretary of State, Department of State.

[FR Doc. 2018–20062 Filed 9–13–18; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Delegation of Authority No. 456]

Delegation of Authority to the Under Secretary of State for Arms Control and International Security To Concur With the Use of the Counter-Isis Train and Equip Fund

By virtue of the authority vested in the Secretary of State, including section 1 of the State Department Basic Authorities Act (22 U.S.C. 2651a) and the Counter-ISIS Train and Equip (CTEF) heading of the Department of Defense Appropriations Act, 2018 (Div. C, Pub. L. 115–141) (FY 2018 DoD Appropriations Act) and section 1236 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291),

I hereby delegate to the Under Secretary of State for Arms Control and International Security, to the extent authorized by law, the authority to concur with the Secretary of Defense's use of the CTEF authority, consistent with the CTEF heading of the FY 2018 DoD Appropriations Act and section 1236.

Notwithstanding this delegation of authority, any function or authority delegated herein may be exercised by the Secretary or the Deputy Secretary. Any reference in this delegation of authority to any statute shall be deemed to be a reference to such statute as amended from time to time, and shall be deemed to apply to any provision of law that is the same or substantially the same as such statute.

This delegation of authority shall be published in the **Federal Register**.

Dated: August 21, 2018.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2018–20053 Filed 9–13–18; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Delegation of Authority No. 454]

Delegation to the Under Secretary of State for Arms Control and International Security To Concur With the Use of the Authority To Provide Support to Certain Governments for Border Security Operations

By virtue of the authority vested in the Secretary of State, including section 1 of the State Department Basic Authorities Act (22 U.S.C. 2651a) and section 1226 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92) (FY 2016 NDAA), I hereby delegate to the Under Secretary of State for Arms Control and International Security, to the extent authorized by law, the authority to concur with the Secretary of Defense's use of the authority to provide support to certain governments for border security operations, pursuant to section 1226 of the FY 2016 NDAA.

Notwithstanding this delegation of authority, any function or authority delegated herein may be exercised by the Secretary or the Deputy Secretary. Any reference in this delegation of authority to any statute shall be deemed to be a reference to such statute as amended from time to time, and shall be deemed to apply to any provision of law that is the same or substantially the same as such statute.

This delegation of authority shall be published in the **Federal Register**.

Dated: August 21, 2018.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2018–20059 Filed 9–13–18; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Delegation of Authority No. 457]

Delegation of Authority to the Under Secretary of State for Arms Control and International Security To Concur With the Use of the Authority for Training Eastern European National Security Forces in the Course of Multilateral Exercises

By virtue of the authority vested in the Secretary of State, including section 1 of the State Department Basic Authorities Act (22 U.S.C. 2651a) and section 1251 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92) (FY 2016 NDAA), I hereby delegate to the Under Secretary of State for Arms Control and International Security, to the extent authorized by law, the authority to concur with the Secretary of Defense's use of the authority for training for Eastern European national security forces in the course of multilateral exercises, pursuant to section 1251 of the FY 2016 NDAA.

Notwithstanding this delegation of authority, any function or authority delegated herein may be exercised by the Secretary or the Deputy Secretary. Any reference in this delegation of authority to any statute shall be deemed to be a reference to such statute as amended from time to time, and shall be deemed to apply to any provision of law that is the same or substantially the same as such statute.

This delegation of authority shall be published in the **Federal Register**.

Dated: August 21, 2018.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2018–20054 Filed 9–13–18; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Delegation of Authority No. 451]

Delegation of Authority to the Under Secretary of State for Arms Control and International Security To Concur With the Use of the Joint Improvised Explosive Device Defeat Fund Authority

By virtue of the authority vested in the Secretary of State, including section 1 of the State Department Basic Authorities Act (22 U.S.C. 2651a) and section 1532(c) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239) (FY 2013 NDAA), I hereby delegate to the Under Secretary of State for Arms Control and International Security, to the extent authorized by law, the authority to concur with the Secretary of Defense's use of the Joint Improvised Explosive Device Defeat Fund authority, pursuant to section 1532(c) of the FY 2013 NDAA.

Notwithstanding this delegation of authority, any function or authority delegated herein may be exercised by the Secretary or the Deputy Secretary. Any reference in this delegation of authority to any statute shall be deemed to be a reference to such statute as amended from time to time, and shall be deemed to apply to any provision of law that is the same or substantially the same as such statute.

This delegation of authority shall be published in the **Federal Register**.

Dated: August 21, 2018.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2018–20058 Filed 9–13–18; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–65]

Petition for Exemption; Summary of Petition Received; Russell Timmerman

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal 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 October 4, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0609 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: Jake Troutman, (202) 683–7788, 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–2018–0609.

Petitioner: Russell Timmerman.

Section(s) of 14 CFR Affected: §§ 107.61(d)(2); 107.63(a)(2) & (b)(3).

Description of Relief Sought: The petitioner is requesting relief from the aeronautical knowledge requirement of § 107.61(d) of 14 CFR. The petitioner believes, because the Federal Aviation Administration Safety Inspectors are required to be well versed in Part 91 rules, they demonstrate sufficient aeronautical knowledge to be exempt from § 61.56 of 14 CFR.

[FR Doc. 2018–19971 Filed 9–13–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–69]

Petition for Exemption; Summary of Petition Received; Silver Wings Drone Services, LLC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal 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 October 4, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0652 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: Jake Troutman, (202) 683–7788, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on August 30, 2018.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0652.

Petitioner: Silver Wings Drone Services, LLC.

Section(s) of 14 CFR Affected: §§ 107.36; 137.19(c); 137.19(d); 137.19(e)(2)(ii), (iii), & (v); 137.31(a) & (b); 137.33(a) & (b); 137.41(c); 137.42; Title 49 CFR part 175.

Description of Relief Sought: The petitioner is requesting relief to commercially operate the DJI Matrice 600 Variant unmanned aircraft system, with the IGNIS Fire System that embeds to unmanned aircraft and is capable of carrying a payload of pingpong-ball sized chemical spheres. Upon command, the spheres are injected with glycol, starting a chemical reaction that will generate flames after being dropped and upon landing on the ground. The petitioner is requesting to perform prescribed burns for habitat management and fuel reduction.

[FR Doc. 2018–19968 Filed 9–13–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–68]

Petition for Exemption; Summary of Petition Received; Powers Flight Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal 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 October 4, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0574 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: Jake Troutman, (202) 683–7788, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on August 30, 2018.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0574.

Petitioner: Powers Flight Group.

Section(s) of 14 CFR Affected: §§ 91.7(a); 91.119(c); 91.121; 91.151(b); 91.405(a); 91.407(a)(1); 91.409(a)(1) & (2); 91.417(a) & (b); 137.19 (c), (d) & (e)(2)(ii)(iii) and (v); 137.31; 137.33; 137.41(c); 137.42.

Description of Relief Sought: The petitioner is requesting relief to commercially operate the HSE–UAV AG V6A+ v2 unmanned aircraft system (UAS), while weighing over 55 pounds (lbs) but no more than 75.3 lbs, for controlled, low-risk, precision commercial agriculture-related services, including: multi-spectral crop analysis; ground moisture analysis; herbicide, pesticide and insecticide; aerial imagery, and 3D modeling; in certain remote rural areas of the United States. The petitioner is also requesting relief to conduct the proposed operation, using UAS weighing more then 55 lbs, with a Remote Pilot Certificate.

[FR Doc. 2018–19967 Filed 9–13–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Reinstate Approval of Information Collection: Aviation Insurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to reinstate an information collection. The collection involves obtaining basic information from new aviation insurance applicants about eligible aviation insurance applicants needed to establish a legally binding, non-premium insurance policy with the FAA, as requested by another Federal agency, such as the applicants name and address, and the aircraft to be covered by the policy. The information collected will be used to determine whether applicants are eligible for Chapter 443 insurance and the amount of coverage necessary; populate non-premium insurance policies with the legal name and address; and meet conditions of coverage required by each insurance policy.

As a condition of coverage, air carriers will be required to submit any changes to the basic information initially submitted on the application, as necessary. Air carrier's will also be responsible for providing a copy of their current commercial insurance policy on an ongoing basis, and aircraft registration and serial numbers for any new aircraft the air carrier would like to add to the policy. This information will form part of a legally binding agreement (*i.e.,* insurance policy) between the FAA and air carrier. Failure to provide this updated information could result in lack or denial of coverage.

DATES: Written comments should be submitted by October 15, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594–5913, or by email at: *Barbara.L.Hall@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0514.

Title: Aviation Insurance.

Form Numbers: 2120–0514.

Type of Review: Reinstate an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 7, 2018 (83 FR 26537). Title 49 U.S.C. 44305 authorizes the Administrator of the Federal Aviation Administration, acting pursuant to a delegation of authority from the Secretary of Transportation, to provide aviation insurance at the request of another Federal agency, without premium, provided that the head of the Federal agency agrees to indemnify the FAA from loss.

The FAA Non-Premium Aviation War Risk Insurance Program offers war risk coverage, without premium, to air carriers at the request of DoD and other Federal agencies. DoD and other Federal agencies rely on the FAA to provide aviation war risk insurance to

contracted air carriers supporting mission objectives and operations that is not available commercially on reasonable terms and conditions. Air carriers never insured under the FAA Non-Premium War Risk Insurance Program must submit an application before the FAA can provide coverage.

Respondents: The FAA currently insures 31 U.S. air carriers through its Non-Premium Aviation Insurance Program at the request of other Federal agencies. We estimate the addition of four new air carriers to the program each year. In addition, air carriers insured will be required to provide and update information on an ongoing basis as a condition of insurance coverage and to remain eligible for insurance policy renewals.

Frequency: On occasion.

Estimated Average Burden per Response: 4 hours; Commercial Policy Submission—10 minutes; Business Information Update—5 minutes; and Aircraft Schedule Update—2 minutes per aircraft.

Estimated Total Annual Burden: 28 hours.

Issued in Washington, DC, on September 7, 2018.

Barbara Hall,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2018–19975 Filed 9–13–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0120]

Agency Information Collection Activities; Revision of an Information Collection Request: Financial Responsibility, Trucking and Freight Forwarding

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The ICR is related to Form BMC–32 titled, ''Endorsement for Household Goods Motor Carrier Polices of Insurance for Cargo Liability Under 49 U.S.C. 13906.''

DATES: Please send your comments by October 15, 2018. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2018–0120. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jeffrey Secrist, Division Chief, Office of Registration and Safety Information, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Telephone: 202–385–2367; Email Address: *jeff.secrist@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Financial Responsibility, Trucking and Freight Forwarding.

OMB Control Number: 2126–0017.

Type of Request: Revision of an approved information collection.

Respondents: Household goods carriers and household goods freight forwarders.

Estimated Number of Respondents: 366,086 respondents. (4,773 for the BMC–32 form + 361,313 respondents for currently approved ICR for the BMC–34, BMC–35, BMC–36, BMC–40, BMC–82, BMC–83, BMC–84, BMC–85, BMC–91, and BMC–91X forms).

Estimated Time per Response: 10 minutes for the BMC–32 form and 10 minutes for the BMC–34, BMC–35, BMC–36, BMC–82, BMC–83, BMC–84, BMC–85, BMC–91, and BMC–91X forms. 40 hours for the BMC–40 form.

Expiration Date: May 31, 2020.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 62,483 hours (796 hours [4,773 respondents × 10 minutes per response] for the BMC–32 form + 61,687 hours for currently approved ICR for the BMC–34, BMC–35, BMC–36, BMC–40, BMC–82, BMC–83, BMC–84, BMC–85, BMC–91, and BMC–91X forms).

Background: The Secretary of Transportation (Secretary) is authorized to register for-hire motor carriers of property and passengers under the provisions of 49 U.S.C. 13902, surface freight forwarders under the provisions of 49 U.S.C. 13903, and property brokers under the provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. 13901. The Secretary has delegated authority pertaining to these registration requirements to the FMCSA. The registration remains valid only if these transportation entities maintain, on file with the FMCSA, evidence of the required levels of financial responsibility pursuant to 49 U.S.C. 13906. FMCSA regulations governing the financial responsibility requirements for these entities are found at 49 CFR part 387. Form BMC–32 is an endorsement that must be attached to cargo insurance policies, but it is not filed with the FMCSA. The Agency is seeking approval for use of Form BMC–32 titled, ''Endorsement for Household Goods Motor Carrier Polices of Insurance for Cargo Liability Under 49 U.S.C. 13906.'' Previously, Form BMC–32 was included as part of the BMC collection of forms approved under the ''Financial Responsibility, Trucking and Freight Forwarding'' ICR, OMB Control Number 2126–0017. However, the last OMB Notice of Action providing approval of the BMC–32 form under this ICR was on February 23, 2006, with an expiration date of February 28, 2009. The ICR was renewed by OMB on May 19, 2017, without including the BMC–32 form, therefore FMCSA is now seeking approval of the BMC–32 form, to add the form to the ICR which is now approved by OMB until May 31, 2020, for use of the BMC–32 form, along with the approved use of the BMC–34, BMC–35, BMC–36, BMC–40, BMC–82, BMC–83, BMC–84, BMC–85, BMC–91, and BMC–91X forms.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: September 5, 2018.

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2018–20021 Filed 9–13–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0055]

New Car Assessment Program Public Meeting; Reschedule

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Reschedule notice; extension of comment period.

SUMMARY: Due to the anticipated severe weather from Hurricane Florence, which is forecast to make landfall along the East Coast of the United States later this week, NHTSA is rescheduling the NCAP public meeting to October 1, 2018. The public meeting was originally scheduled on September 14, 2018. Furthermore, due to the new schedule of the public meeting, NHTSA is extending the comment period on the notice of public meeting and request for comments to October 31, 2018. The comment period for the notice of public meeting was originally scheduled to end on October 2, 2018.

DATES: NHTSA will hold the public meeting on October 1, 2018 (instead of September 14, 2018), from 9 a.m. to 5 p.m., Eastern Daylight Time. Check-in will begin at 8 a.m. Attendees should arrive by 8 a.m. to allow sufficient time for security clearance. In addition to this meeting, the public will have the opportunity to submit written comments to the docket for this notice concerning matters addressed in this notice. The comment period for the notice of public meeting and request for comments published August 3, 2018, at 83 FR 38201, is extended. Written comments must be received on or before October 31, 2018 to be considered timely.

ADDRESSES: The public meeting will be held at DOT Headquarters, located at 1200 New Jersey Avenue SE, Washington, DC 20590–0001 (Green Line Metro station at Navy Yard) in the Media Center. This facility is accessible to individuals with disabilities.

FOR FURTHER INFORMATION CONTACT: You may contact Ms. Jennifer N. Dang, Division Chief, New Car Assessment Program, Office of Crashworthiness Standards (Telephone: 202–366–1810).

SUPPLEMENTARY INFORMATION:

I. Public Meeting Details

Registration: Registration is still necessary for all attendees due to limited space. Even if you have already registered for the September 14th meeting, please re-register if you plan to attend the October 1st meeting. Attendees must register online at *https://www.surveymonkey.com/r/Rescheduled-NCAP-Public-Meeting* by September 21, 2018. Please provide your name, email address, and affiliation. Also, indicate whether you plan to participate actively in the meeting (speaking will be limited to 10 minutes per speaker for each of the four agenda topics, unless the number of registered speakers is such that more time per agenda topic will be available), and whether you require accommodations, such as a sign language interpreter.

Written Comments: Docket NHTSA–2018–0055 is available for written statements and supporting information regarding matters addressed in this notice. All interested persons, regardless of whether they attend or speak at the public meeting, are invited to submit written comments to the docket and are encouraged to do so. The formal docket comment period will close on October 31, 2018, but NHTSA will consider comments received after the closing date to the extent practicable. Instructions for submitting comments are described in the Public Meeting Details section of the original notice of public meeting (83 FR 38201, August 3, 2018).

The public meeting is structured to be a listening session in which NHTSA considers recommendations from the public on how best to improve NCAP. Webcast will be available for this public meeting.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Heidi Renate King,

Deputy Administrator.

[FR Doc. 2018–20116 Filed 9–12–18; 4:15 pm]

BILLING CODE 4910–59–P

FEDERAL REGISTER

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No. 179 September 14, 2018

Part II

Department of Agriculture

Office of Procurement and Property Management

7 CFR Part 3201

Designation of Product Categories for Federal Procurement; Proposed Rule

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

7 CFR Part 3201

RIN 0599–AA26

Designation of Product Categories for Federal Procurement

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend the Guidelines for Designating Biobased Products for Federal Procurement (Guidelines) to add 30 sections that will designate the product categories within which biobased products would be afforded procurement preference by Federal agencies and their contractors. These 30 product categories contain finished products that are made, in large part, from intermediate ingredients that have been proposed for designation for Federal procurement preference. USDA is also proposing minimum biobased contents for each of these product categories. Additionally, USDA is proposing to amend the existing designated product categories of general purpose de-icers, firearm lubricants, laundry products, and water clarifying agents.

DATES: USDA will accept public comments on this proposed rule until November 13, 2018.

ADDRESSES: You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0599–AA26. Also, please identify submittals as pertaining to the ''Proposed Designation of Product Categories.''

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: biopreferred_support@amecfw.com.* Include RIN number 0599–AA26 and ''Proposed Designation of Product Categories'' in the subject line. Please include your name and address in your message.
- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Karen Zhang, USDA, Office of Procurement and Property Management, Room 1640, USDA South Building, 1400 Independence Avenue SW, Washington, DC 20250.
- Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, etc.) should contact the USDA TARGET Center at 202–720–2600 (voice) and 202–690–0942 (TTY).

FOR FURTHER INFORMATION CONTACT: Karen Zhang, USDA, Office of Procurement and Property Management, Room 1640, USDA South Building, 1400 Independence Avenue SW, Washington, DC 20250; email: *biopreferred_support@amecfw.com;* phone 919–765–9969. Information regarding the Federal preferred procurement program (one initiative of the BioPreferred Program) is available at *http://www.biopreferred.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Summary of This Proposed Rule
IV. Designation of Product Categories, Minimum Biobased Contents, and Time Frame
  A. Background
  B. Product Categories and Minimum Biobased Contents Proposed for Designation
  C. Proposed Amendments to Previously Designated Product Categories
  D. Compliance Date for Procurement Preference and Incorporation Into Specifications
V. Where can agencies get more information on these USDA-designated product categories?
VI. Regulatory Information
  A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  B. Regulatory Flexibility Act (RFA)
  C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
  D. Executive Order 12988: Civil Justice Reform
  E. Executive Order 13132: Federalism
  F. Unfunded Mandates Reform Act of 1995
  G. Executive Order 12372: Intergovernmental Review of Federal Programs
  H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  I. Paperwork Reduction Act
  J. E-Government Act

I. Authority

The designation of these product categories is proposed under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill), as amended by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), and further amended by the Agricultural Act of 2014 (the 2014 Farm Bill), 7 U.S.C. 8102. (Section 9002 of the 2002 Farm Bill, as amended by the 2008 and the 2014 Farm Bills, is referred to in this document as ''section 9002''.)

II. Background

Section 9002 provides for the preferred procurement of biobased products by Federal procuring agencies and is referred to hereafter in this **Federal Register** notice as the ''Federal preferred procurement program.'' Under the provisions specified in the ''Guidelines for Designating Biobased Products for Federal Procurement'' in Title 7 of the U.S. Code of Federal Regulations (CFR), part 3201 (Guidelines), the USDA BioPreferred Program ''designates'' product categories to which the preferred procurement requirements apply by listing them in subpart B of 7 CFR part 3201.

The term ''product category'' is used as a generic term in the designation process to mean a grouping of specific products that perform a similar function. As originally finalized, the Guidelines included provisions for the designation of product categories that were composed of finished, consumer products such as mobile equipment hydraulic fluids, penetrating lubricants, or hand cleaners and sanitizers.

The 2008 and 2014 Farm Bills directed USDA to expand the scope of the Guidelines to include the designation of product categories composed of both intermediate ingredients and feedstock materials and finished products made from those materials. Specifically, the 2008 Farm Bill stated that USDA shall ''designate those items (including finished products) that are or can be produced with biobased products (including biobased products for which there is only a single product or manufacturer in the category) that will be subject to'' Federal preferred procurement, ''designate those intermediate ingredients and feedstocks that are or can be used to produce items that will be subject'' to Federal preferred procurement, and ''automatically designate items composed of [designated] intermediate ingredients and feedstocks . . . if the content of the designated intermediate ingredients and feedstocks exceeds 50 percent of the item (unless the Secretary determines a different composition percentage is appropriate).''

USDA is, therefore, proposing to designate product categories that contain finished products made from biobased intermediate ingredients and feedstocks.

Once USDA designates a product category, procuring agencies are

required, with some exceptions, to purchase biobased products within these designated product categories where the purchase price of the procurement product exceeds $10,000 or where the quantity of such products or the functionally equivalent products purchased over the preceding fiscal year equaled $10,000 or more. Procuring agencies must procure biobased products within each product category unless they determine that products within a product category are not reasonably available within a reasonable period of time, fail to meet the reasonable performance standards of the procuring agencies, or are available only at an unreasonable price. As stated in the Guidelines, biobased products that are merely incidental to Federal funding are excluded from the Federal preferred procurement program; that is, the requirements to purchase biobased products do not apply to such purchases if they are unrelated to or incidental to the purpose of the Federal contract. For example, if a janitorial service company purchases cleaning supplies to be used in the performance of a Federal contract, the cleaning supplies would be subject to the authority of the Federal preferred procurement program. However, cleaning supplies purchased to maintain the offices from which the janitorial service company manages the Federal contract would be incidental to the performance of the contract and, as such, would not be subject to the authority of the Federal preferred procurement program. In implementing the Federal preferred procurement program for biobased products, procuring agencies should follow their procurement rules and Office of Federal Procurement Policy guidance on buying non-biobased products when biobased products exist and should document exceptions taken for price, performance, and availability. The definition of ''procuring agency'' in section 9002 includes both Federal agencies and ''a person that is a party to a contract with any Federal agency, with respect to work performed under such a contract.'' Thus, Federal contractors, as well as Federal agencies, are expressly subject to the procurement preference provisions of section 9002.

USDA recognizes that the performance needs for a given application are important criteria in making procurement decisions. USDA is not requiring procuring agencies to limit their choices to biobased products that are categorized within the product categories proposed for designation in this proposed rule. Rather, the effect of the designation of the product categories is to require procuring agencies to determine their performance needs, determine whether there are qualified biobased products that are categorized within the designated product categories that meet the reasonable performance standards for those needs, and purchase such qualified biobased products to the maximum extent practicable as required by section 9002.

Section 9002(a)(3)(B) requires USDA to provide information to procuring agencies on the availability, relative price, and performance of such products and to recommend, where appropriate, the minimum level of biobased content to be contained in the procured products.

Subcategorization. Most of the product categories USDA has designated for Federal preferred procurement cover a wide range of products. For some product categories, there are subgroups of products that meet different requirements, uses, and/or different performance specifications. For example, within the product category ''hand cleaners and sanitizers,'' products that are used in medical offices may be required to meet performance specifications for sanitizing, while other products that are intended for general purpose hand washing may not need to meet these specifications. Where such subgroups exist, USDA intends to create subcategories. Thus, for example, for the product category ''hand cleaners and sanitizers,'' USDA determined that it was reasonable to create a ''hand cleaner'' subcategory and a ''hand sanitizer'' subcategory. Sanitizing specifications are applicable to the latter subcategory, but not the former. In sum, USDA looks at the products within each product category to evaluate whether there are groups of products within the category that have unique characteristics or that meet different performance specifications and, if USDA finds these types of differences within a given product category, it intends to create subcategories with the minimum biobased content based on the tested products within the subcategory.

For some product categories, however, USDA may not have sufficient information at the time of proposal to create subcategories. For example, USDA may know that there are different performance specifications that metal cleaners and corrosion remover products are required to meet, but it may have information on only one type of metal cleaner and corrosion remover product. In such instances, USDA may either designate the product category without creating subcategories (*i.e.,* defer the creation of subcategories) or designate one subcategory and defer designation of other subcategories within the product category until additional information is obtained. Once USDA has received sufficient additional information to justify the designation of a subcategory, the subcategory will be designated through the proposed and final rulemaking process.

In this proposed rule, USDA is proposing to subcategorize one of the product categories. That product category is concrete repair materials, and the proposed subcategories are: Concrete leveling and concrete patching. USDA created two subcategories for ''concrete repair materials'' to distinguish these products by function. Details on this proposed product category and its subcategories may be found in section IV.B of this rule. USDA requests public comment, along with supporting data, on the need to create subcategories within any of the other proposed product categories in this proposed rule. If public comments are received that support the creation of additional subcategories, USDA will consider the supporting data and may create subcategories in the final rule.

Minimum Biobased Contents. The minimum biobased contents being proposed in this rule are based on products for which USDA has biobased content test data. USDA obtains biobased content data in conjunction with product manufacturers' and vendors' applications for certification to use the USDA Certified Biobased Product label. Products that are certified to display the label must undergo biobased content testing by an independent, third-party testing lab using ASTM D6866, ''Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis.'' These test data are maintained in the BioPreferred Program database, and their use in setting the minimum biobased content for designated product categories results in a more efficient process for both the Program and manufacturers and vendors of products within the product categories.

As a result of the public comments received on the first designated product categories rulemaking proposal, USDA decided to account for the slight imprecision of three (3) percentage points in ASTM D6866 when establishing the minimum biobased content requirement for each proposed product category. Thus, rather than establishing the minimum biobased content for a product category at the tested biobased content of the product that was selected as the basis for the minimum value, USDA is establishing

the minimum biobased content for each product category at three (3) percentage points lower than the tested value. USDA believes that this adjustment is appropriate to account for the expected variations in analytical results. USDA encourages procuring agencies to seek products with the highest biobased content that is practicable in all proposed designated product categories.

In addition to considering the biobased content test data for each product category, USDA also considers other factors, including product performance information. USDA evaluates this information to determine whether some products that may have a lower biobased content also have unique performance or applicability attributes that would justify setting the minimum biobased content at a level that would include these products. For example, a lubricant product that has a lower biobased content than others within the same product category and is formulated to perform over a wider temperature range than the other products may be more desirable to Federal agencies. Thus, it would be beneficial to set the minimum biobased content for the product category at a level that would include the product with desirable performance features.

USDA also considers the overall range of the tested biobased contents within a product category, groupings of similar values, and breaks (significant gaps between two groups of values) in the biobased content test data array. For example, in a previously proposed product category, the biobased contents of seven tested products ranged from 17 to 100 percent, as follows: 17, 41, 78, 79, 94, 98, and 100 percent. Because this is a wide range and because there is a notable gap in the data between the 41 percent biobased product and the 78 percent biobased product, USDA reviewed the product literature to determine whether subcategories could be created within this product category. USDA found that the available product information did not justify creating a subcategory based on the 17 percent product or the 41 percent product. Further, USDA did not find any performance claims that would justify setting the minimum biobased content based on either the 17 percent or the 41 percent products. Thus, USDA set the minimum biobased content for this product category at 75 percent, based on the product with a tested biobased content of 78 percent. USDA believes that this evaluation process allows it to establish minimum biobased contents based on a broad set of factors to assist the Federal procurement community in its decisions to purchase biobased products.

USDA makes every effort to obtain biobased content test data on multiple products within each product category. For most designated product categories, USDA has biobased content test data on more than one product within the category. However, in some cases, USDA has been able to obtain biobased content data for only a single product within a designated product category. As USDA obtains additional data on the biobased contents of products within these designated product categories or their subcategories, USDA will evaluate whether the minimum biobased content for a designated product category or subcategory will be revised.

Overlap with the Environmental Protection Agency's (EPA) Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery Act (RCRA) section 6002. Some of the products that are categorized in biobased product categories that are designated for Federal preferred procurement under the BioPreferred Program may overlap with product categories that the U.S. Environmental Protection Agency (EPA) has designated under its Comprehensive Procurement Guideline (CPG) for products containing recovered (or recycled) materials. A list of the U.S. EPA Comprehensive Procurement Guideline (CPG) program's product categories may be found on its website (*https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program*) and Title 40 CFR part 247 in the CFR. In this proposed rule, some products that are categorized in the proposed product categories of concrete curing agents; concrete repair materials—concrete leveling; concrete repair materials—concrete patching; exterior paints and coatings; folders and filing products; other lubricants; playground and athletic surface materials; product packaging; rugs or floor mats; shopping and trash bags; soil amendments; and transmission fluids may also be categorized in one or more of the following product categories that are designated in EPA's CPG program:

- Construction Products: Cement and Concrete; Consolidated and Reprocessed Latex Paint for Specified Uses;
- Landscaping Products: Compost Made From Recovered Organic Materials; Fertilizer Made From Recovered Organic Materials;
- Miscellaneous Products: Mats;
- Non-Paper Office Products: Binders, Clipboards, File Folders, Clip Portfolios, and Presentation Folders; Plastic Envelopes; Plastic Trash Bags;
- Paper Products: Paperboard and Packaging;
- Parks and Recreation Products: Playground Surfaces; Running Tracks; and
- Vehicular Products: Re-Refined Lubricating Oil.

More specifics regarding this overlap are addressed in section IV.B for each of this proposed product categories that was identified above. As such, USDA is asking manufacturers and vendors of qualifying biobased products to make additional product and performance information available to Federal agencies conducting market research to assist them in determining whether the biobased products in question are the same products for the same uses as the recovered content products. Manufacturers and vendors are asked to provide information highlighting the sustainable features of their biobased products and to indicate the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers and vendors are asked to provide other types of information, such as whether the product contains fossil energy-based components (*e.g.,* petroleum, coal, or natural gas) and whether the product contains recovered materials. Federal agencies also may review available information on a product's biobased content and then use this information to make purchasing decisions based on the sustainability features of the products.

According to the Federal Acquisition Regulation, Title 48 CFR part 23.405, where a biobased product is used for the same purposes and meets the same Federal agency performance requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product. For example, if a biobased hydraulic fluid is to be used as a fluid in hydraulic systems and because ''lubricating oils containing re-refined oil'' have already been designated by EPA for that purpose, then the Federal agency must purchase the EPA-designated recovered content product, ''lubricating oils containing re-refined oil.'' If, on the other hand, the biobased hydraulic fluid is to be used to address a Federal agency's certain environmental or health performance requirements that the EPA-designated recovered content product would not meet, then the biobased product should be given preference, subject to reasonable price, availability, and performance considerations.

Federal Government Purchase of Sustainable Products. The Federal

government's sustainable purchasing program includes the following three mandatory preference programs for designated products: The BioPreferred Program, the EPA's CPG program, and the Environmentally Preferable Purchasing program. The Office of the Chief Sustainability Officer (OCSO) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

Other Federal Preferred Procurement Programs. Federal procurement officials should also note that many biobased products may be available for purchase by Federal agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O'Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and SourceAmerica (formerly known as the National Industries for the Severely Handicapped) offer products and services for preferred procurement by Federal agencies.

The types of products that could be categorized in this proposed product categories could also be available for purchase in the AbilityOne Catalog (*www.abilityone.com*). USDA notes that the AbilityOne Catalog offers a combination of non-biobased and biobased products; therefore, the selection of biobased products that is currently available for purchase may be small. USDA encourages procuring agencies to first consider purchasing biobased products from the AbilityOne Catalog when fulfilling biobased product purchasing requirements.

Some biobased products that are categorized in this proposed product categories of adhesives; cleaning tools; clothing; de-icers; durable cutlery; durable tableware; exterior paints and coatings; feminine care products; folders and filing products; gardening supplies and accessories; kitchenware and accessories; other lubricants; rugs and floor mats; and toys and sporting gear could be available for purchase in one or more of the following product categories in the AbilityOne Catalog:

- Cleaning and Janitorial Products,
- Clothing,
- Furniture,
- Hardware and Paints,
- Kitchen and Breakroom Supplies,
- Mailing and Shipping Supplies,
- Office Supplies,
- Outdoor Supplies, and
- Skin and Personal Care.

As indicated previously, there currently is a small selection of biobased products in the AbilityOne Catalog. In the future, if the AbilityOne Catalog were to offer a broader selection of biobased products for procuring agencies to purchase, the objectives of both the AbilityOne Program and the Federal preferred procurement program would be furthered.

Outreach. To augment its own research, USDA consults with industry and Federal stakeholders to the Federal preferred procurement program during the development of the rulemaking packages for the designation of product categories. USDA consults with stakeholders to gather information used in determining the order of product category designation and in identifying the following: Manufacturers producing and marketing products that are categorized within a product category proposed for designation; performance standards used by Federal agencies evaluating products to be procured; and warranty information used by manufacturers of end-user equipment and other products with regard to biobased products.

III. Summary of This Proposed Rule

USDA is proposing to designate the following product categories for Federal preferred procurement: Adhesives; animal habitat care products; cleaning tools; concrete curing agents; concrete repair materials; durable cutlery; durable tableware; epoxy systems; exterior paints and coatings; facial care products; feminine care products; fire logs and fire starters; folders and filing products; foliar sprays; gardening supplies and accessories; heating fuels and wick lamps; kitchenware and accessories; other lubricants; phase change materials; playground and athletic surface materials; powder coatings; product packaging; rugs and floor mats; shopping and trash bags; soil amendments; surface guards, molding, and trim; toys and sporting gear; traffic and zone marking paints; transmission fluids; and wall coverings. In addition, USDA is proposing a minimum biobased content for each of these product categories and/or subcategories. Lastly, USDA is proposing a date by which Federal agencies must incorporate these designated product categories into their procurement specifications (see section IV.E).

USDA is also proposing to amend the existing designated product categories of general purpose de-icers; firearm lubricants; laundry products; and water clarifying agents. Since USDA finalized the designation of each of these product categories, USDA has obtained additional information on products within these four categories. Thus, USDA is now proposing amendments to these four categories to more closely align the existing categories with data gathered since the categories were originally designated.

USDA is working with manufacturers and vendors to make all relevant product and manufacturer contact information available on the BioPreferred Program's website at *http://www.biopreferred.gov.* Steps USDA has implemented, or will implement, include the following: Making direct contact with submitting companies through email and phone conversations to encourage completion of product listings; coordinating outreach efforts with biobased product manufacturers to encourage participation of their customer base; conducting targeted outreach with industry and commodity groups to educate stakeholders on the importance of providing complete product information; participating in industry conferences and meetings to educate companies on program benefits and requirements; and communicating the potential for expanded markets beyond the Federal Government, to include State and local governments, as well as the general public markets. Section V provides instructions to agencies on how to obtain this information on products within these product categories through the BioPreferred Program's website.

Comments. USDA invites public comment on the proposed designation of these product categories, including the definition, proposed minimum biobased content, and any of the relevant analyses performed during their selection. In addition, USDA invites comments in the following areas:

1. We have attempted to identify relevant and appropriate performance standards and other relevant measures of performance for each of the proposed product categories. If you know of other such standards or relevant measures of performance for any of the proposed product categories, USDA requests that you submit information identifying such standards and measures, including their name (and other identifying information as necessary), identifying who is using the standard/measure, and describing the circumstances under which the product is being used.

2. Many biobased products within the product categories being proposed for designation will or may have positive environmental and human health attributes. USDA is seeking comments on such attributes to provide additional information on the BioPreferred Program's website. This information will then be available to Federal procuring agencies and will assist them in making informed sustainable procurement decisions. When possible,

please provide appropriate documentation to support the environmental and/or human health attributes that you describe.

3. Some product categories being proposed for designation today have wide ranges of tested biobased contents. For the reasons discussed later in this preamble, USDA is proposing a minimum biobased content for these product categories that would allow most of the tested products to be eligible for Federal preferred procurement. USDA welcomes comments on the appropriateness of the proposed minimum biobased contents for these product categories and whether there are potential subcategories within the product categories that should be considered.

4. This proposed rule is expected to have both positive and negative impacts on individual businesses, including small businesses. USDA anticipates that the biobased Federal preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the proposed designated biobased product categories to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. Because USDA has been unable to determine the number of businesses, including small businesses, which may be adversely affected by this proposed rule, USDA requests comment on how many small entities may be affected by this rule and on the nature and extent of that effect.

All comments should be submitted as directed in the **ADDRESSES** section above.

IV. Designation of Product Categories, Minimum Biobased Contents, and Time Frame

A. Background

When designating product categories for Federal preferred procurement, section 9002 requires USDA to consider the following: (1) The availability of biobased products within the product categories and (2) the economic and technological feasibility of using those products.

In considering a product's availability, USDA uses several sources of information. The primary source of information for the product categories being proposed for designation is USDA's database of manufacturers and products that have been certified to display the USDA Certified Biobased Product label. In addition, USDA performs internet searches, contacts trade associations and commodity groups, and contacts manufacturers and vendors to identify those with biobased products within product categories being considered for designation. USDA uses the results of these same searches to determine if a product category is generally available.

In considering a product category's economic and technological feasibility, USDA examines evidence pointing to the general commercial use of a product and its life-cycle cost and performance characteristics. This information is obtained from the sources used to assess a product's availability. Commercial use, in turn, is evidenced by any manufacturer and vendor information on the availability, relative prices, and performance of their products as well as by evidence of a product being purchased by a procuring agency or other entity, where available. In sum, USDA considers a product category economically and technologically feasible for purposes of designation if products within that product category are being offered and used in the marketplace.

As discussed earlier, USDA has implemented, or will implement, several steps intended to educate the manufacturers and other stakeholders on the benefits of this program and the need to make relevant information, including manufacturer contact information, available to procurement officials via the BioPreferred Program website. Additional information on specific products within the product categories proposed for designation may also be obtained directly from the manufacturers of the products. USDA has also provided information on the BioPreferred Program website for manufacturers and vendors who wish to position their businesses as biobased product vendors to the Federal Government. This information can be accessed by clicking on the ''Selling Biobased'' tab on the left side of the home page of the BioPreferred Program's website.

USDA recognizes that information related to the functional performance of biobased products is a primary factor in making the decision to purchase these products. USDA is gathering information on industry standard test methods and performance standards that manufacturers are using to evaluate the functional performance of their products. (Test methods are procedures used to provide information on a certain attribute of a product. For example, a test method might determine how many bacteria are killed. Performance standards identify the level at which a product must perform for it to be ''acceptable'' to the entity that set the performance standard. For example, a performance standard might require that a certain percentage (*e.g.,* 95 percent) of bacteria must be killed by the product.) The primary sources of information on these test methods and performance standards are manufacturers of biobased products within these product categories. Additional test methods and performance standards are also identified during meetings of the interagency council and during the review process for each proposed rule. The functional performance test methods, performance standards, product certifications, and other measures of performance associated with the functional aspects of each product category proposed for designation are listed under the detailed discussion presented in Section IV.B.

While this process identifies many of the relevant test methods and standards, USDA recognizes that those identified herein do not represent all of the methods and standards that may be applicable for a product category or for any individual product within the category. As noted earlier in this preamble, USDA is requesting identification of other relevant performance standards and measures of performance. As the program continues to evolve, these and other additional relevant performance standards will be available on the BioPreferred Program's website.

To propose a product category for designation, USDA must have sufficient information on a sufficient number of products within the category to be able to assess its availability and its economic and technological feasibility. For some product categories, there may be numerous products available. For others, there may be very few products currently available. Given the infancy of the market for some product categories, it is expected that categories with only a single product will be identified. Further, given that the intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products, USDA has determined it is appropriate to designate a product category or subcategory for Federal preferred procurement even when there is only a single product with a single manufacturer or vendor. Similarly, the documented availability and benefits of even a very small percentage of all products that may exist within a product category are also considered sufficient to support designation.

Exemptions. Products that are exempt from the biobased procurement preference include military equipment, defined as any product or system designed or procured for combat or combat-related missions, and spacecraft systems and launch support equipment. However, USDA notes that it is not the intent of these exemptions to imply that biobased products are inferior to non-biobased products; agencies are encouraged to purchase biobased products wherever performance, availability, and reasonable price indicate that such purchases are justified.

Although each product category in this proposed rule would be exempt from the procurement preference requirement when used in spacecraft systems or launch support application or in military equipment used in combat and combat-related applications, this exemption does not extend to contractors performing work other than direct maintenance and support of the spacecraft or launch support equipment or combat or combat-related missions. For example, if a contractor is applying a paint remover product as a step in refurbishing office furniture on a military base, the paint remover the contractor purchases should be a qualifying biobased paint remover. The exemption does apply, however, if the product being purchased by the contractor is for use in combat or combat-related missions or for use in space or launch applications. After reviewing the regulatory requirement and the relevant contract, in areas where contractors have any questions on the exemption, they should contact the cognizant contracting officer.

B. Product Categories and Minimum Biobased Contents Proposed for Designation

In this proposed rule, USDA is proposing to designate the following: Adhesives; animal habitat care products; cleaning tools; concrete curing agents; concrete repair materials; durable cutlery; durable tableware; epoxy systems; exterior paints and coatings; facial care products; feminine care products; fire logs and fire starters; folders and filing products; foliar sprays; gardening supplies and accessories; heating fuels and wick lamps; kitchenware and accessories; other lubricants; phase change materials; playground and athletic surface materials; powder coatings; product packaging; rugs and floor mats; shopping and trash bags; soil amendments; surface guards, molding, and trim; toys and sporting gear; traffic and zone marking paints; transmission fluids; and wall coverings.

USDA has determined that each of these product categories meets the necessary statutory requirements—namely, that they are being produced with biobased materials and that their procurement by procuring agencies will carry out the following objectives of section 9002:

- To increase demand for biobased products, which would in turn increase demand for agricultural commodities that can serve as feedstocks for the production of biobased products;
- To spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and
- To enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

Further, this designation of finished product categories made from designated intermediate ingredients was one key addition to Section 9002 made by the 2008 Farm Bill.

In addition, because of the participation by the manufacturers of these products in the voluntary labeling program, USDA has sufficient information on these proposed product categories to determine their availability and to conduct the requisite analyses to determine their biobased content and their economic and technological feasibility.

The proposed designated product categories are discussed in the following sections.

1. Adhesives (Minimum Biobased Content 24 Percent)

Adhesives are compounds that temporarily or permanently bind two item surfaces together. These products include glues and sticky tapes used in construction, household, flooring, and industrial settings. This category excludes epoxy systems.

USDA identified six manufacturers and vendors of 10 biobased adhesives. These manufacturers and vendors do not include all manufacturers and vendors of biobased adhesives, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These 10 biobased adhesives have biobased contents of 27, 27, 28, 30, 30, 46, 48, 53, 71, and 71 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of the products categorized as adhesives. Thus, the proposed minimum biobased content for this product category is 24 percent, based on the products with tested biobased contents of 27 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. In addition, one of these manufacturers and vendors identified one additional test method (as shown below) that was used in evaluating products within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, the test method identified by this manufacturer and vendor is below:

- ASTM E108 Standard Test Methods for Fire Tests of Roof Coverings.

USDA has been unable to obtain data on the amount of adhesives purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Adhesives may be manufactured using the following designated intermediate ingredient and feedstock categories: intermediates—binders, intermediates—chemicals, intermediates—fibers and fabrics, intermediates—plastic resins, intermediates—rubber materials, and intermediates—textile processing materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, has been collected on adhesives and may be found on the BioPreferred Program's website.

2. Animal Habitat Care Products (Minimum Biobased Content 22 Percent)

Animal habitat care products are products that are intended to improve the quality of animal habitats such as cleaning supplies, sanitizers, feeders, and products that control, mask, or suppress pet odors. This category excludes animal bedding or litter products and animal cleaning products.

USDA identified eight manufacturers and vendors of 52 biobased animal habitat care products. These manufacturers and vendors do not include all manufacturers and vendors of biobased animal habitat care products, merely those identified as

USDA Certified Biobased Products in the BioPreferred Program's database. These 52 biobased animal habitat care products range in biobased content from 25 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of the products categorized as animal habitat care products. Thus, the proposed minimum biobased content for this product category is 22 percent, based on the products with tested biobased contents of 25 percent.

Information supplied by the eight manufacturers and vendors indicates that these products are being used commercially. In addition, one of these manufacturers and vendors identified additional performance standards (as shown below) that were used in evaluating products within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, those identified by this manufacturer and vendor include the following:

- GS–8 Green Seal Environmental Standard for Household Cleaning Products and
- GS–37 Green Seal Standard for Industrial and Institutional Cleaners.

USDA has been unable to obtain data on the amount of animal habitat care products purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Animal habitat care products may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—cleaner components; intermediates—fibers and fabrics; intermediates—foams; intermediates—oils, fats, and waxes; intermediates—personal care product components; intermediates—plastic resins; intermediates—rubber materials; and intermediates—textile processing materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on animal habitat care products and may be found on the BioPreferred Program's website.

3. Cleaning Tools (Minimum Biobased Content 22 Percent)

Cleaning tools are objects that are used to clean a variety of surfaces or items and are designed to be used multiple times. This category includes tools such as brushes, scrapers, abrasive pads, and gloves that are used for cleaning. The expendable materials used in cleaning, such as glass cleaners, single-use wipes, and all-purpose cleaners, are excluded from this category as these materials better fit in other categories.

USDA identified five manufacturers and vendors of 21 biobased cleaning tools. These manufacturers and vendors do not include all manufacturers and vendors of biobased cleaning tools, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These 21 biobased cleaning tools range in biobased content from 25 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 22 percent, based on the product with a tested biobased content of 25 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of cleaning tools purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Cleaning tools may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—oils, fats, and waxes; intermediates—plastic resins; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on cleaning tools and may be found on the BioPreferred Program's website.

4. Concrete Curing Agents (Minimum Biobased Content 59 Percent)

Concrete curing agents are products that are designed to enhance and control the curing process of concrete.

USDA identified one manufacturer and vendor of one biobased concrete curing agent. This manufacturer and vendor is not the only manufacturer and vendor of biobased concrete curing agents; rather, it is the only manufacturer and vendor that was identified as USDA Certified Biobased Products in the BioPreferred Program's database. This biobased concrete curing agent contains 62 percent biobased content, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude this product. Thus, the proposed minimum biobased content for this product category is 59 percent, based on the product's tested biobased content of 62 percent.

Information supplied by this manufacturer and vendor indicates that this product is being used commercially. In addition, this manufacturer and vendor identified one additional test method (as shown below) that was used in evaluating the product within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, the test method identified by this manufacturer and vendor is below:

- ASTM C309 Standard Specification for Liquid Membrane-Forming Compounds for Curing Concrete.

USDA has been unable to obtain data on the amount of concrete curing agents purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Concrete

curing agents may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—oils, fats, and waxes; and intermediates—paints and coating components.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on concrete curing agents and may be found on the BioPreferred Program's website.

Biobased concrete curing agents may overlap with the products categorized in the EPA's CPG product category of Construction Products: Cement and Concrete. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and other test methods or performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased concrete curing agents overlap with the CPG-designated product category of Construction Products: Cement and Concrete and which product should be afforded the preference in purchasing.

5. Concrete Repair Materials (Minimum Biobased Content: 23 Percent for Concrete Leveling and 69 Percent for Concrete Patching)

Concrete leveling materials are products that are designed to repair cracks and other damage to concrete by raising or stabilizing concrete. Concrete patching materials are products that are designed to repair cracks and other damage to concrete by filling and patching the concrete.

USDA identified one manufacturer and vendor of two biobased concrete leveling products and one manufacturer and vendor of one biobased concrete patching product. These manufacturers and vendors do not include all manufacturers and vendors of biobased concrete repair materials, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. The biobased concrete repair materials—concrete leveling products—contain 26 percent and 46 percent biobased content, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product subcategory, USDA did not find a reason to exclude either of these products. Thus, the proposed minimum biobased content for this product subcategory is 23 percent, based on the product with a tested biobased content of 26 percent. The biobased concrete repair materials—concrete patching product—contains 72 percent biobased content, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude this product. Thus, the proposed minimum biobased content for this product subcategory is 69 percent, based on the product's tested biobased content of 72 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in these finished product subcategories.

USDA has been unable to obtain data on the amount of concrete repair materials purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product subcategory would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Concrete repair materials may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—oils, fats, and waxes; intermediates—paint and coating components; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on Concrete Repair Materials and may be found on the BioPreferred Program's website.

Biobased concrete repair materials may overlap with the products categorized in the EPA's CPG product category of Construction Products: Cement and Concrete. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website of qualifying biobased products about the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and other test methods or performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased concrete repair materials overlap with the CPG-designated product category of Construction Products: Cement and Concrete and which product should be afforded the preference in purchasing.

6. Durable Cutlery (Minimum Biobased Content 28 Percent)

Durable cutlery consists of dining utensils that are designed to be used multiple times.

USDA identified one manufacturer and vendor of three biobased durable cutlery products. This manufacturer and vendor is not the only manufacturer and vendor of biobased durable cutlery; rather, it is the only one that was identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased durable cutlery products contain 31, 31, and 98 percent biobased content, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 28 percent, based on the products with tested biobased contents of 31 percent.

Information supplied by this manufacturer and vendor indicates that these products are being used commercially. While this manufacturer and vendor did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of durable cutlery purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Durable cutlery may be manufactured using the

following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—oils, fats, and waxes; intermediates—plastic resins; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on durable cutlery products and may be found on the BioPreferred Program's website.

7. Durable Tableware (Minimum Biobased Content 28 Percent)

Durable tableware consists of multiple-use drinkware and dishware including cups, plates, bowls, and serving platters.

USDA identified four manufacturers and vendors of 17 biobased durable tableware products. These manufacturers and vendors do not include all manufacturers and vendors of biobased durable tableware, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased durable tableware products range in biobased content from 31 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 28 percent, based on the product with a tested biobased content of 31 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of durable tableware purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Durable tableware may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—oils, fats, and waxes; intermediates—plastic resins; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on durable tableware products and may be found on the BioPreferred Program's website.

8. Epoxy Systems (Minimum Biobased Content 23 Percent)

Epoxy systems are two-component systems that are epoxy-based and are used as coatings, adhesives, surface fillers, and composite matrices.

USDA identified six manufacturers and vendors of 13 biobased epoxy systems. These manufacturers and vendors do not include all manufacturers and vendors of biobased epoxy systems, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased epoxy systems range in biobased content from 26 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 23 percent, based on the product with a tested biobased content of 26 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. In addition, two of these manufacturers and vendors identified additional test methods (as shown below) that were used in evaluating the products within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, the test methods identified by these two manufacturers and vendors include the following:

- ASTM D638 Standard Test Method for Tensile Properties of Plastics,
- ASTM D790 Standard Test Methods for Flexural Properties of Unreinforced and Reinforced Plastics and Electrical Insulating Materials, and
- ASTM D2486 Standard Test Methods for Scrub Resistance of Wall Paints.

USDA has been unable to obtain data on the amount of epoxy systems purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Epoxy systems may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—oils, fats, and waxes; intermediates—paints and coating components; and intermediates—plastic resins.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on epoxy systems and may be found on the BioPreferred Program's website.

9. Exterior Paints and Coatings (Minimum Biobased Content 83 Percent)

Exterior paints and coatings are liquid products that typically contain pigments to add color and are formulated for use on outdoor surfaces. When these products dry, they typically form a protective layer and provide a coat of color to the applied surface. This category includes paint and primers but excludes wood and concrete sealers and stains and specialty coatings such as roof coatings, wastewater system coatings, and water tank coatings.

USDA identified one manufacturer and vendor of three biobased exterior paints and coatings. This manufacturer and vendor is not the only manufacturer and vendor of biobased exterior paints and coatings; rather, it is the only manufacturer and vendor that was identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased exterior paints and coatings have biobased contents of 86, 87, and 89 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 83 percent, based on the product with a tested biobased content of 86 percent.

Information supplied by this manufacturer and vendor indicates that these products are being used commercially. While this manufacturer and vendor did not identify additional test methods, performance standards, product certifications, and other measures of performance for these

products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of exterior paints and coatings purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Exterior paints and coatings may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—oils, fats, and waxes; intermediates—paint and coating components; and intermediates—plastic resins.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on exterior paints and coatings and may be found on the BioPreferred Program's website.

Biobased exterior paints and coatings may overlap with the products categorized in the EPA's CPG product category of Construction Products: Consolidated and Reprocessed Latex Paint for Specified Uses. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased exterior paints and coatings overlap with the CPG-designated product category of Construction Products: Consolidated and Reprocessed Latex Paint for Specified Uses and which product should be afforded the preference in purchasing.

10. Facial Care Products (Minimum Biobased Content 88 Percent)

Facial care products are cleansers, moisturizers, and treatments specifically designed for the face. These products are used to care for the condition of the face by supporting skin integrity, enhancing its appearance, and relieving skin conditions. This category does not include tools and applicators, such as those used to apply facial care products.

USDA identified eight manufacturers and vendors of 18 biobased facial care products. These manufacturers and vendors do not include all manufacturers and vendors of biobased facial care products, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased facial care products range in biobased content from 91 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 88 percent, based on the products with tested biobased contents of 91 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. In addition, one manufacturer and vendor identified additional product certifications or performance standards (as shown below) that were used in evaluating the products within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, those identified by this manufacturer and vendor include the followin:

- USDA National Organic Program,
- EU Organic Certification, and
- Global Organic Textile Standard (GOTS).

USDA has been unable to obtain data on the amount of facial care products purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Facial care products may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—oils, fats, and waxes; and intermediates—personal care product components.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on facial care products and may be found on the BioPreferred Program's website.

11. Feminine Care Products (Minimum Biobased Content 65 Percent)

Feminine care products are products that are designed for maintaining feminine health and hygiene. This category includes sanitary napkins, panty liners, and tampons.

USDA identified two manufacturers and vendors of 18 biobased feminine care products. These manufacturers and vendors are not the only manufacturers and vendors of biobased feminine care products; rather, they are the only manufacturers and vendors that were identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased feminine care products range in biobased content from 68 percent to 99 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 65 percent, based on the product with a tested biobased content of 68 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. In addition, one manufacturer identified additional product certifications or performance standards (as shown below) that were used in evaluating the products within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, those identified by this manufacturer include the following:

- USDA National Organic Program,
- EU Organic Certification, and
- Global Organic Textile Standard (GOTS).

USDA has been unable to obtain data on the amount of feminine care products purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Feminine care products may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders;

intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—personal care product components; intermediates—plastic resins; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on feminine care products and may be found on the BioPreferred Program's website.

12. Fire Logs and Fire Starters (Minimum Biobased Content 92 Percent)

Fire logs and fire starters are devices or substances that are used to start a fire intended for uses such as comfort heat, decoration, or cooking. Examples include fire logs and lighter fluid. This category excludes heating fuels for chafing dishes, beverage urns, warming boxes, and wick lamps.

USDA identified 10 manufacturers and vendors of 18 biobased fire logs and fire starters. These manufacturers and vendors do not include all manufacturers and vendors of biobased fire logs and fire starters, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased fire logs and fire starters range in biobased content from 95 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 92 percent, based on the product with a tested biobased content of 95 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. In addition, three of these manufacturers and vendors identified additional test methods, performance standards, and product certifications (as shown below) that were used in evaluating the products within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, those identified by these manufacturers or vendors include the following:

- ASTM D6751 Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels and
- UL 2115 Standard for Processed Solid-Fuel Firelogs.

USDA has been unable to obtain data on the amount of fire logs and fire starters purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Fire logs and fire starters may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—oils, fats, and waxes; and intermediates—plastic resins.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on fire logs and fire starters and may be found on the BioPreferred Program's website.

13. Folders and Filing Products (Minimum Biobased Content 66 Percent)

Folders and filing products are products that are designed to hold together items such as loose sheets of paper, documents, and photographs with clasps, fasteners, rings, or folders. This category includes binders, folders, and document covers.

USDA identified one manufacturer and vendor of two biobased folders and filing products. This manufacturer and vendor is not the only manufacturer and vendor of biobased folders and filing products; rather, it is the only manufacturer and vendor that was identified as USDA Certified Biobased Products in the BioPreferred Program's database. These two biobased folders and filing products each contain 69 percent biobased content, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude either of these products. Thus, the proposed minimum biobased content for this product category is 66 percent, based on the products with tested biobased contents of 69 percent.

Information supplied by this manufacturer and vendor indicates that these products are being used commercially. While this manufacturer and vendor did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of folders and filing products purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Folders and filing products may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—oils, fats, and waxes; intermediates—plastic resins; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on folders and filing products and may be found on the BioPreferred Program's website.

Biobased folders and filing products may overlap with the products categorized in the EPA's CPG product categories of Non-Paper Office Products: Binders, Clipboards, File Folders, Clip Portfolios, and Presentation Folders and Non-Paper Office Products: Plastic Envelopes. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and other test methods or performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased folders and filing products overlap with the CPG-designated product categories of Non-Paper Office Products: Binders, Clipboards, File Folders, Clip Portfolios, and Presentation Folders and Non-Paper Office Products: Plastic Envelopes and which product should be afforded the preference in purchasing.

14. Foliar Sprays (Minimum Biobased Content 50 Percent)

Foliar sprays are products that are applied to the leaves of plants and provide plants with nutrients. These products may also repair plants from previous pest attacks. Examples include liquid fertilizers, foliar feeds, and micronutrient solutions.

USDA identified nine manufacturers and vendors of nine biobased foliar sprays. These manufacturers and vendors do not include all manufacturers and vendors of biobased foliar sprays, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased foliar sprays have biobased contents of 53, 74, 80, 93, 97, 97, 97, 100 and 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 50 percent, based on the product with a tested biobased content of 53 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. In addition, one of these manufacturers and vendors identified an additional test method (as shown below) that was used in evaluating the products within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, the test method identified by this manufacturer and vendor is below:

• ASTM D4052 Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter.

USDA has been unable to obtain data on the amount of foliar sprays purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Foliar sprays may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—cleaner components; and intermediates—oils, fats, and waxes.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on foliar sprays and may be found on the BioPreferred Program's website.

15. Gardening Supplies and Accessories (Minimum Biobased Content 43 Percent)

Gardening supplies and accessories are products that are used to grow plants in outdoor and indoor settings. Examples include seedling starter trays, nonwoven mats or substrates for hydroponics, and flower or plant pots. This category excludes compost activators and accelerators; erosion control materials; fertilizers, including soil inoculants; foliar sprays; mulch and compost materials; and soil amendments.

USDA identified eight manufacturers and vendors of 12 biobased gardening supplies and accessories. These manufacturers and vendors do not include all manufacturers and vendors of biobased gardening supplies and accessories, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased gardening supplies and accessories range in biobased content from 46 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 43 percent, based on the product with a tested biobased content of 46 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. In addition, one of these manufacturers and vendors identified an additional test method (as shown below) that was used in evaluating the products within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, the one identified by this manufacturer and vendor is below:

• ASTM D6400 Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities.

USDA has been unable to obtain data on the amount of gardening supplies and accessories purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Gardening supplies and accessories may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; and intermediates—plastic resins.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on gardening supplies and accessories and may be found on the BioPreferred Program's website.

16. Heating Fuels and Wick Lamps (Minimum Biobased Content 75 Percent)

Heating fuels and wick lamps are products that create controlled sources of heat or sustain controlled open flames that are used for warming food, portable stoves, beverage urns, or fondues. This category also includes wick lamps and their fuels that create controlled sources of light indoors and in camping or emergency preparedness situations. This category excludes fire logs and fire starters and candles and wax melts.

USDA identified three manufacturers and vendors of 12 biobased heating fuels and wick lamps. These manufacturers and vendors do not include all manufacturers and vendors of biobased heating fuels and wick lamps, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased heating fuels and wick lamps range in biobased content from 78 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 75 percent, based on the product with a tested biobased content of 78 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. In addition, one of these manufacturers and vendors identified an additional test method (as shown below) that was used in evaluating the products within this product category.

While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, the test method identified by this manufacturer and vendor is below:

• ASTM E1333 Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber.

USDA has been unable to obtain data on the amount of heating fuels and wick lamps purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Heating fuels and wick lamps may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—oils, fats, and waxes; and intermediates—plastic resins.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on heating fuels and wick lamps and may be found on the BioPreferred Program's website.

17. Kitchenware and Accessories (Minimum Biobased Content 22 Percent)

Kitchenware and accessories are products designed for food or drink preparation. These products include cookware and bakeware, such as baking cups, cookie sheets, parchment paper, and roasting bags or pans; cooking utensils, such as brushes, tongs, spatulas, and ladles; and food preparation items, such as cutting boards, measuring cups, mixing bowls, coffee filters, food preparation gloves, and sandwich and snack bags. These products exclude kitchen appliances, such as toasters, blenders, and coffee makers; disposable tableware; disposable cutlery; disposable containers; durable tableware; durable cutlery; and cleaning tools.

USDA identified five manufacturers and vendors of 17 biobased kitchenware and accessories. These manufacturers and vendors do not include all manufacturers and vendors of biobased kitchenware and accessories, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These 17 biobased kitchenware and accessories range in biobased content from 25 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 22 percent, based on the product with a tested biobased content of 25 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. In addition, these manufacturers and vendors identified one additional test method (as shown below) that was used in evaluating products within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, the test method identified by these manufacturers and vendors is below:

• ASTM D6400 Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities.

USDA has been unable to obtain data on the amount of kitchenware and accessories purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Kitchenware and accessories may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—oils, fats, and waxes; intermediates—plastic resins; intermediates—rubber materials; and intermediates—textile processing materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on kitchenware and accessories and may be found on the BioPreferred Program's website.

18. Other Lubricants (Minimum Biobased Content 39 Percent)

Other lubricants are lubricant products that do not fit into any of the BioPreferred Program's specific lubricant categories. This category includes lubricants that are formulated for specialized uses. Examples of other lubricants include lubricants used for sporting or exercise gear and equipment, musical instruments, and specialized equipment such as tree shakers. This category excludes lubricants that are covered by the specific lubricant categories such as chain and cable lubricants, firearm lubricants, forming lubricants, gear lubricants, multi-purpose lubricants, penetrating lubricants, pneumatic equipment lubricants, and slide way lubricants.

USDA identified five manufacturers and vendors of 14 biobased other lubricants. These manufacturers and vendors do not include all manufacturers and vendors of biobased other lubricants, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased other lubricants range in biobased content from 42 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 39 percent, based on the product with a tested biobased content of 42 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. In addition, one of these manufacturers and vendors identified an additional test method (as shown below) that was used in evaluating the products within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, the one identified by this manufacturer and vendor is below:

• California Code of Regulations (CCR) Title 22, Section 66696 Static Acute Bioassay Procedures for Hazardous Waste Samples.

USDA has been unable to obtain data on the amount of other lubricants purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute

towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Other lubricants may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—cleaner components; intermediates—lubricant components; and intermediates—oils, fats, and waxes.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on other lubricants and may be found on the BioPreferred Program's website.

Biobased other lubricants may overlap with the products categorized in the EPA's CPG product category of Vehicular Products: Re-Refined Lubricating Oil. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and other test methods or performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased Other Lubricants overlap with the CPG-designated product category of Vehicular Products: Re-Refined Lubricating Oil and which product should be afforded the preference in purchasing.

19. Phase Change Materials (Minimum Biobased Content 71 Percent)

Phase change materials are products that are capable of absorbing and releasing large amounts of thermal energy by freezing and thawing at certain temperatures. Heat is absorbed or released when the material changes from solid to liquid and vice versa. Applications may include, but are not limited to, conditioning of buildings, medical applications, thermal energy storage, or cooling of food. Materials such as animal fats and plant oils that melt at desirable temperatures are typically used to make products in this category.

USDA identified two manufacturers and vendors of eight biobased phase change materials. These manufacturers and vendors do not include all manufacturers and vendors of biobased phase change materials, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased phase change materials have biobased contents of 74, 94, 100, 100, 100, 100, 100, and 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 71 percent, based on the product with a tested biobased content of 74 percent.

Information supplied by these manufacturers and vendors indicates that this product is being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of phase change materials purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Phase change materials may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; and intermediates—oils, fats, and waxes.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on phase change materials and may be found on the BioPreferred Program's website.

20. Playground and Athletic Surface Materials (Minimum Biobased Content 22 Percent)

Playground and athletic surface materials are products that are designed for use on playgrounds and athletic surfaces. Examples include materials that are applied to the surfaces of playgrounds, athletic fields, and other sports surfaces to enhance or change the color or general appearance of the surface and to provide safety and/or performance benefits. Such materials include, but are not limited to, top coatings, primers, line marking paints, and rubberized pellets that are used on athletic courts, tracks, natural or artificial turf, and other playing surfaces. This category does not include the artificial turf or surface itself, as that is included in the carpets product category.

USDA identified two manufacturers and vendors of three biobased playground and athletic surface materials. These manufacturers and vendors are not the only manufacturers and vendors of biobased playground and athletic surface materials; rather, they are the only manufacturers and vendors that were identified through the USDA Certified Biobased Products listing in the BioPreferred Program's database. These biobased playground and athletic surface materials have biobased contents of 25, 25, and 29 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 22 percent, based on the products with tested biobased contents of 25 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of playground and athletic surface materials purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Playground and athletic surface materials may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—oils, fats, and waxes; intermediates—paint and coating components; intermediates—plastic resins; and intermediate—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance

characteristics, have been collected on playground and athletic surface materials and may be found on the BioPreferred Program's website.

Biobased playground and athletic surface materials may overlap with the products categorized in the EPA's CPG product categories of Parks and Recreation Products: Playground Surfaces and Running Tracks. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and other test methods or performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased playground and athletic surface materials overlap with the CPG-designated product categories of Parks and Recreation Products: Playground Surfaces and Running Tracks and which product should be afforded the preference in purchasing.

21. Powder Coatings (Minimum Biobased Content 34 Percent)

Powder coatings are polymer resin systems that are combined with stabilizers, curatives, pigments, and other additives and ground into a powder. These coatings are applied electrostatically to metallic surfaces and then cured under heat. Powder coatings are typically used for coating metals, such as vehicle and bicycle parts, household appliances, and aluminum extrusions.

USDA identified one manufacturer and vendor of one biobased powder coating. This manufacturer and vendor is not the only manufacturer and vendor of biobased powder coatings; rather, it is the only manufacturer and vendor that was identified through the USDA Certified Biobased Products listing in the BioPreferred Program's database. This biobased powder coating has a biobased content of 37 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude this product. Thus, the proposed minimum biobased content for this product category is 34 percent, based on the product's tested biobased content of 37 percent.

Information supplied by this manufacturer and vendor indicates that this product is being used commercially. While this manufacturer and vendor did not identify additional test methods, performance standards, product certifications, and other measures of performance for this product, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of powder coatings purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Powder coatings may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—paint and coating components; and intermediates—plastic resins.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on powder coatings and may be found on the BioPreferred Program's website.

22. Product Packaging (Minimum Biobased Content 25 Percent)

Product packaging items are used to protect, handle, and retain a product during activities related but not limited to its storage, distribution, sale, and use. These containers are typically designed to be used once. This category excludes packing and insulating materials and shopping and trash bags.

USDA identified 21 manufacturers and vendors of 64 biobased product packagings. These manufacturers and vendors do not include all manufacturers and vendors of biobased product packaging, merely those identified through the USDA Certified Biobased Products listing in the BioPreferred Program's database. These biobased product packaging range in biobased content from 28 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 25 percent, based on the product with a tested biobased content of 28 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. In addition, three of these manufacturers and vendors identified additional test methods or performance standards (as shown below) that were used in evaluating the products within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, those identified by these manufacturers and vendors include the following:

- ASTM D6400 Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities,
- HACCP: Hazard and Critical Control Points,
- ISO 9001 Quality Management Systems—Requirements, and
- ISO 14001 Environmental Management Systems—Requirements with Guidance for Use.

USDA has been unable to obtain data on the amount of product packaging purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Product packaging may be manufactured using the following designated intermediate ingredient and feedstock categories: intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—oils, fats, and waxes; intermediates—paint and coating components; intermediates—plastic resins; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on product packaging and may be found on the BioPreferred Program's website.

Biobased product packaging may overlap with the products categorized in the EPA's CPG product category of Paper Products: Paperboard and Packaging. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and performance standards through which the product has undergone testing. This information

will assist Federal agencies in determining whether qualifying biobased product packaging overlaps with the CPG-designated product category of Paper Products: Paperboard and Packaging and which product should be afforded the preference in purchasing.

23. Rugs and Floor Mats (Minimum Biobased Content 23 Percent)

Rugs and floor mats are floor coverings that are used for decorative or ergonomic purposes and that are not attached to the floor. This category includes items such as area rugs, rug runners, chair mats, and bathroom and kitchen mats. This category excludes wall-to-wall carpet.

USDA identified three manufacturers and vendors of eight biobased rugs and floor mats. These manufacturers and vendors are not the only manufacturers and vendors of biobased rugs and floor mats; rather, they are the manufacturers and vendors that were identified through the USDA Certified Biobased Products listing in the BioPreferred Program's database. These biobased rugs and floor mats each have biobased contents of 26 or 30 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 23 percent, based on the products' tested biobased contents of 26 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of rugs and floor mats purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Rugs and floor mats may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—oils, fats, and waxes; intermediates—plastic resins; intermediates—rubber materials; and intermediates—textile processing materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on rugs and floor mats and may be found on the BioPreferred Program's website.

Biobased rugs and floor mats may overlap with the products categorized in the EPA's CPG product category of Miscellaneous Products: Mats. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and other test methods or performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased rugs and floor mats overlap with the CPG-designated product category of Miscellaneous Products: Mats and which product should be afforded the preference in purchasing.

24. Shopping and Trash Bags (Minimum Biobased Content 22 Percent)

Shopping and trash bags are open-ended bags that are typically made of thin, flexible film and are used for containing and transporting items such as consumer goods and waste. Examples include trash bags, can liners, shopping or grocery bags, pet waste bags, compost bags, and yard waste bags. This category does not include product packaging, disposable containers, or semi-durable and non-durable films.

USDA identified six manufacturers and vendors of nine shopping and trash bags. These manufacturers and vendors do not include all manufacturers and vendors of biobased shopping and trash bags, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased shopping and trash bags have biobased contents of 25, 26, 26, 38, 47, 48, 75, 88 and 99 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any products. Thus, the proposed minimum biobased content for this product category is 22 percent, based on the product with a tested biobased content of 25 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of shopping and trash bags purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Shopping and trash bags may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—oils, fats, and waxes; intermediates—paint and coating components; and intermediates—plastic resins.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on shopping and trash bags and may be found on the BioPreferred Program's website.

Biobased shopping and trash bags may overlap with the products categorized in the EPA's CPG product category of Non-Paper Office Products: Plastic Trash Bags. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased shopping and trash bags overlap with the CPG-designated product category of Non-Paper Office Products: Plastic Trash Bags and which product should be afforded the preference in purchasing.

25. Soil Amendments (Minimum Biobased Content 72 Percent)

Soil amendments are materials that enhance the physical characteristics of soil through improving water retention or drainage, improving nutrient cycling, promoting microbial growth, or changing the soil's pH. This category excludes foliar sprays and chemical fertilizers.

USDA identified 15 manufacturers and vendors of 17 biobased soil amendments. These manufacturers and vendors do not include all manufacturers and vendors of biobased soil amendments, merely those identified through the USDA Certified Biobased Products listingin the BioPreferred Program's database. These biobased soil amendments range in biobased content from 75 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 72 percent, based on the product with a tested biobased content of 75 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. In addition, two of these manufacturers and vendors identified additional test methods or product certifications (as shown below) that were used in evaluating the products within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance that are applicable to products within this product category, the product certification identified by these manufacturers and vendors includes the following:

- ASTM D6868 Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be Aerobically Composted in Municipal or Industrial Facilities and
- US Composting Council Seal of Testing Assurance.

USDA has been unable to obtain data on the amount of soil amendments purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Soil amendments may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; and intermediates—fibers and fabrics.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on soil amendments and may be found on the BioPreferred Program's website.

Biobased soil amendments may overlap with the products categorized in the EPA's CPG product categories of Landscaping Products: Compost Made From Recovered Organic Materials and Landscaping Products: Fertilizer Made From Recovered Organic Materials. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material, in addition to biobased ingredients, and other test methods or performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased soil amendments overlap with the CPG-designated product categories of Landscaping Products: Compost Made From Recovered Organic Materials and Landscaping Products: Fertilizer Made From Recovered Organic Materials and which product should be afforded the preference in purchasing.

26. Surface Guards, Molding, and Trim (Minimum Biobased Content 26 Percent)

Surface guards, molding, and trim products are typically used during construction or manufacturing. These products are designed to protect surfaces, such as walls and floors, from damage or to cover the exposed edges of furniture or floors.

USDA identified two manufacturers and vendors of two surface guards, molding, and trim products. These manufacturers and vendors do not include all manufacturers and vendors of biobased surface guards, molding, and trim products, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased surface guards, molding, and trim products have biobased contents of 29 percent and 35 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any products. Thus, the proposed minimum biobased content for this product category is 26 percent, based on the products with tested biobased contents of 29 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of surface guards, molding, and trim purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Surface guards, molding, and trim may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—oils, fats, and waxes; intermediates—plastic resins; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on surface guards, molding, and trim products and may be found on the BioPreferred Program's website.

27. Toys and Sporting Gear (Minimum Biobased Content 32 Percent)

Toys and sporting gear are products that are designed for indoor or outdoor recreational use including, but not limited to, toys; games; and sporting equipment and accessories such as balls, bats, racquets, nets, and bicycle seats. This category does not include products such as cleaners, lubricants, and oils that are used to maintain or clean toys and sporting gear.

USDA identified two manufacturers and vendors of seven toys and sporting gear. These manufacturers and vendors do not include all manufacturers and vendors of biobased toys and sporting gear, merely those identified as USDA Certified Biobased Products in the

BioPreferred Program's database. These biobased toys and sporting gear have biobased contents ranging from 35 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any products. Thus, the proposed minimum biobased content for this product category is 32 percent, based on the products with tested biobased contents of 35 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of toys and sporting gear purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Toys and sporting gear may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—foams; intermediates—lubricant components; intermediates—oils, fats, and waxes; intermediates—paint and coating components; intermediates—plastic resins; intermediates—rubber materials; and intermediates—textile processing materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on toys and sporting gear and may be found on the BioPreferred Program's website.

28. Traffic and Zone Marking Paints (Minimum Biobased Content 30 Percent)

Traffic and zone marking paints are products that are formulated and marketed for marking and striping streets, highways, or other traffic surfaces including, but not limited to, curbs, driveways, parking lots, sidewalks, and airport runways.

USDA identified one manufacturer and vendor of five traffic and zone marking paints. This manufacturer and vendor is not the only manufacturer and vendor of biobased traffic and zone marking paints; rather, it is the only one identified through the USDA Certified Biobased Products listing in the BioPreferred Program's database. These biobased traffic and zone marking paints have biobased contents of 33, 33, 34, 35, and 38 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any products. Thus, the proposed minimum biobased content for this product category is 30 percent, based on the products with tested biobased contents of 33 percent.

Information supplied by this manufacturer and vendor indicates that these products are being used commercially. While this manufacturer and vendor did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of traffic and zone marking paints purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Traffic and zone marking paints may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—oils, fats, and waxes; intermediates—paint and coating components; and intermediates—plastic resins.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on traffic and zone marking paints and may be found on the BioPreferred Program's website.

29. Transmission Fluids (Minimum Biobased Content 60 Percent)

Transmission fluids are liquids that lubricate and cool the moving parts in a transmission to prevent wearing and to ensure smooth performance.

USDA identified two manufacturers and vendors of two transmission fluids. These manufacturers and vendors do not include all manufacturers and vendors of biobased transmission fluids, merely those identified through the USDA Certified Biobased Products listing in the BioPreferred Program's database. These biobased transmission fluids have biobased contents of 63 percent and 96 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude either product. Thus, the proposed minimum biobased content for this product category is 60 percent, based on the product with a tested biobased content of 63 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of transmission fluids purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Transmission fluids may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—lubricant components; and intermediates—oils, fats, and waxes.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on transmission fluids and may be found on the BioPreferred Program's website.

Biobased transmission fluids may overlap with the products categorized in the EPA's CPG product category of Vehicular Products: Re-Refined Lubricating Oil. USDA is requesting that manufacturers and vendors of these qualifying biobased products provide information on the USDA website regarding the intended uses of the product, whether the product contains any recovered material in addition to biobased ingredients, and other test methods or performance standards through which the product has undergone testing. This information will assist Federal agencies in determining whether qualifying biobased transmission fluids overlap with the CPG-designated product category of Vehicular Products: Engine Coolants and which product should be afforded the preference in purchasing.

30. Wall Coverings (Minimum Biobased Content 62 Percent)

Wall coverings are materials that are applied to walls using an adhesive. This category includes, but is not limited to, wallpaper, vinyl wall coverings, and wall fabrics. This category excludes all types of paints or coatings.

USDA identified one manufacturer and vendor of five wall coverings. This manufacturer and vendor is not the only manufacturer and vendor of biobased wall coverings; rather, it is the only manufacturer and vendor that was identified through the USDA Certified Biobased Products listing in the BioPreferred Program's database. These biobased wall coverings have biobased contents of 65, 68, 89, 89, and 89 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any products. Thus, the proposed minimum biobased content for this product category is 62 percent, based on the product with a tested biobased content of 65 percent.

Information supplied by this manufacturer and vendor indicates that these products are being used commercially. In addition, this manufacturer and vendor identified an additional performance standard (as shown below) that was used in evaluating the products within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, the performance standard identified by this manufacturer and vendor is below:

- ACT Physical Properties Performance Guideline.

USDA has been unable to obtain data on the amount of wall coverings purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Wall coverings may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—plastic resins; intermediates—rubber materials; and intermediates—textile processing materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on wall coverings and may be found on the BioPreferred Program's website.

C. Proposed Amendments to Previously Designated Product Categories

In this proposed rule, USDA is proposing to amend the previously designated product categories of general purpose de-icers; firearm lubricants; laundry products; and water clarifying agents. The proposed amendments are discussed in the following sections.

1. General Purpose De-Icers

Since the designation of the general purpose de-icers product category, USDA has gathered more information on de-icers intended for general purpose use and/or specialized use. In reviewing this information, USDA found that there is no significant difference in formulation or biobased content of de-icers intended for general purpose or specialized use. As a result, USDA concluded that it is reasonable to include these products in a single, revised category for de-icers. USDA is proposing to revise the previously designated general purpose de-icers category to include both general purpose and specialized de-icers, as follows:

De-Icers (Minimum Biobased Content 93 Percent)

De-icers are chemical products (*e.g.,* salts, fluids) that are designed to aid in the removal of snow and/or ice, and/or in the prevention of the buildup of snow and/or ice, by lowering the freezing point of water.

USDA identified five manufacturers and vendors of 13 biobased de-icers. These manufacturers and vendors do not include all manufacturers and vendors of biobased de-icers, merely those identified through the USDA Certified Biobased Products in the BioPreferred Program's database. These biobased de-icers have biobased contents ranging from 96 percent to 100 percent, as measured by ASTM D6866. USDA is not proposing a change to the minimum biobased content of the existing designated category. Thus, the proposed minimum biobased content for this product category is 93 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. In addition, two of these manufacturers and vendors identified additional test methods or performance standards (as shown below) that were used in evaluating the products within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, those identified by these manufacturers and vendors include:

- AMS1476B SAE International Deodorant, Aircraft Toilet Specification,
- ASTM D1177 Standard Test Method for Freezing Point of Aqueous Engine Coolants,
- ASTM D1384 Standard Test Method for Corrosion Test for Engine Coolants in Glassware,
- Boeing D6–17487R Revision R Toilet Flushing Fluids,
- EPA 2007.0 Acute Toxicity WET Method of Mysid, *Americamysis bahia,* and
- FBC System Compatible Lubrizol Test Method-2009—NSF CPVC.

USDA has been unable to obtain data on the amount of de-icers purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. De-icers may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders and intermediates—chemicals.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on

de-icers and may be found on the BioPreferred Program's website.

2. Firearm Lubricants

Since the designation of the firearm lubricants category, USDA has gathered more information on firearm lubricants, as well as other firearm care products, such as cleaners and protectants. In reviewing the information now available, USDA determined that firearm cleaners, lubricants, protectants, and products that are formulated as any combination thereof are similar in formulation and biobased content. Additionally, USDA found that many of these products are advertised as performing well in cleaning, lubricating, and protecting firearms. USDA concluded that it is reasonable to include these products in a single, revised category for firearm care products. Thus, USDA is proposing to revise the firearm lubricants category to include additional firearm care products, such as cleaners and protectants, as follows:

Firearm Cleaners, Lubricants, and Protectants (Minimum Biobased Content 32 Percent)

Firearm cleaners, lubricants, and protectants are products that are designed to care for firearms by cleaning, lubricating, protecting, or any combination thereof. Examples include products that are designed for use in firearms to reduce the friction and wear between the moving parts of a firearm, to keep the weapon clean, and/or to prevent the formation of deposits that could cause the weapon to jam.

USDA identified 14 manufacturers and vendors of 31 biobased firearm cleaners, lubricants, and protectants. These manufacturers and vendors do not include all manufacturers and vendors of biobased firearm cleaners, lubricants, and protectants, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased firearm cleaners, lubricants, and protectants range in biobased content from 35 percent to 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 32 percent, based on the product with a tested biobased content of 35 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of firearm cleaners, lubricants, and protectants purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Firearm cleaners, lubricants, and protectants may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—cleaner components; intermediates—lubricant components; and intermediates—oils, fats, and waxes.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, has been collected on firearm cleaners, lubricants, and protectants and may be found on the BioPreferred Program's website.

3. Laundry Products

USDA previously finalized the designation of the laundry products category. This category included two subcategories. Since that time, USDA has obtained additional information on products within this category and is now proposing to add one new subcategory within the laundry products category, as follows:

Laundry Products—Dryer Sheets (Minimum Biobased Content 90 Percent)

Laundry products—dryer sheets are products that are designed to clean, condition, or otherwise affect the quality of the laundered material. Such products include but are not limited to laundry detergents, bleach, stain removers, and fabric softeners. These are small sheets that are added to laundry in clothes dryers to eliminate static cling, soften fabrics, or otherwise improve the characteristics of the fabric. These products are scented or unscented.

USDA identified five manufacturers and vendors of seven biobased laundry products—dryer sheets. These manufacturers and vendors do not include all manufacturers and vendors of biobased laundry products—dryer sheets, merely those identified as USDA Certified Biobased Products in the BioPreferred Program's database. These biobased laundry products—dryer sheets have biobased contents of 93, 96, 97, 97, 100, 100 and 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any of these products. Thus, the proposed minimum biobased content for this product category is 90 percent, based on the product with a tested biobased content of 93 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. In addition, one of these manufacturers and vendors identified a product certification (as shown below) that was used in evaluating the products within this product category. While there may be additional test methods, performance standards, product certifications, and other measures of performance applicable to products within this product category, the one identified by this manufacturer and vendor is below:

- FSC–STD–40 Forest Stewardship Council Standard for Chain of Custody Certification.

USDA has been unable to obtain data on the amount of laundry products—dryer sheets purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Laundry products—dryer sheets may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—oils, fats, and waxes; intermediates—plastic resins; and intermediates—textile processing materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, have been collected on laundry products—dryer sheets and

may be found on the BioPreferred Program's website.

4. Water Clarifying Agents

USDA is proposing the revise the designated water clarifying agents category by expanding the definition so that the category includes water treatment chemicals, as well as water clarifying agents. Since the designation of the water clarifying agents product category, USDA has gathered more information about water clarifying agents, as well as other types of water or wastewater treatment chemicals. In reviewing the information available, USDA determined that these types of products are similar in formulation, biobased content, and use. USDA concluded that it is reasonable to include these products in a single, revised category for water or wastewater treatment chemicals. Therefore, USDA is proposing to revise the Water Clarifying Agents category as follows:

Water or Wastewater Treatment Chemicals (Minimum Biobased Content 87 Percent)

Water or wastewater treatment chemicals are chemicals that are specifically formulated to purify raw water or to treat and purify wastewater from residential, commercial, industrial, and agricultural systems. Examples include coagulants, flocculants, neutralizing agents, activated carbon, or defoamers. This category excludes microbial cleaning products.

USDA identified five manufacturers and vendors of seven water or wastewater treatment chemicals. These manufacturers and vendors do not include all manufacturers and vendors of biobased water and wastewater treatment chemicals, merely those identified through the USDA Certified Biobased Products listing in the BioPreferred Program's database. These biobased water or wastewater treatment chemicals have biobased contents of 90, 97, 98, 100, 100, 100, and 100 percent, as measured by ASTM D6866. In establishing the minimum biobased content requirement for this product category, USDA did not find a reason to exclude any products. Thus, the proposed minimum biobased content for this product category is 87 percent, based on the product with a tested biobased content of 90 percent.

Information supplied by these manufacturers and vendors indicates that these products are being used commercially. While these manufacturers and vendors did not identify additional test methods, performance standards, product certifications, and other measures of performance for these products, USDA is open to evaluating products that have undergone additional testing or have achieved other types of product certifications for inclusion in this finished product category.

USDA has been unable to obtain data on the amount of water or wastewater treatment chemicals purchased by Federal procuring agencies. However, USDA believes that some Federal agencies and their contractors do and would likely purchase these types of products. Additionally, as discussed earlier in Section II, designating this finished product category would contribute towards fulfilling the 2008 Farm Bill requirements to designate products composed of designated intermediate ingredients and feedstocks. Water or wastewater treatment chemicals may be manufactured using the following designated intermediate ingredient and feedstock categories: Intermediates—binders; intermediates—chemicals; intermediates—fibers and fabrics; intermediates—plastic resins; and intermediates—rubber materials.

Specific product information, including company contact, intended use, biobased content, and performance characteristics, has been collected on water or wastewater treatment chemicals and may be found on the BioPreferred Program's website.

D. Compliance Date for Procurement Preference and Incorporation Into Specifications

USDA intends for the final rule to take effect thirty (30) days after publication of the final rule. However, USDA is proposing that procuring agencies would have a one-year transition period, starting from the date of publication of the final rule, before the procurement preference for biobased products within a designated product category would take effect.

USDA is proposing a one-year period before the procurement preferences would take effect because it recognizes that Federal agencies will need time to incorporate the preferences into procurement documents and to revise existing standardized specifications. Both section 9002(a)(3) and 7 CFR 3201(c) explicitly acknowledge the need for Federal agencies to have sufficient time to revise the affected specifications to give preference to biobased products when purchasing products within the designated product categories. Procuring agencies will need time to evaluate the economic and technological feasibility of the available biobased products for their agency-specific uses and for compliance with agency-specific requirements.

By the time these product categories are promulgated for designation, Federal agencies will have had a minimum of 18 months (from the date of this **Federal Register** notice), and much longer considering when the Guidelines were first proposed and these requirements were first laid out, to implement these requirements.

For these reasons, USDA proposes that the mandatory preference for biobased products under the designated product categories take effect one year after promulgation of the final rule. The one-year period provides these agencies with ample time to evaluate the economic and technological feasibility of biobased products for a specific use and to revise the specifications accordingly. However, some agencies may be able to complete these processes more expeditiously, and not all uses will require extensive analysis or revision of existing specifications. Although it is allowing up to one year, USDA encourages procuring agencies to implement the procurement preferences as early as practicable for procurement actions involving any of the designated product categories.

V. Where can agencies get more information on these USDA-designated product categories?

The information used to develop this proposed rule was voluntarily submitted by the manufacturers of products that are categorized within the product categories being proposed. These manufacturers sought to participate in the BioPreferred Program's USDA Certified Biobased Product labeling initiative and submitted product information necessary for certification. Information on each of these products can be found on the BioPreferred Program's website (*http://www.biopreferred.gov*).

Further, once the product category designations in this proposal become final, manufacturers and vendors voluntarily may make available additional information on specific products for posting by the agency on the BioPreferred Program's website. USDA has begun performing periodic audits of the information displayed on the BioPreferred Program's website and, where questions arise, is contacting the manufacturer or vendor to verify, correct, or remove incorrect or out-of-date information. Procuring agencies should contact the manufacturers and vendors directly to discuss specific needs and to obtain detailed information on the availability and prices of biobased products meeting those needs.

By accessing the BioPreferred Program's website, agencies may also be able to obtain any voluntarily-posted information on each product concerning the following: Relative price; life-cycle costs; hot links directly to a manufacturer's or vendor's website (if available); performance standards (industry, government, military, ASTM/ISO) that the product has been tested against; and environmental and public health information.

VI. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Order 12866, as supplemented by Executive Order 13563, requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''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 adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

This proposed rule has been determined by the Office of Management and Budget to be not significant for purposes of Executive Order 12866. We are not able to quantify the annual economic effect associated with this proposed rule. USDA attempted to obtain information on the Federal agencies' usage within the proposed new product categories being added and the existing categories being amended. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of this proposed rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing products within designated product categories if price is ''unreasonable,'' the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of this proposed rule.

1. Summary of Impacts

This proposed rule is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the Federal preferred procurement program will ultimately provide additional opportunities for businesses and manufacturers to begin supplying products under the proposed designated biobased product categories to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by this proposed rule. The proposed rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance, availability and/or price of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule.

2. Benefits of the Proposed Rule

The designation of these product categories would provide the benefits outlined in the objectives of section 9002: To increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products and to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities. On a national and regional level, this proposed rule can result in expanding and strengthening markets for biobased materials used in these product categories.

3. Costs of the Proposed Rule

Like the benefits, the costs of this proposed rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products and costs to Federal agencies to provide procurement preference for the preferred products. Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Pre-award procurement costs for Federal agencies may rise minimally as the contracting officials conduct market research to evaluate the performance, availability, and price reasonableness of preferred products before making a purchase.

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601–602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

USDA evaluated the potential impacts of its proposed designation of these product categories to determine whether its actions would have a significant impact on a substantial number of small entities. Because the Federal preferred procurement program established under section 9002 applies only to Federal agencies and their contractors, small governmental (city, county, etc.) agencies are not affected. Thus, the proposal, if promulgated, will not have a significant economic impact on small governmental jurisdictions.

USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of product categories for Federal preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers.

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program continues to evolve, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market biobased products within the product categories designated by this rulemaking, the number is expected to be small. Because biobased products represent an emerging market for products that are alternatives to traditional products with well-established market shares, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus,

the number of small businesses manufacturing biobased products affected by this rulemaking is not expected to be substantial.

The Federal preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the product categories being proposed for designation for Federal preferred procurement in this rule are expected to be included under the following North American Industry Classification System (NAICS) codes:

- 314 Textile Product Mills;
- 3169 Other Leather and Allied Product Manufacturing;
- 32419 Other Petroleum and Coal Products Manufacturing;
- 3255 Paint, Coating, and Adhesive Manufacturing;
- 3256 Soap, Cleaning Compound, and Toilet Preparation Manufacturing;
- 325212 Synthetic Rubber Manufacturing;
- 325998 All Other Miscellaneous Chemical Product and Preparation Manufacturing;
- 325220 Artificial and Synthetic Fibers and Filaments Manufacturing;
- 32611 Plastics Packaging Materials and Unlaminated Film and Sheet Manufacturing;
- 32614 Polystyrene Foam Product Manufacturing;
- 32615 Urethane and Other Foam Product (except Polystyrene) Manufacturing;
- 32616 Plastics Bottle Manufacturing;
- 32619 Other Plastics Product Manufacturing;
- 3262 Rubber Product Manufacturing;
- 3322 Cutlery and Handtool Manufacturing;
- 3324 Boiler, Tank, and Shipping Container Manufacturing;
- 3328 Coating, Engraving, Heat Treating, and Allied Activities;
- 33992 Sporting and Athletic Goods Manufacturing;
- 33993 Doll, Toy, and Game Manufacturing;
- 33994 Office Supplies (except Paper) Manufacturing;
- 339994 Broom, Brush, and Mop Manufacturing; and
- 339999 All Other Miscellaneous Manufacturing.

USDA obtained information on these 24 NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that in 2012, the Survey of Business Owners data indicate that there were about 42,365 firms with paid employees within these 24 NAICS categories. When considering the 2012 Business Patterns Geography Area Series data in conjunction, these firms owned a total of about 48,532 individual establishments. Thus, the average number of establishments per company is about 1.15. The 2012 Business Patterns Geography Area Series data also reported that of the 48,532 individual establishments, about 48,306 (99.5 percent) had fewer than 500 paid employees. USDA also found that the average number of paid employees per firm among these industries was about 35. Thus, nearly all of the businesses meet the Small Business Administration's definition of a small business (less than 500 employees, in most NAICS categories).

USDA does not have data on the potential adverse impacts on manufacturers of non-biobased products within the product categories being proposed today but believes that the impact will not be significant. The ratio of the total number of companies with USDA Certified Biobased Products that are categorized in this proposed product categories to the total number of firms with paid employees in each of the NAICS codes listed above is 0.0038. Thus, USDA believes that the number of small businesses manufacturing non-biobased products within this proposed product categories and selling significant quantities of those products to government agencies that would be affected by this rulemaking to be relatively low. Also, this proposed rule will not affect existing purchase orders, and it will not preclude procuring agencies from continuing to purchase non-biobased products when biobased products do not meet the availability, performance, or reasonable price criteria. This proposed rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials.

After considering the economic impacts of this proposed rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities.

While not a factor relevant to determining whether the proposed rule will have a significant impact for RFA purposes, USDA has concluded that the effect of the rule will be to provide positive opportunities for businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies increases demand for these products and results in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This proposed rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 12988: Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This proposed rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

E. Executive Order 13132: Federalism

This proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Unfunded Mandates Reform Act of 1995

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

G. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule does not significantly or uniquely affect "one or more Indian tribes . . . the relationship between the Federal Government and

Indian tribes, or . . . the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Thus, no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under this proposed rule is currently approved under OMB control number 0503–0011.

J. E-Government Act Compliance

USDA is committed to compliance with the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for Federal preferred procurement under each designated product category. For information pertinent to E-Government Act compliance related to this rule, please contact Karen Zhang at (202) 401–4747.

List of Subjects in 7 CFR Part 3201

Biobased products, Business and industry, Government procurement.

For the reasons stated in the preamble, the Department of Agriculture proposes to amend 7 CFR part 3201 as follows:

PART 3201—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

■ 1. The authority citation for part 3201 continues to read as follows:

Authority: 7 U.S.C. 8102.

■ 2. Section 3201.37 is amended by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 3201.37 De-Icers.

(a) *Definition.* Chemical products (*e.g.,* salts, fluids) that are designed to aid in the removal of snow and/or ice, and/or in the prevention of the buildup of snow and/or ice, by lowering the freezing point of water.

* * * * *

(c) *Preference compliance dates.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased de-icers. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased de-icers.

■ 3. Section 3201.38 is revised to read as follows:

§ 3201.38 Firearm cleaners, lubricants, and protectants.

(a) *Definition.* Products that are designed to care for firearms by cleaning, lubricating, protecting, or any combination thereof. Examples include products that are designed for use in firearms to reduce the friction and wear between the moving parts of a firearm, to keep the weapon clean, and/or to prevent the formation of deposits that could cause the weapon to jam.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 32 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance dates.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased firearm cleaners, lubricants, and protectants. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased firearm cleaners, lubricants, and protectants.

■ 4. Section 3201.40 is amended by adding paragraphs (a)(2)(iii) and b(3) and revising paragraph (c) to read as follows:

§ 3201.40 Laundry products.

(a) * * *

(2) * * *

(iii) *Dryer sheets.* These are small sheets that are added to laundry in clothes dryers to eliminate static cling, soften fabrics, or otherwise improve the characteristics of the fabric.

(b) * * *

(3) *Dryer sheets*—90 percent.

(c) *Preference compliance dates.* (1) No later than May 14, 2009, procuring agencies, in accordance with this part, will give a procurement preference for those qualifying biobased laundry products specified in paragraphs (a)(2)(i) through (ii) of this section. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased laundry products.

(2) No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for those qualifying biobased laundry products specified in paragraph (a)(2)(iii) of this section. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased laundry products.

■ 5. Section 3201.99 is revised to read as follows:

§ 3201.99 Water and wastewater treatment chemicals.

(a) *Definition.* Chemicals that are specifically formulated to purify raw water or to treat and purify wastewater from residential, commercial, industrial, and agricultural systems. Examples include coagulants, flocculants, neutralizing agents, activated carbon, or defoamers. This category excludes microbial cleaning products.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 87 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased water and wastewater treatment chemicals. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased water and wastewater treatment chemicals.

■ 6. Add §§ 3201.120 through 3201.149 to subpart B to read as follows:

Subpart B—Designated Product Categories and Intermediate Ingredients or Feedstocks

Sec.

* * * * *

3201.120 Adhesives.
3201.121 Animal habitat care products.
3201.122 Cleaning tools.
3201.123 Concrete curing agents.
3201.124 Concrete repair materials.
3201.125 Durable cutlery.
3201.126 Durable tableware.
3201.127 Epoxy systems.
3201.128 Exterior paints and coatings.
3201.129 Facial care products.
3201.130 Feminine care products.
3201.131 Fire logs and fire starters.
3201.132 Folders and filing products.
3201.133 Foliar sprays.

3201.134 Gardening supplies and accessories.
3201.135 Heating fuels and wick lamps.
3201.136 Kitchenware and accessories.
3201.137 Other lubricants.
3201.138 Phase change materials.
3201.139 Playground and athletic surface materials.
3201.140 Powder coatings.
3201.141 Product packaging.
3201.142 Rugs and floor mats.
3201.143 Shopping and trash bags.
3201.144 Soil amendments.
3201.145 Surface guards, molding, and trim.
3201.146 Toys and sporting gear.
3201.147 Traffic and zone marking paints.
3201.148 Transmission fluids.
3201.149 Wall coverings.

§ 3201.120 Adhesives.

(a) *Definition.* Adhesives are compounds that temporarily or permanently bind two item surfaces together. These products include glues and sticky tapes used in construction, household, flooring, and industrial settings. This category excludes epoxy systems.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 24 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased adhesives. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased adhesives.

§ 3201.121 Animal habitat care products.

(a) *Definition.* Animal habitat care products are products that are intended to improve the quality of animal habitats such as cleaning supplies, sanitizers, feeders, and products that control, mask, or suppress pet odors. This category excludes animal bedding or litter products and animal cleaning products.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 22 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased animal habitat care products. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased animal habitat care products.

§ 3201.122 Cleaning tools.

(a) *Definition.* Cleaning tools are objects that are used to clean a variety of surfaces or items and can be used multiple times. This category includes tools such as brushes, scrapers, abrasive pads, and gloves that are used for cleaning. The expendable materials used in cleaning, such as glass cleaners, single-use wipes, and all-purpose cleaners, are excluded from this category, as these materials better fit in other categories.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 22 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased cleaning tools. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased cleaning tools.

§ 3201.123 Concrete curing agents.

(a) *Definition.* Concrete curing agents are products that are designed to enhance and control the curing process of concrete.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 59 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased concrete curing agents. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased concrete curing agents.

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Construction Products: Cement and Concrete. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product category of Construction Products: Cement and Concrete and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Concrete curing agents within this designated product category can compete with similar concrete curing agents with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Construction Products: Cement and Concrete containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12.

§ 3201.124 Concrete repair materials.

(a) *Definition.* (1) Products that are designed to repair cracks and other damage to concrete.

(2) Concrete repair materials for which preferred procurement applies are:

(i) *Concrete repair materials—concrete leveling.* Concrete repair materials—concrete leveling are products that are designed to repair cracks and other damage to concrete by raising or stabilizing concrete.

(ii) *Concrete repair materials—concrete patching.* Concrete repair materials—concrete patching are products that are designed to repair cracks and other damage to concrete by filling and patching the concrete.

(b) *Minimum biobased content.* The minimum biobased content for all concrete repair materials shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product. The applicable minimum biobased contents are:

(1) Concrete repair materials—concrete leveling—23 percent.

(2) Concrete repair materials—concrete patching—69 percent.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased concrete repair materials. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased concrete repair materials.

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Construction Products: Cement and Concrete. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product category of Construction Products: Cement and Concrete and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Concrete repair materials within this designated product category can compete with similar concrete repair materials with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Construction Products: Cement and Concrete containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12.

§ 3201.125 Durable cutlery.

(a) *Definition.* Durable cutlery consists of dining utensils that are designed to be used multiple times.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 28 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased durable cutlery. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased durable cutlery.

§ 3201.126 Durable tableware.

(a) *Definition.* Durable tableware consists of multiple-use drinkware and dishware including cups, plates, bowls, and serving platters.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 28 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased durable tableware. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased durable tableware.

§ 3201.127 Epoxy systems.

(a) *Definition.* Epoxy systems are two-component systems that are epoxy-based and are used as coatings, adhesives, surface fillers, and composite matrices.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 23 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased epoxy systems. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased epoxy systems.

§ 3201.128 Exterior paints and coatings.

(a) *Definition.* Exterior paints and coatings are pigmented liquid products that typically contain pigments to add color and are formulated for use on outdoor surfaces. When these products dry, they typically form a protective layer and provide a coat of color to the applied surface. This category includes paint and primers but excludes wood and concrete sealers and stains and specialty coatings such as roof coatings, wastewater system coatings, and water tank coatings.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 83 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased exterior paints and coatings. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased exterior paints and coatings.

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Construction Products: Consolidated and Reprocessed Latex Paint for Specified Uses. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product category of Construction Products: Consolidated and Reprocessed Latex Paint for Specified Uses and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Exterior paints and coatings within this designated product category can compete with similar exterior paints and coatings with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Construction Products: Consolidated and Reprocessed Latex Paint for Specified Uses containing recovered materials as products for which Federal agencies must give preference in their

purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12.

§ 3201.129 Facial care products.

(a) *Definition.* Facial care products are cleansers, moisturizers, and treatments specifically designed for the face. These products are used to care for the condition of the face by supporting skin integrity, enhancing its appearance, and relieving skin conditions. This category does not include tools and applicators, such as those used to apply facial care products.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 88 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased facial care products. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased facial care products.

§ 3201.130 Feminine care products.

(a) *Definition.* Feminine care products are products that are designed for maintaining feminine health and hygiene. This category includes sanitary napkins, panty liners, and tampons.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 65 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased feminine care products. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased feminine care products.

§ 3201.131 Fire logs and fire starters.

(a) *Definition.* Fire logs and fire starters are devices or substances that are used to start a fire intended for uses such as comfort heat, decoration, or cooking. Examples include fire logs and lighter fluid. This category excludes heating fuels for chafing dishes, beverage urns, warming boxes, and wick lamps.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 92 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased fire logs and fire starters. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased fire logs and fire starters.

§ 3201.132 Folders and filing products.

(a) *Definition.* Folders and filing products are products that are designed to hold together items such as loose sheets of paper, documents, and photographs with clasps, fasteners, rings, or folders. This category includes binders, folders, and document covers.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 66 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased folders and filing products. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased folders and filing products.

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product categories of Non-Paper Office Products: Binders, Clipboards, File Folders, Clip Portfolios, and Presentation Folders and Non-Paper Office Products: Plastic Envelopes. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product categories of Non-Paper Office Products: Binders, Clipboards, File Folders, Clip Portfolios, and Presentation Folders and Non-Paper Office Products: Plastic Envelopes and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Biobased folders and filing products within this designated product category can compete with similar folders and filing products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Non-Paper Office Products: Binders, Clipboards, File Folders, Clip Portfolios, and Presentation Folders and Non-Paper Office Products: Plastic Envelopes containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.16.

§ 3201.133 Foliar sprays.

(a) *Definition.* Foliar sprays are products that are applied to the leaves of plants and provide plants with nutrients. These products may also repair plants from previous pest attacks. Examples include liquid fertilizers, foliar feeds, and micronutrient solutions.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 50 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased foliar sprays. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased foliar sprays.

§ 3201.134 Gardening supplies and accessories.

(a) *Definition.* Gardening supplies and accessories are products that are used to grow plants in outdoor and indoor settings. Examples include seedling starter trays, nonwoven mats or substrates for hydroponics, and flower

or plant pots. This category excludes compost activators and accelerators; erosion control materials; fertilizers, including soil inoculants; foliar sprays; mulch and compost materials; and soil amendments.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 43 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased gardening supplies and accessories. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased gardening supplies and accessories.

§ 3201.135 Heating fuels and wick lamps.

(a) *Definition.* Heating fuels and wick lamps are products that create controlled sources of heat or sustain controlled open flames that are used for warming food, portable stoves, beverage urns, or fondue pots. This category also includes wick lamps and their fuels that create controlled sources of light indoors and in camping or emergency preparedness situations. This category excludes fire logs and fire starters and candles and wax melts.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 75 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased heating fuels and wick lamps. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased heating fuels and wick lamps.

§ 3201.136 Kitchenware and accessories.

(a) *Definition.* Kitchenware and accessories are products designed for food or drink preparation. These products include cookware and bakeware, such as baking cups, cookie sheets, parchment paper, and roasting bags or pans; cooking utensils, such as brushes, tongs, spatulas, and ladles; and food preparation items, such as cutting boards, measuring cups, mixing bowls, coffee filters, food preparation gloves, and sandwich and snack bags. These products exclude kitchen appliances, such as toasters, blenders, and coffee makers; disposable tableware; disposable cutlery; disposable containers; durable tableware; durable cutlery; and cleaning tools.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 22 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased kitchenware and accessories. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased kitchenware and accessories.

§ 3201.137 Other lubricants.

(a) *Definition.* Other lubricants are lubricant products that do not fit into any of the BioPreferred Program's specific lubricant categories. This category includes lubricants that are formulated for specialized uses. Examples of other lubricants include lubricants used for sporting or exercise gear and equipment, musical instruments, and specialized equipment such as tree shakers. This category excludes lubricants that are covered by the specific lubricant categories such as chain and cable lubricants, firearm lubricants, forming lubricants, gear lubricants, multi-purpose lubricants, penetrating lubricants, pneumatic equipment lubricants, and slide way lubricants.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 39 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased other lubricants. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased other lubricants.

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Vehicular Products: Re-Refined Lubricating Oil. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product category of Vehicular Products: Re-Refined Lubricating Oil and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Other lubricants within this designated product category can compete with similar other lubricants with recycled content. According to the Resource Conservation and Recovery Act of 1976, section 6002, Federal agencies must give preference in their purchasing programs for the U.S. Environmental Protection Agency's CPG-designated Vehicular Products: Re-Refined Lubricating Oil containing recovered materials as products. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11.

§ 3201.138 Phase change materials.

(a) *Definition.* Phase change materials are products that are capable of absorbing and releasing large amounts of thermal energy by freezing and thawing at certain temperatures. Heat is absorbed or released when the material changes from solid to liquid and vice versa. Applications may include, but are not limited to, conditioning of buildings, medical applications, thermal energy storage, or cooling of food. Materials such as animal fats and plant oils that melt at desirable temperatures are typically used to make products in this category.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 71 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased phase change materials. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased phase change materials.

§ 3201.139 Playground and athletic surface materials.

(a) *Definition.* Playground and athletic surface materials are products that are designed for use on playgrounds and athletic surfaces. Examples include materials that are applied to the surfaces of playgrounds, athletic fields, and other sports surfaces to enhance or change the color or general appearance of the surface and to provide safety and/or performance benefits. Such materials include, but are not limited to, top coatings, primers, line marking paints, and rubberized pellets that are used on athletic courts, tracks, natural or artificial turf, and other playing surfaces. This category does not include the artificial turf or surface itself, as that is included in the carpets product category.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 22 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased playground and athletic surface materials. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased playground and athletic surface materials.

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product categories of Parks and Recreation Products: Playground Surfaces and Running Tracks. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product categories of Parks and Recreation Products: Playground Surfaces and Running Tracks and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Playground and athletic surface materials within this designated product category can compete with similar playground and athletic surface materials with recycled content. According to the Resource Conservation and Recovery Act of 1976, section 6002, Federal agencies must give preference in their purchasing programs for the U.S. Environmental Protection Agency's CPG-designated product categories of Parks and Recreation Products: Playground Surfaces and Running Tracks containing recovered materials as products. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.10.

§ 3201.140 Powder coatings.

(a) *Definition.* Powder coatings are polymer resin systems that are combined with stabilizers, curatives, pigments, and other additives and ground into a powder. These coatings are applied electrostatically to metallic surfaces and then cured under heat. Powder coatings are typically used for coating metals, such as vehicle and bicycle parts, household appliances, and aluminum extrusions.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 34 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased powder coatings. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased powder coatings.

§ 3201.141 Product packaging.

(a) *Definition.* Product packaging items are used to protect, handle, and retain a product during activities related but not limited to its storage, distribution, sale, and use. These containers are typically designed to be used once. This category excludes packing and insulating materials and shopping and trash bags.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 25 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased product packaging. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased product packaging.

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Paper Products: Paperboard and Packaging. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product category of Paper Products: Paperboard and Packaging and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Product packaging within this designated product category can compete with similar product packaging with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Paper Products: Paperboard and Packaging containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.10.

§ 3201.142 Rugs and floor mats.

(a) *Definition.* Rugs or floor mats are floor coverings that are used for decorative or ergonomic purposes and that are not attached to the floor. This category includes items such as area

rugs, rug runners, chair mats, and bathroom and kitchen mats. This category excludes wall-to-wall carpet.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 23 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased rugs and floor mats. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased rugs and floor mats.

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Miscellaneous Products: Mats. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product category of Miscellaneous Products: Mats and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Rugs and floor mats within this designated product category can compete with similar rugs or floor mats with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Miscellaneous Products: Mats containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.17.

§ 3201.143 Shopping and trash bags.

(a) *Definition.* Shopping and trash bags are open-ended bags that are typically made of thin, flexible film and are used for containing and transporting items such as consumer goods and waste. Examples include trash bags, can liners, shopping or grocery bags, pet waste bags, compost bags, and yard waste bags. This category does not include product packaging, disposable containers, or semi-durable and non-durable films.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 22 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased shopping and trash bags. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased shopping and trash bags.

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Non-Paper Office Products: Plastic Trash Bags. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product category of Non-Paper Office Products: Trash Bags and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Shopping and trash bags within this designated product category can compete with similar shopping and trash bags with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Non-Paper Office Products: Trash Bags containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.17.

§ 3201.144 Soil amendments.

(a) *Definition.* Soil amendments are materials that enhance the physical characteristics of soil through improving water retention or drainage, improving nutrient cycling, promoting microbial growth, or changing the soil's pH. This category excludes foliar sprays and chemical fertilizers.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 72 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased soil amendments. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased soil amendments.

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product categories of Landscaping Products: Compost Made From Recovered Organic Materials and Landscaping Products: Fertilizer Made From Recovered Organic Materials. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated product categories Landscaping Products: Compost Made From Recovered Organic Materials and Landscaping Products: Fertilizer Made From Recovered Organic Materials and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Soil amendments within this designated product category can compete with similar soil amendments with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated Landscaping Products: Compost Made From Recovered Organic Materials and Landscaping Products: Fertilizer Made From Recovered Organic Materials containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.15.

§ 3201.145 Surface guards, molding, and trim.

(a) *Definition.* Surface guards, molding, and trim products are typically used during construction or manufacturing. These products are designed to protect surfaces, such as walls and floors, from damage or to cover the exposed edges of furniture or floors.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 26 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased surface guards, molding, and trim. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased surface guards, molding, and trim.

§ 3201.146 Toys and sporting gear.

(a) *Definition.* Toys and sporting gear are products that are designed for indoor or outdoor recreational use including, but not limited to, toys; games; and sporting equipment and accessories such as balls, bats, racquets, nets, and bicycle seats. This category does not include products such as cleaners, lubricants, and oils that are used to maintain or clean toys and sporting gear.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 32 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased toys and sporting gear. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased toys and sporting gear.

§ 3201.147 Traffic and zone marking paints.

(a) *Definition.* Traffic and zone marking paints are products that are formulated and marketed for marking and striping streets, highways, or other traffic surfaces including, but not limited to, curbs, driveways, parking lots, sidewalks, and airport runways.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 30 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased traffic and zone marking paints. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased traffic and zone marking paints.

§ 3201.148 Transmission fluids.

(a) *Definition.* Transmission fluids are liquids that lubricate and cool the moving parts in a transmission to prevent wearing and to ensure smooth performance.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 60 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased transmission fluids. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased transmission fluids.

(d) *Determining overlap with a designated product category in the EPA's CPG program.* Qualifying products within this product category may overlap with the EPA's CPG-designated recovered content product category of Vehicular Products: Re-refined Lubricating Oil. USDA is requesting that manufacturers of these qualifying biobased products provide information on the BioPreferred Program's website about the intended uses of the product, information on whether the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether a qualifying biobased product overlaps with the EPA's CPG-designated Vehicular Products: Re-Refined Lubricating Oil and which product should be afforded the preference in purchasing.

Note to Paragraph (d): Transmission fluids within this designated product category can compete with similar transmission fluids with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency CPG-designated product categories Vehicular Products: Re-Refined Lubricating Oil containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.11.

§ 3201.149 Wall coverings.

(a) *Definition.* Wall coverings are materials that are applied to walls using an adhesive. This category includes, but is not limited to, wallpaper, vinyl wall coverings, and wall fabrics. This category excludes all types of paints or coatings.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 62 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than [date one year after the date of publication of the final rule], procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased wall coverings. By that date, Federal agencies responsible for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased wall coverings.

Dated: August 31, 2018.

Donald K. Bice,

Deputy Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. 2018–19681 Filed 9–13–18; 8:45 am]

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Part III

Federal Communications Commission

47 CFR Part 1

Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 17–84; WT Docket No. 17–79, FCC 18–111]

Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts a new framework for the vast majority of pole attachments governed by federal law by instituting a ''one-touch make-ready'' regime, in which a new attacher may elect to perform all simple work to prepare a pole for new wireline attachments in the communications space. This new framework includes safeguards to promote coordination among parties and ensures that new attachers perform the work safely and reliably. The Commission retains the current multi-party pole attachment process for attachments that are complex or above the communications space of a pole, but makes significant modifications to speed deployment, promote accurate billing, expand the use of self-help for new attachers when attachment deadlines are missed, and reduce the likelihood of coordination failures that lead to unwarranted delays. The Commission also improves its pole attachment rules by codifying and redefining Commission precedent that requires utilities to allow attachers to ''overlash'' existing wires, thus maximizing the usable space on the pole; eliminating outdated disparities between the pole attachment rates that incumbent carriers must pay compared to other similarly-situated cable and telecommunications attachers; and clarifying that the Commission will preempt, on an expedited case-by-case basis, state and local laws that inhibit the rebuilding or restoration of broadband infrastructure after a disaster.

DATES: Effective October 15, 2018, except for Sections III.A–E of the *Third Report and Order,* which will be effective on the later of February 3, 2019 or 30 days after the announcement in the **Federal Register** of OMB approval of information collection requirements modified in this *Third Report and Order.* OMB approval is necessary for the information collection requirements in 47 CFR 1.1411(c)(1) and (3), (d) introductory text, (d)(3), (e)(3), (h)(2) and (3), (i)(1) and (2), (j)(1) through (5), 1.1412(a) and (b), 1.1413(b), and 1.1415(b). The Commission will publish a document in the **Federal Register** announcing the effective date for the rules requiring OMB approval.

FOR FURTHER INFORMATION CONTACT: Wireline Competition Bureau, Competition Policy Division, Michael Ray, at (202) 418–0357, *michael.ray@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order* in WC Docket No. 17–84, WT Docket No. 17–79, FCC 18–111, adopted August 2, 2018 and released August 3, 2018. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. It is available on the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-18-111A1.pdf.*

Synopsis

I. Introduction

1. In today's order, we take one large step and several smaller steps to improve and speed the process of preparing poles for new attachments, or ''make ready.'' Make-ready generally refers to the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the pole. Consistent with the recommendations of the Broadband Deployment Advisory Committee (BDAC), we fundamentally shift the framework for the vast majority of attachments governed by federal law by adopting a new pole attachment process that includes ''one-touch make-ready'' (OTMR), in which the new attacher performs all make-ready work. OTMR speeds and reduces the cost of broadband deployment by allowing the party with the strongest incentive—the new attacher—to prepare the pole quickly by performing all of the work itself, rather than spreading the work across multiple parties. By some estimates, OTMR alone could result in approximately 8.3 million incremental premises passed with fiber and about $12.6 billion in incremental fiber capital expenditures. We exclude from OTMR new attachments that are more complicated or above the ''communications space'' of a pole, where safety and reliability risks can be greater, but we make significant incremental improvements to our rules governing such attachments to speed the existing process, promote accurate billing, and reduce the likelihood of coordination failures that cause unwarranted delay.

2. We also adopt other improvements to our pole attachment rules. To provide certainty to all parties and reduce the costs of deciphering our old decisions, we codify and refine our existing precedent that requires utilities to allow ''overlashing,'' which helps maximize the usable space on the pole. We clarify that new attachers are not responsible for the costs of repairing preexisting violations of safety or other codes or utility construction standards discovered during the pole attachment process. And we eliminate outdated disparities between the pole attachment rates incumbent local exchange carriers (LECs) must pay compared to other similarly-situated telecommunications attachers.

3. Finally, in this *Third Report and Order,* we make clear that we will preempt, on a case-by-case basis, state and local laws that inhibit the rebuilding or restoration of broadband infrastructure after a disaster.

II. Background

4. Section 224 of the Communications Act of 1934, as amended (Act), grants us broad authority to regulate attachments to utility-owned and -controlled poles, ducts, conduits, and rights-of-way. The Act authorizes us to prescribe rules to: Ensure that the rates, terms, and conditions of pole attachments are just and reasonable; require utilities to provide nondiscriminatory access to their poles, ducts, conduits, and rights-of-way to telecommunications carriers and cable television systems (collectively, attachers); provide procedures for resolving pole attachment complaints; govern pole attachment rates for attachers; and allocate make-ready costs among attachers and utilities. The Act exempts from our jurisdiction those pole attachments in states that have elected to regulate pole attachments themselves. Pole attachments in thirty states are currently governed by our rules.

5. Our rules take into account the many purposes of utility poles and how an individual pole is divided into various ''spaces'' for specific uses. Utility poles often accommodate equipment used to provide a variety of services, including electric power, telephone, cable, wireline broadband, and wireless. Accommodating a variety of services on the same pole benefits the public by minimizing unnecessary and costly duplication of plant for all pole

users. Different vertical portions of the pole serve different functions. The bottom of the pole generally is unusable for most types of attachments, although providers of wireless services and facilities sometimes attach equipment associated with distributed antenna systems and other small wireless facilities to the portion of the pole near the ground. Above that, the lower usable space on a pole—the ''communications space''—houses low-voltage communications equipment, including fiber, coaxial cable, and copper wiring. The topmost portion of the pole, the ''electric space,'' houses high-voltage electrical equipment. Work in the electric space generally is considered more dangerous than work in the communications space. Historically, communications equipment attachers used only the communications space; however, mobile wireless providers increasingly are seeking access to areas above the communications space, including the electric space, to attach pole-top small wireless facilities.

6. When a new attacher seeks access to a pole, it is necessary to evaluate whether adding the attachment will be safe and whether there is room for it. In many cases, existing attachments must be moved to make room for the new attachment. In some cases, it is necessary to install a larger pole to accommodate a new attachment. Our current rules, adopted in 2011, prescribe a multi-stage process for placing new attachments on utility poles:

- *Application Review and Survey.* The new attacher applies to the utility for pole access. Once the application is complete, the utility has 45 days in which to make a decision on the application and complete any surveys to determine whether and where attachment is feasible and what make-ready is required. The utility may take an additional 15 days for large orders. Our current rules allow new attachers in the communications space to perform surveys when the utility does not meet its deadline.
- *Estimate.* The utility must provide an estimate of all make-ready charges within 14 days of receiving the results of the survey.
- *Attacher Acceptance.* The new attacher has 14 days or until withdrawal of the estimate by the utility, whichever is later, to approve the estimate and provide payment.
- *Make-Ready.* The existing attachers are required to prepare the pole within 60 days of receiving notice from the utility for attachments in the communications space (105 days in the case of larger orders) or 90 days for attachments above the communications space (135 days in the case of larger orders as defined in 47 CFR 1.1411(g)). A utility may take 15 additional days after the make-ready period ends to complete make-ready itself. Our current rules allow new attachers in the communications space to perform make-ready work themselves using a utility-approved contractor when the utility or existing attachers do not meet their deadlines.

7. A number of commenters allege that pole attachment delays and the high costs of attaching to poles have deterred them from deploying broadband. Commenters in particular point to the make-ready stage of our current timeline as the largest source of high costs and delays in the pole attachment process.

8. As part of its commitment to speeding broadband deployment, the Commission established the BDAC in January 2017 to advise on how best to remove barriers to broadband deployment, such as delays in new pole attachments. Earlier this year, the BDAC recommended that the Commission take a series of actions to promote competitive access to broadband infrastructure, including adopting OTMR for simple attachments in the communications space and making incremental improvements to the Commission's pole attachment process for complex and non-communications space attachments.

9. We are also committed to using all the tools at our disposal to speed the restoration of infrastructure after disasters. Disasters such as the 2017 hurricanes can have debilitating effects on communications networks, and one of our top priorities is assisting in the rebuilding of network infrastructure in the wake of such events. We have also made clear our commitment to ensuring that our own federal regulations do not impede restoration efforts.

III. Third Report and Order

10. Based on the record in this proceeding, we amend our pole attachment rules to facilitate faster, more efficient broadband deployment. Further, we address state and local legal barriers to rebuilding networks after disasters. But, at the outset, we emphasize that parties are welcome to reach bargained solutions that differ from our rules. Our rules provide processes that apply in the absence of a negotiated agreement, but we recognize that they cannot account for every distinct situation and encourage parties to seek superior solutions for themselves through voluntary privately-negotiated solutions. In addition, we recognize that some states will seek to build on the rules that we adopt herein in order to serve the particular needs of their communities. As such, nothing here should be construed as altering the ability of a state to exercise reverse preemption of our pole attachment rules.

A. Speeding Access to Poles

11. Most fundamentally, we amend our rules to allow new attachers (defined as a cable television system or telecommunications carrier requesting to attach new or upgraded facilities to a pole owned or controlled by a utility) with simple wireline attachments in the communications space to elect an OTMR-based pole attachment process that places them in control of the work necessary to attach their equipment, and we improve our existing attachment process for other, more complex attachments.

12. No matter the attachment process, we encourage all parties to work cooperatively to meet deadlines, perform work safely, and address any problems expeditiously. Utilities, new attachers, and existing attachers agree that cooperation among the parties works best to make the pole attachment process proceed smoothly and safely.

1. New OTMR-Based Pole Attachment Process

13. We adopt a new pole attachment process that new attachers can elect that places them in control of the surveys, notices, and make-ready work necessary to attach their equipment to utility poles. With OTMR as the centerpiece of this new pole attachment regime, new attachers will save considerable time in gaining access to poles (with accelerated deadlines for application review, surveys, and make-ready work) and will save substantial costs with one party (rather than multiple parties) doing the work to prepare poles for new attachments. A better aligning of incentives for quicker and less expensive attachments will serve the public interest through greater broadband deployment and competitive entry.

a. Applicability and Merits of OTMR Regime

14. We adopt the BDAC's recommendation and amend our rules to allow new attachers to elect OTMR for simple make-ready for wireline attachments in the communications space on a pole. We define simple make-ready as the BDAC does, *i.e.,* make-ready where existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service

outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment. Commenters state that simple make-ready work does not raise the same level of safety concerns as complex make-ready or work above the communications space on a pole. There is substantial support in the record, both from utilities and attachers, for allowing OTMR for simple make-ready; and because this option will apply to the substantial majority of pole attachment projects, it will speed broadband deployment. We also follow the BDAC's recommendation and do not provide an OTMR option for more complex projects in the communications space or for any projects above the communications space at this time.

15. Our new rules define ''complex'' make-ready, as the BDAC does, as transfers and work within the communications space that would be reasonably likely to cause a service outage or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. We consider any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers to be complex. We agree with Verizon that the term ''wireless activities'' does not include a wireless attacher's work on its wireline backhaul facilities, which is not different than wireline work done by other attachers. While the BDAC recommendation did not explicitly address the treatment of pole replacements, we interpret the definition of complex make-ready to include all pole replacements as well. We agree with commenters that pole replacements are usually not simple or routine and are more likely to cause service outages or facilities damage, and thus we conclude that they should fall into the complex category of work.

16. There is substantial support from commenters in the record for not using OTMR for complex make-ready work at this time. We agree that we should exclude these more challenging attachments from OTMR at this time to minimize the likelihood and impact of service disruption. In particular, cutting or splicing of existing wires on a pole has the heightened potential to result in a network outage. We also recognize that wireless attachments involve unique physical and safety complications that existing attachers must consider (*e.g.,* wireless configurations cover multiple areas on a pole, considerably more equipment is involved, RF impacts must be analyzed), thus increasing the challenges of using an accelerated, single-party process at this time.

17. The new OTMR process also will not be available for work above the communications space, including the electric space. Many utility commenters argue that work above the communications space, which mainly involves wireless attachments, frequently impacts electrical facilities and that such work should fall to the utilities to manage and complete. We recognize that work above the communications space may be more dangerous for workers and the public and that impacts of electric outages are especially severe. Therefore, we find at this time that the value of control by existing attachers and utilities over infrastructure above the communications space outweighs the benefits of allowing OTMR for these attachments. We recognize that by not providing an OTMR option above the communications space for the time being, we are not permitting OTMR as an option for small cell pole-top attachments necessary for 5G deployment. We take this approach because there is broad agreement that more complex projects and all projects above the communications space may raise substantial safety and continuity of service concerns. At the same time, we adopt rules aimed at mitigating the safety and reliability concerns about the OTMR process we adopt today, and we are optimistic that once parties have more experience with OTMR, either they will by contract or we will by rule expand the reach of OTMR. In the meantime, we find that the benefits of moving incrementally by providing a right to elect OTMR only in the communications space and only for simple wireline projects outweigh the costs.

18. We agree with commenters that argue that OTMR is substantially more efficient for new attachers, current attachers, utilities, and the public than the current sequential make-ready approach set forth in our rules. Indeed, Corning estimates that OTMR for wireline deployments could result in over eight million additional premises passed with fiber and about $12.6 billion in incremental fiber capital expenditures. Although we do not at this time provide for an OTMR option for pole-top small cell deployment, OTMR will facilitate the rollout of 5G services because mobile services depend on wireline backhaul, and OTMR will expedite the buildout of wireline backhaul capacity.

19. OTMR speeds broadband deployment by better aligning incentives than the current multi-party process. It puts the parties most interested in efficient broadband deployment—new attachers—in a position to control the survey and make-ready processes. The misaligned incentives in the current process often result in delay by current incumbents and utilities and high costs for new attachers as a result of the coordination of sequential make-ready work performed by different parties. As Google Fiber points out, under the current process, if the lowest attacher on the pole (usually the incumbent LEC) moves its wires and equipment to accommodate a new attachment at the end of the existing 60-day make-ready period, then the entire pole attachment process is derailed because multiple existing attachers still have to perform make-ready on their equipment, despite the fact that the make-ready deadline contemplated in our rules has lapsed. Because existing attachers lack an incentive to accommodate new attachers quickly, these delays in sequential attachment are all too common. OTMR eliminates this problem.

20. We also agree with commenters that OTMR will benefit municipalities and their residents by reducing closures and disruptions of streets and sidewalks. Unlike sequential make-ready work, which results in a series of trips to the affected poles by each of the attachers and repeated disruptions to vehicular traffic, OTMR's single trip to each affected pole will reduce the number of such disruptions.

21. We also agree with those commenters that argue that an OTMR-based regime will benefit utilities. The record indicates that many utilities that own poles are not comfortable with their current responsibilities for facilitating attachments in the communications space. By shifting responsibilities from the utility to the new attacher to survey the affected poles, determine the make-ready work to be done, notify affected parties of the required make-ready work, and perform the make-ready work, our new OTMR regime will alleviate utilities of the burden of overseeing the process for most new attachments and of some of the costs of pole ownership.

22. While giving the new attacher control drives the substantial benefits of an OTMR regime, it also raises concerns among some utilities and existing attachers. But we are not convinced by the arguments made by some commenters that OTMR will allow make-ready work to be performed by new attachers that lack adequate

incentives to perform quality work, and therefore will increase the likelihood of harm to equipment integrity and public safety. As other commenters explain, the new attacher and its chosen contractor have an incentive to perform quality work in order to limit risk, keep workers safe, and avoid tort liability for damages caused by substandard work. We also adopt several safeguards herein that incentivize the new attacher and its contractor to perform work correctly.

23. In addition, some commenters raise concerns that OTMR may not protect public safety given the real prospects for serious injuries to lineworkers and the public; ensure the reliability and security of the electric grid; and maintain the safety and reliability of existing attachers' facilities in order to prevent service outages. We are committed to ensuring that our approach to pole attachments preserves the safety of workers and the public and protects the integrity of existing electric and communications infrastructure. As an initial matter, we follow the BDAC's recommendation that all complex work and work above the communications space, where reliability and safety risks can be greater, will not be eligible for the new OTMR process. In addition, we take several steps to promote coordination among the parties and ensure that new attachers perform work safely and reliably, thereby significantly mitigating the potential drawbacks of OTMR. First, we require new attachers to use a utility-approved contractor to perform OTMR work, except when the utility does not provide a list of approved contractors, in which case new attachers must use qualified contractors. This requirement addresses existing attachers' apprehension about unfamiliar contractors working on their facilities and also guards against delays that result when utilities fail to maintain approved contractor lists. Second, we require new attachers to provide advance notice and allow representatives of existing attachers and the utility a reasonable opportunity to be present when surveys and OTMR work are performed in order to encourage new attachers to perform quality work and to provide the utility and existing attachers an opportunity for oversight to protect safety and prevent equipment damage. Third, we require new attachers to allow existing attachers and the utility the ability to inspect and request any corrective measures soon after the new attacher performs the OTMR work to address existing attachers' and utilities' concerns that the new attacher's contractor may damage equipment or cause an outage without their knowledge and with no opportunity for prompt recourse. However, we decline to adopt NCTA and CWA's request that we find that new attachers should be responsible for any expenses associated with the costs incurred by existing attachers if they decide to double-check the work performed by the new attacher's contractors, including any post-make-ready inspections.

24. Finally, as an additional safeguard to prevent substantial service interruptions or danger to the public or workers, we allow existing attachers and utilities to file a petition with the Commission, to be considered on an expedited, adjudicatory case-by-case basis, requesting the suspension of a new attacher's OTMR privileges due to a pattern or practice of substandard, careless, or bad faith conduct when performing attachment work. Such petition shall be placed on public notice, and the new attacher will have an opportunity to address the allegations of substandard, careless, or bad faith conduct and to explain how it plans to eliminate any such conduct in the future. In those instances where the Commission finds that suspension is warranted, the Commission will suspend the privileges for a length of time appropriate based on the conduct at issue, up to and including permanent suspension.

25. We disagree with NCTA's contention that these safeguards do not adequately protect existing attachers from substandard work performed on their equipment by third-party contractors. At every step in the OTMR process, the safeguards we adopt give existing attachers an opportunity to monitor third-party work and raise any concerns they might have—either to the new attacher or to the utility. Far from being voiceless in their concerns about third-party work, as NCTA contends, existing attachers can take their reservations about new attacher workmanship and contractor qualifications to the utility, which, as the pole owner and an attacher on the pole, has the incentive to act on such concerns.

26. We recognize that we cannot fully align the incentives of new attachers with those of existing attachers and utilities, but we find that the significant benefits of faster, cheaper, more efficient broadband deployment from this new OTMR process outweigh any costs that remain for most pole attachments. We expect the OTMR regime we adopt today to speed broadband deployment without substantial service interruptions or danger to the public or workers. To the extent that it exceeds our expectations, we may consider expanding the availability of our OTMR process where it is safe to do so. Conversely, if new attachers fail to prevent physical harm or outages, we will not hesitate to revisit whether to maintain an OTMR option.

27. We note that even where an attachment qualifies for our new OTMR process, there may be instances where a new attacher prefers to use our existing pole attachment timeline because, for instance, the new attacher prefers a process where existing attachers are responsible for moving their own equipment rather than the new attacher. Therefore, we permit new attachers to elect our existing pole attachment regime (as modified herein) rather than the new OTMR process.

28. *Legal Considerations.* We reject the contentions of certain cable commenters that OTMR deprives an existing attacher of its statutory right to notice and an opportunity to add to or modify its own existing attachment before a pole is modified or altered and thus violates Section 224(h) of the Act. Section 224(h) provides, in relevant part, that ''[w]henever the owner of a pole . . . intends to modify or alter such pole . . . the owner shall provide written notification of such action to any entity that has obtained an attachment . . . so that such entity may have a reasonable opportunity to add to or modify its existing attachment.'' We agree with Verizon that there is no statutory right under Section 224(h) for an existing attacher to add to or modify its existing attachment when a new attacher is performing the make-ready. On its face Section 224(h) only applies to situations where the pole owner modifies or alters the pole, and thus is not implicated under the OTMR approach we adopt today: Under our approach new attachers, not pole owners, perform OTMR work.

29. We also find that OTMR does not constitute a government taking of existing attachers' property that requires just compensation under the Fifth Amendment to the U.S. Constitution, and we reject arguments to the contrary. As an initial matter, OTMR is not a ''permanent physical occupation'' of an existing attacher's property; at most it gives contractors of the new attacher a temporary right to move and rearrange attachments. In such situations, where a regulation falls short of eliminating all economically beneficial use of the property at issue, courts apply the balancing test of *Penn Central Transportation Co.* and evaluate the economic impact of the regulation on the property owner, the extent to which the regulation has interfered with

''distinct investment-backed expectations'' and ''the character of the government action.'' Applying that test here makes clear that OTMR effects no taking. We are limiting the application of OTMR to simple work (*i.e.,* where outages are not expected to occur) on wireline attachments in the communications space performed by qualified contractors, and we have taken steps to ensure that the OTMR process limits adverse effects on existing attachers' networks, which means any economic impact on existing attachers and any interference with investment expectations will be limited. Furthermore, OTMR represents at most an incidental movement of existing attachers' property. To the extent that movement affects existing attachers' or utilities' property, such impact is incidental and not our purpose, which is to promote broadband deployment and further the public interest.

b. Contractor Selection Under the OTMR Process

30. We adopt rules requiring attachers using the OTMR process to use a utility-approved contractor if the utility makes available a list of qualified contractors authorized to perform surveys and simple make-ready work in the communications space. If there is no utility-approved list of contractors, then we adopt rules that require OTMR attachers to use a contractor that meets key safety and reliability criteria, as recommended by the BDAC. The record suggests that inconsistent updating of approved contractor lists by utilities, as well as a lack of uniform contractor qualification and selection standards, leads to delays when new attachers seek to exercise their self-help remedy and perform make-ready work on a pole. At the same time, existing attachers are understandably apprehensive about having unfamiliar contractors work on and potentially damage their facilities. The process we adopt addresses both of these problems by preventing delays in the engagement of contractors and by establishing clear minimum qualifications.

31. *Utility-Approved Contractors.* We strongly encourage utilities to publicly maintain a list of approved contractors qualified to perform surveys and simple make-ready work as part of the OTMR process. However, we do not require utilities to do so. Utilities have a strong interest in protecting their equipment and many have indicated their interest in deciding which contractors can perform work on their poles. At the same time, many utilities have indicated that they do not have the expertise to select contractors qualified to work in the communications space and would prefer to defer to the new attachers' choice of contractors. Therefore, we give the utilities the option of maintaining a list of approved contractors for OTMR work but do not impose a mandate.

32. If the utility maintains a list, new and existing attachers may request that contractors meeting the qualifications set forth below be added to the utility's list and utilities may not unreasonably withhold consent to add a new contractor to the list. We adopt this requirement so that a utility that maintains a list does not have the ability to prevent deployment progress, which would be contrary to our goal in adopting OTMR. To be reasonable, a utility's decision to withhold consent must be prompt, set forth in writing that describes the basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability.

33. To help ensure public and worker safety and the integrity of all parties' equipment, we conclude that any contractors that perform OTMR must meet certain minimum safety and reliability standards. We require utilities to ensure that contractors on the approved list meet the following minimum requirements, enumerated by the BDAC, for performing OTMR work: (1) Follow published safety and operational guidelines of the utility, if available, but if unavailable, follow the National Electrical Safety Code (NESC) guidelines; (2) read and follow licensed-engineered pole designs for make-ready work, if required by the utility; (3) follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational Safety and Health Administration (OSHA) rules; (4) meet or exceed any uniformly applied and reasonable safety and reliability thresholds set and made available by the utility, *e.g.,* the contractor cannot have a record of significant safety violations or worksite accidents; and (5) be adequately insured or be able to establish an adequate performance bond for the make-ready work it will perform, including work it will perform on facilities owned by existing attachers. We adopt NCTA's proposed clarification that the make-ready for which the contractor must be adequately insured or establish an adequate performance bond includes any work it will perform on facilities owned by existing attachers. These requirements collectively will materially reduce safety and reliability risks, as well as delays in the completion of pole attachments, by allowing one qualified contractor to perform all necessary make-ready work instead of having multiple contractors make multiple trips to the pole to perform this work.

34. *New Attacher Selection of Contractors.* Where there is no utility-approved list of qualified contractors or no approved contractors available within a reasonable time period, then, consistent with the BDAC recommendation, new attachers proceeding with OTMR may use qualified contractors of their choosing. To maximize options for new attachers, we allow a new attacher entitled to select a contractor that does not appear on a utility's list to use its own employees to perform pole attachment work, so long as those employees meet all qualifications for contractors set forth herein. Thus, we use the term ''contractor'' as a term of art that encompasses the new attacher's employees. The new attacher must certify to the utility (either in the three-business-day advance notice for surveys or in the 15-day make-ready notice) that the named contractor meets the same five minimum requirements for safety and reliability discussed above.

35. The utility may mandate additional commercially reasonable requirements for contractors relating to issues of safety and reliability, but such requirements must clearly communicate the safety or reliability issue, be non-discriminatory, in writing, and publicly available (*e.g.,* on the utility's website). Ideally, such requirements for contractors would also be found in the pole attachment agreement between the utility and the new attacher. This condition will guard against pole damage and resulting outages and safety hazards due to particular local conditions, while ensuring that utilities do not use these additional requirements as a roadblock to deployment. We also grant utilities the flexibility to mandate such additional commercially reasonable requirements for contractors because utilities are best positioned to ensure that any additional state or local legal requirements are complied with and any additional environmental or pole-specific factors are accounted for.

36. Where there is no utility-approved list of contractors, we adopt rules, consistent with the BDAC's recommendation, allowing the utility to veto any contractor chosen by the new attacher. Utilities must base any veto on reasonable safety or reliability concerns related to the contractor's ability to meet one or more of the minimum qualifications described earlier in this

subsection or on the utility's previously posted safety standards. We agree with ACA that we should prevent unwarranted vetoes by requiring the utility to have a ''reasonable'' basis for vetoing the new attacher's contractor. The utility also must make its veto within either the three-business-day notice period for surveys or the 15-day notice period for make-ready. In reaching this determination, we agree with the Coalition of Concerned Utilities that the safety and reliability of the pole is extremely important and, as a result, utilities should be able to disqualify contractors that raise concrete workmanship dangers. To avoid an ongoing dispute between the utility and the new attacher that results in the substantial delay of the pole attachment, any veto by the utility that conforms with the requirements we set forth is determinative and final. When vetoing an attacher's chosen contractor, however, the utility must identify at least one qualified contractor available to do the work.

37. *Existing Attachers.* We decline to grant existing attachers the right to veto or object to the inclusion of a contractor on the utility-approved list or a new attacher's contractor selection. We also decline suggestions that we grant existing attachers the right to disqualify a contractor if the contractor does not meet the minimum qualifications for contractors we establish or if the existing attacher previously terminated the contractor for poor performance or violations of federal, state, or local law. The rules we adopt should alleviate some commenters' concern that depriving existing attachers of a right to input in the contractor selection process could result in serious harm to existing facilities on the pole. First, only simple make-ready work is subject to the OTMR process; existing attachers can perform their own make-ready work in more challenging and dangerous situations. Further, the authority we grant utilities to develop a mandatory list and veto a new attacher's contractor selection for OTMR work should help mitigate the risk to the safety and reliability of the attachments subject to make-ready work by the new attacher's contractor. As several commenters point out, in many markets, contractors approved by the utilities may already be the same as those approved by existing attachers. Additionally, regardless of whether the utility intervenes, contractors must meet the five criteria recommended by the BDAC, which help to ensure safe, reliable, and quality work. Finally, we conclude that we have put in place adequate protections elsewhere in the new OTMR process, in addition to the protections we identify here, to protect the network reliability and safety concerns of existing attachers.

c. OTMR Pole Attachment Timeline

38. One substantial benefit of the OTMR process is that it allows for a substantially shortened timeline for application review and make-ready work. We estimate that new attachers using the new OTMR process will save more than three months from application to completion as compared to the process provided for under our existing rules.

(i) Conducting a Survey

39. Our OTMR regime saves significant time by placing the responsibility on the new attacher (rather than the utility) to conduct a survey of the affected poles to determine the make-ready work to be performed. Under an OTMR regime, the survey will come near the beginning of the process (after the new attacher negotiates with the utility for pole access and chooses a contractor to perform the work required for attachment) to enable the new attacher to determine whether any make-ready is required and, if so, what type of make-ready (simple or complex) is involved. The results of the survey typically will be included in the new attacher's pole attachment application.

40. To help ensure that the new attacher handles third-party equipment with sufficient care and makes an accurate determination of the work to be done to prepare the poles for its new attachments, our new rules require new attachers to permit representatives of the utility and any existing attachers potentially affected by the proposed work to be present for the survey. We also require new attachers to use commercially reasonable efforts to provide the utility and existing attachers at least three business days of advance notice of the date, time, and location of the survey and the name of the contractor performing the survey. Despite claims to the contrary, we agree with the BDAC that advance notice of three business days from the new attacher strikes the right balance between providing sufficient time to accommodate coordination with the utility and existing attachers and the need to keep the pole attachment process moving forward in a timely manner. Also, as the BDAC found in the context of utility surveys, joint surveys help address the potential safety and equipment damage risks raised by existing attachers. Existing attachers can raise any objections about the survey findings either with the new attacher or with the utility, which can make final determinations on survey results for reasons of capacity, safety, reliability, and generally applicable engineering purposes. To prevent coordination problems that may invite delay, we do not require a new attacher to set a date for the survey that is convenient for the utility and existing attachers. In the case of reasonable scheduling conflicts, however, we encourage the parties to work together to find a mutually-agreeable time for the survey. We also encourage all attachers to provide a point of contact publicly (*e.g.,* on their websites) so that new attachers know whom to contact when providing notices required under the OTMR regime.

41. We recognize that new attachers may need to rely upon utilities for existing attacher contact information to make the notifications, and utilities presumably have access to such information through pole attachment agreements and/or previous make-ready notifications. Therefore, if a new attacher requests contact information for existing attachers from the utility for use in this notification process, the utility must provide any such contact information it possesses. We adopt this requirement so that a new attacher can fulfill its notification obligation when it does not have a direct relationship with existing attachers. We find a utility's failure to keep adequate documentation on existing attachments is insufficient justification for eliminating the advance notice requirement for surveys.

(ii) Notifying the Utility of the Intent To Use OTMR

42. Consistent with the BDAC's recommendation, we require the new attacher to ensure that its contractor determines whether make-ready work identified in the survey is simple or complex, subject to a utility's right to reasonably object to the determination. Because all utilities have strong incentives to promote safety and the structural integrity of their poles, we agree with AT&T and Windstream that all utilities, including incumbent LEC pole owners, should have the ability to object to the simple/complex determination on poles that the utility owns. For purposes of clarity and certainty, we require a new attacher—if it wants to use the OTMR process and is eligible to do so based on the survey—to elect OTMR in its pole attachment application and to identify in its application the simple make-ready work to be performed. Some commenters oppose letting the new attacher's contractor make the simple

versus complex determination. However, we agree with those commenters that argue that the new attacher's contractor has the incentive to make the correct determination in order to (1) avoid liability for damages caused by an incorrect choice; (2) limit risk; and (3) in the case of third-party contractors, preserve relationships with all attachers, as well as with the utility, to obtain future work. As a result, we find it is more likely that approved contractors will be conservative in their determination of whether work is simple or complex. In addition, we agree with Google Fiber that having a contractor chosen from a neutral utility-approved list, where such a list is available, determine whether make-ready is simple or complex means neither the incumbent nor the new attacher has an opportunity to inject anti-competitive bias into the process.''

43. We require a utility that wishes to object to a simple make-ready determination to raise such an objection during the 15-day application review period (or within 30 days in the case of larger orders). We decline suggestions that we extend the objection right to existing attachers because we agree that doing so could provide existing attachers the opportunity to slow a new attacher's deployment by over-designating make-ready work as complex. The existing attacher always may voice its concerns to the new attacher and to the utility, which can veto the determination of a new attacher's contractor and which has an incentive as the pole owner and as an attacher to ensure that work is classified correctly.

44. Also, while the BDAC did not address the timing of an objection to the simple/complex determination in its OTMR recommendation, we find that setting a time limit for the objection will reduce confusion and foster quicker deployment. We find 15 days to be sufficient because the utility will have the right to accompany the new attacher's contractor on the survey when the contractor makes the simple/complex determination, so the utility will have ample opportunity to have the information it needs to determine whether to object before the deadline.

45. If the utility objects to the new contractor's determination that work is simple, then the work is deemed complex—the utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, and provides a good faith explanation of how such evidence and information relate to a determination that the make-ready is not simple. This approach is consistent with other decisions left to a utility during our pole attachment process. We find that making the utility's determination final is appropriate because it avoids protracted disputes that could slow deployment. However, we caution utilities that if they make such a decision in a manner inconsistent with the requirements we set forth, for instance without adequate support or in bad faith, then new attachers can avail themselves of our complaint process to address such behavior.

46. If the new attacher determines that the make-ready involves a mix of simple and complex work (or involves work above the communications space), then we allow the new attacher discretion to determine whether to bifurcate the work. If the new attacher prefers to complete the simple make-ready work under the OTMR process while it waits for complex work/work above the communications space to run its course through the longer existing process, then it may do so. A new attacher electing to bifurcate the work must submit separate applications for the simple and complex work and work above the communications space. If the new attacher prefers that its entire project (both simple and complex work and work above the communications space) follow the existing process, or if the new attacher does not view bifurcation as feasible, then it may employ the existing process for the entire project.

47. In response to a request from Xcel/Alliant, we clarify ''what procedures should be followed when it is discovered in the field while make-ready is being performed that the work on a particular pole is in fact complex, or if it is found that conditions in the field will prevent the OTMR contractor from performing the make-ready work in a 'simple' manner, if at all.'' In such situations, we find that if the new attacher or the utility discovers that work initially classified by the new attacher and approved by the utility as simple actually turns out to be complex, then that specific work must be stopped (although the new attacher may choose to continue OTMR work on other poles to the extent that such work is simple). The determining party must notify the other party of its determination and the affected poles; the attachments at issue will then be governed by the non-OTMR timeline, and the utility should provide notice to existing attachers of make-ready work as soon as reasonably practicable.

(iii) Review of Application for Completeness

48. In the interest of speeding application review, we adopt a rule to specify that under the OTMR regime, a pole attachment application is complete if it provides the utility with the information necessary under the utility's procedures, as specified in a master service agreement or in publicly-available requirements at the time of submission of the application, to make an informed decision on the application. We also establish a timeline for the utility's review of the application for completeness. We adopt these requirements to address attachers' complaints—made in response to the Commission's request in the *Wireline Infrastructure Notice* for comments on ways to streamline and accelerate the pole attachment timeline—that ''pole owners are not transparent about telling applicants all information that is required to be included on applications at the time of their submission,'' often resulting in delays to the pole attachment process while the pole owner requests additional information over a series of weeks or months.

49. While the current definition of a complete application only requires ''information necessary under [the utility's] procedures,'' our revised definition provides more transparency about what an attacher must include in its application, because the master service agreement or publicly-available requirements must be available to new attachers as they prepare their application.

50. To prevent unnecessary delays in starting the pole attachment process, we adopt rules consistent with the BDAC-recommended timeline for a utility to determine whether a pole attachment application is complete:

- A utility has 10 business days after receipt of a pole attachment application in which to determine whether the application is complete and notify the attacher of that decision.
- If the utility notifies the attacher that the attacher's application is not complete within the 10 business-day review period, then the utility must specify where and how the application is deficient.
- If there is no response by the utility within 10 business days, or if the utility rejects the application as incomplete but fails to specify any deficiencies in the application, then the application is deemed complete.
- If the utility timely notifies the new attacher that the application is incomplete and specifies deficiencies, a resubmitted application need only

supplement the previous application by addressing the issues identified by the utility, and the application shall be deemed complete within five business days after its resubmission, unless the utility specifies which deficiencies were not addressed and how the resubmitted application did not sufficiently address the utility's reasons.

• The new attacher may follow this resubmission procedure as many times as it chooses, so long as in each case it makes a bona fide attempt to correct the issues identified by the utility, and in each case the deadlines set forth herein apply to the utility's review.

51. We find that incorporating a specific timeline into our rules provides all parties with some predictability about the start of the OTMR process and avoids unnecessary delays that arise when utilities do not formally accept an application in a timely manner. We find that the timeline we adopt balances the interests of new attachers in the speedy processing of applications and of utilities in needing sufficient time to review the applications. We require utilities to specify the deficiencies in pole attachment applications within 10 business days of receipt so that the new attachers have the information necessary to address those deficiencies in a timely fashion. We also believe this gives incentives for utilities generally to communicate to prospective applicants concerning what is needed for an application because doing so will aid in the utility's formal review process. We adopt a ''deemed grant'' remedy to prevent delays, and we adopt a shorter timeline for second and further reviews because we expect utilities' review to be cabined to a more limited number of issues that it previously identified. We also encourage utilities that receive complete applications to respond promptly and affirmatively confirm that applications are complete, rather than wait for the 10 business-day review period to lapse. In response to a concern raised by Crown Castle, we clarify that the utility cannot delay its determination of whether an application is complete by seeking to negotiate rates, terms, and conditions in the pole attachment agreement that unreasonably deviate from those assured by the rules. Such bad faith practices intended to delay the start of the pole attachment timeline are prohibited as contrary to our goal of speedy broadband deployment.

(iv) Application Review

52. For OTMR attachments, we shorten the time period within which a utility must decide whether to grant a complete application from 45 days to 15 days for standard requests and from 60 days to 30 days for larger requests as defined under 47 CFR 1.1411(g). While the BDAC did not address this issue, we find that because the new attacher (rather than the utility) will be doing most of the pre-make-ready work under OTMR (*e.g.,* surveys, notices), it is appropriate to adopt a shorter timeline for the utility to review the application. Furthermore, because the utility has the right to specify the information it requires the new attacher to put in the application and has the ability to reject the application (multiple times if necessary) before accepting it for review, we find 15 days should be sufficient for the utility to conduct its review. If the utility needs additional time, then it may work with the new attacher to negotiate a new schedule that timely resolves these issues. We retain in the OTMR context our preexisting requirement that if a utility denies an application, the utility's denial must be specific and include all relevant evidence and information supporting its denial and must explain how such evidence and information relate to a denial of access for reasons of safety, reliability, lack of capacity, or engineering standards.

(v) Make-Ready

53. The new attacher may proceed with OTMR by giving 15 days' prior written notice to the utility and all affected existing attachers. To avoid unnecessary delays, we conclude that the new attacher may provide the required 15-day notice any time after the utility deems its pole attachment application complete. Thus, the 15-day notice period may run concurrently with the utility's evaluation of whether to grant the application. If, however, the new attacher cannot start make-ready work on the date specified in its 15-day notice (*e.g.,* because its application has been denied or it is otherwise not ready to commence make-ready), then the new attacher must provide 15 days' advance notice of its revised make-ready date.

54. Although the BDAC recommendation provides for 25 days prior written notice for OTMR, we find that 15 days strikes a reasonable balance between promoting fast access to utility poles (one of the core goals of OTMR) and providing sufficient time for existing attachers and the utility to work with the new attacher to arrange to be present when OTMR is being performed on their equipment. Furthermore, the 25-day notice period recommended by the BDAC for OTMR is only five days shorter than the 30-day period recommended by the BDAC for existing attachers to complete complex make-ready work, which is not much time savings for an OTMR process that we adopt for simple work that is unlikely to cause safety issues. We also disagree with NCTA's request for a longer notice period for larger projects; because this is merely a notice requirement and does not require action on the part of the existing attacher or utility, there is no need for a longer notice period for larger projects.

55. To keep all affected parties informed about the new attacher's progress, and consistent with the BDAC's recommendation, we require the new attacher to provide representatives of the utility and existing attachers with the following information in the 15-day advance notice: (1) The date and time of the make-ready work; (2) a description of the make-ready work involved; (3) a reasonable opportunity to be present when the make-ready work is being performed; and (4) the name of the contractor chosen by the new attacher to perform the make-ready work. As is the case for survey notifications, if a new attacher requests contact information for existing attachers from the utility for use in this notification process, the utility must provide any such contact information it possesses. Allowing existing attachers and the utility a reasonable opportunity to be present when OTMR work is being done addresses the concerns of existing attachers that third-party contractors may not take proper care when performing simple make-ready work on their equipment. We also adopt the advance notice requirements to allow the utility and existing attachers, if they so choose, to alert their customers that work on their equipment is forthcoming. In addition, providing the name of the new attacher's OTMR contractor allows existing attachers to notify the utility and the utility to object if the contractor is not properly qualified.

56. We emphasize that the 15 days is only a notice period before the new attacher begins make-ready work; it is not an opportunity for existing attachers or the utility to complete make-ready work on their equipment and then bill the new attacher for that work. However, we clarify that we are not precluding existing attachers and the utility from doing non-reimbursable work on their equipment during the 15-day notice period. We find that, contrary to the requests of certain attachers, providing an existing attacher an affirmative right to perform make-ready and bill the new attacher for such work during the notice period would undermine one of the main benefits of

OTMR: Decreasing make-ready costs for new attachers.

57. We also adopt the BDAC recommendation that we require the new attacher to notify an affected entity immediately if the new attacher's contractor damages another company's equipment or causes an outage that is reasonably likely to interrupt the provision of service. We extend this requirement to damage to the utility's equipment as well. Upon receiving notice of damaged equipment or a service outage, the utility or existing attacher can either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or outage or require the new attacher to fix the damage or outage at its expense immediately following notice from the utility or existing attacher. Upon notice from the existing attacher or the utility to fix damages or an outage caused by the new attacher, the new attacher must complete the repair work before it can resume its make-ready work. Where the utility or the existing attacher elects to fix the damage or outage, the new attacher can only continue with make-ready work if it does not interfere with the repair work being conducted by the utility or existing attacher. This requirement for immediate notification and repair of damages or outages caused by a new attacher's contractor addresses the concern of existing attachers and utilities that the new attacher's contractor may damage equipment or cause an outage that would harm consumers or threaten safety without the existing attacher's or utility's knowledge or an opportunity for prompt recourse.

(vi) Post Make-Ready

58. We agree with commenters that suggest that the OTMR process should include time for post-make-ready inspections and the quick repair of any defective make-ready work. To give existing attachers and the utility an opportunity to correct any errors and to further encourage quality work by the new attacher, we adopt the BDAC's recommendation that the new attacher must provide notice to the utility and affected existing attachers within 15 days after the new attacher has completed OTMR work on a particular pole. To minimize paperwork burdens, the new attacher may batch in one post-make-ready notice all poles completed in a particular 15-day span. For example, if a pole attachment project took 30 days to complete, the new attacher could provide one notice to the existing attacher with the first 15 days' worth of work and a second notice on day 30 with the remainder of the work. In its post-make ready notice, the new attacher must provide the utility and existing attachers at least a 90-day period for the inspection of make-ready work performed by the new attacher's contractors. This post-make-ready inspection and remedy requirement gives the utility and existing attachers their own opportunity to ensure that work has been done correctly.

59. To allow new attachers to timely address allegations of needed repair work, we adopt rules requiring that within 14 days after any post-make ready inspection, the utility and the existing attachers notify the new attacher of any damage or any code (*e.g.,* safety, electrical, engineering, construction) violations caused to their equipment by the new attacher's make-ready work and provide adequate documentation of the damage or the violations. The utility or existing attacher can either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or violations, or require the new attacher to fix the damage or violations at its expense within 14 days following notice from the utility or existing attacher. We provide the utility or existing attacher options regarding repair to maximize their flexibility in addressing issues for which they are not at fault. The safeguards we establish in the OTMR process collectively give the new attacher the incentive to ensure its contractor performs work correctly; we therefore expect the invocation of this remediation procedure to be infrequent.

60. We disagree with Verizon's argument that we should refrain from establishing a timeframe for the utility and existing attachers to inspect completed make-ready work because deadlines for raising claims about property damage are ''typically governed by state contract or property law.'' We find it appropriate to establish a post-inspection timeline at the federal level so that parties can identify any defective make-ready work that has the potential to cause harm or injury to persons or equipment and remedy it as soon as possible. We also find that the deadlines we establish for the post-make-ready timeline give the existing attachers and the utility time that is sufficient but not unnecessarily long to inspect the work and give the new attacher reasonable time to fix any equipment damage and to rectify any potentially unsafe conditions.

d. Indemnification

61. We conclude that new attachers should be responsible and liable for any damage or non-compliance resulting from work completed by the new attacher during OTMR. The OTMR rules we adopt provide a process for existing attachers to timely identify damage to their equipment that occurs during the OTMR process and to arrange for its repair. To the extent that process proves insufficient, injured parties may seek judicial relief based on State law claims.

62. We find, consistent with the BDAC's recommendation, that federally-imposed indemnification is not necessary. The record indicates that the existing legal regime, including contract and tort law, provides sufficient protection for existing attachers without broad federal regulatory intrusion. The repair process we adopt in our OTMR rules adds an additional layer of protection. With these other remedies already available, we disagree with NCTA that a Commission-mandated indemnification requirement is the ''only practical mechanism by which an existing attacher can hold a new attacher or its contractor accountable for the consequences of performing shoddy work'' in situations where there is no privity of contract between the parties or a statutory requirement to hold harmless existing attachers. Rather, we find that adding a federal layer of indemnification would not be efficient or assist in speeding broadband deployment. Further, we agree with Google Fiber that indemnification obligations are typically not one-size-fits-all provisions, such that it would be difficult to craft a regulatory solution that is workable in all situations.

2. Targeted Changes to the Commission's Existing Pole Attachment Process

63. To speed broadband deployment for new attachments that are not eligible for our OTMR process and for new attachers that prefer not to use the OTMR process, we make targeted changes to the rules governing the existing pole attachment timeline. Our targeted changes include:

- Revising the definition of a complete pole attachment application and establishing a timeline for a utility's determination whether an application is complete;
- Requiring utilities to provide at least three business days' advance notice of any surveys to the new attacher and each existing attacher;
- Establishing a 30-day deadline for completion of all make-ready work in the communications space;
- Eliminating the 15-day utility make-ready period for communications space attachments;

• Streamlining the utility's notice requirements;

• Enhancing the new attacher's self-help remedy by making the remedy available for surveys and make-ready work for all attachments anywhere on the pole in the event that the utility or the existing attachers fail to meet the required deadlines;

• Revising the contractor selection process for a new attacher's self-help work; and

• Requiring utilities to provide detailed estimates and final invoices to new attachers regarding make-ready costs.

64. We agree with numerous commenters that with respect to the Commission's current pole attachment timeline, we should refrain from adopting wholesale changes at this time. As a result, while we make changes aimed at speeding broadband deployment where the record indicates such changes would be workable and beneficial, we leave unchanged the pole attachment deadlines for the existing application review/survey, estimate, and acceptance stages.

a. Creating a More Efficient Pole Attachment Timeline

(i) Review of Application for Completeness

65. For the reasons discussed above, we adopt rules reflecting the same improvements to our definition of a complete pole attachment application and the same completeness review process as we do for the OTMR timeline, subject to one change to adjust for the fact that the utility conducts the survey under the non-OTMR process. We adopt the BDAC's recommendation and revise our existing pole attachment rules to define an application as complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in publicly-available requirements at the time of submission of the application, to begin to survey the affected poles. While the current definition of a complete application only requires information necessary under the utility's procedures, this revised definition requires more transparency on behalf of the utility as the master service agreement and public requirements will be available to new attachers as they prepare their applications. In addition, to prevent unnecessary delays in starting the pole attachment process, we adopt the same BDAC-recommended timeline as in our OTMR process for a utility to determine whether a pole attachment application is complete. We agree with ACA that providing a specific timeline for determining completeness offers all parties predictability about the start of the OTMR process and avoids unnecessary delays. We also follow the BDAC OTMR recommendation that ties deadlines to receipt of the application by the utility, because the utility cannot begin to review the application until it has been received.

(ii) Review of Whether To Grant Complete Application and Survey

66. We decline to shorten the 45-day period in our existing rules during which the utility must review a complete pole attachment application and survey the affected poles for non-OTMR projects. In so doing, we reject proposals by some attachers that we shorten the application review and survey stage because we agree with utility commenters that the existing 45-day timeframe accounts for demands on existing workforce, safety concerns, volume of pole attachment applications, and timing constraints. We also decline to adopt ACA's proposal that a pole attachment application be deemed granted if the utility fails to act on an application within the 45-day timeframe. Failure by the utility to act on an application within the prescribed time period is a violation of our rules and, accordingly, use of our recently-adopted expedited pole access complaint procedure is available as a remedy. We also clarify that nothing in our rules precludes a utility from using a new attacher to conduct a survey of the affected poles, at the utility's expense, consistent with the requirements in 47 CFR 1.1411(i)(1).

67. To make the survey and application review process more efficient and transparent, however, we adopt a change recommended by the BDAC and several commenters to require utilities to facilitate survey participation by new and existing attachers. Specifically, in performing a field inspection as part of any pre-construction survey, we modify our rules to require a utility to permit the new attacher and any existing attachers potentially affected by the new attachment to be present for any pole surveys. We require the utility to use commercially reasonable efforts to provide at least three business days' advance notice of any surveys to the new attacher and each existing attacher, such notice to include the date, time, and location of the survey, and the name of the contractor performing the survey. To prevent coordination problems that may invite delay, we do not require a utility to set a date for the survey that is convenient for the affected attachers. However, in the case of reasonable scheduling conflicts, we encourage the parties to work together to find a mutually-agreeable time for the survey. We find that advance notice of three business days strikes the right balance between providing sufficient time to accommodate coordination with the attachers and the need to keep the pole attachment process moving forward in a timely manner. To provide utilities some measure of flexibility in complying with this requirement while still encouraging joint surveys to occur, we hold utilities to a ''commercially reasonably efforts standard'' to make the notifications.

68. In addition, to prevent unnecessary and wasteful duplication of surveys, we adopt a change to our rules that allows utilities to meet the survey requirement of our existing timeline by electing to use surveys previously prepared on the poles in question by new attachers. In the OTMR context, new attachers will perform the necessary surveys to determine whether make-ready work is simple or complex prior to the submission of an application. To the extent such work is complex, it will be governed by our existing pole attachment timeline where the utility performs the survey and must give advance notice of the survey to affected attachers. However, we will allow the utility to elect to use the new attacher's previously performed survey (performed as part of the OTMR pole attachment process) to fulfill its survey requirements, rather than require the utility to perform a potentially duplicative survey. The utility still must notify affected attachers of its intent to use the new attacher's survey and provide a copy of the new attacher's survey in its notice. If the utility is relying solely on the new attacher's survey to fulfill the survey requirements, we agree with Crown Castle that it is appropriate to shorten the survey period from 45 days to 15 days to speed deployment.

(iii) Make-Ready Stage

69. To speed broadband deployment, we amend our rules to reduce the deadlines for both simple and complex make-ready from 60 to 30 days (and from 105 to 75 days for large requests in the communications space). To account for the unique circumstances involved with attachments above the communications space, we maintain the current make-ready deadline of 90 days (and 135 days for large requests) for these attachments. We also adopt modified notice requirements to apportion more of the responsibility for promoting make-ready timeline

compliance from utilities to new attachers, because new attachers have the greater incentive to drive adherence to the make-ready deadline.

70. *Make-ready deadlines.* Based on the current record and the BDAC's recommendation, we adopt a change to our rules that shortens the make-ready deadline for new pole attachments in the communications space to promote broadband deployment without imposing undue risk to safety or reliability. We agree with Crown Castle that adoption of a shorter make-ready period in the communications space will promote the efficient completion of make-ready by encouraging utilities and existing attachers to prioritize attachment work. We also agree with Google Fiber that a 30-day period for communications space make-ready (and 75 days for larger requests) will ensure that existing attachers have the opportunity to control make-ready that is expected to affect their services, while reducing delays and increasing efficiency for new attachers. The make-ready timelines we adopt for work in the communication space should be sufficient for both simple and complex work.

71. While the BDAC recommended that we impose a 30-day deadline for complex make-ready work in the communications space, it did not make a recommendation on the deadline for simple make-ready work that is not subject to OTMR. We find that there is value to maintaining consistency of deadlines in the communications space; thus, we adopt the 30-day deadline for all communications space make-ready work.

72. To account for the safety concerns of working above the communications space, we maintain our current make-ready deadlines of 90 days (and 135 days for large requests). In establishing the existing deadlines for make-ready above the communications space, which are 30 days longer than the existing deadlines for make-ready work in the communications space, the Commission pointed to the safety risks associated with working on attachments in, near, or above the electric space and the recognized lack of real-world experience at the time with pole-top attachments. We recognize that both utilities and attachers have more experience with these types of attachments than when the Commission adopted these deadlines in 2011, but the same safety risks identified by the Commission in 2011 are still relevant today, and therefore we continue to allow for more time to complete make-ready above the communications space because such attachments involve work near electrical wires that require more careful work and more experienced contractors. However, we recognize the important role that attachments above the communications space can have in facilitating faster and more efficient wireless deployment (particularly the small cell deployments necessary for advanced 5G networks), and therefore, as described below, we make the self-help remedy applicable to these attachments for the first time, which we anticipate will speed deployment by providing a strong incentive for utilities and existing attachers to meet their make-ready deadlines and give new attachers the tools to deploy quickly when deadlines are not met.

73. For all attachments, we retain as a safeguard our existing rule allowing utilities to deviate from the make-ready timelines for good and sufficient cause when it is infeasible for the utility to complete make-ready work within the prescribed time frame. This safeguard will mitigate the effects of our decrease in the make-ready time periods by carving out edge cases where timely completion is truly infeasible and the utility wishes to retain control of the make-ready process. It aids us in balancing the interests of utilities to control make-ready in non-OTMR circumstances and the needs of new attachers to obtain timely completion of OTMR or the ability to employ self-help. We agree with ACA that a utility that so deviates may do so for a period no longer than necessary to complete make-ready on the affected poles and must immediately notify, in writing, the new attacher and affected existing attachers, identify the affected poles, and include a detailed explanation of the basis for the deviation and a new completion date. A new attacher may challenge the utility's determination for deviating from the make-ready timeline if the utility's rationale is not justified by good and sufficient cause.

74. Recognizing that our new timeline will put pressure on existing attachers, particularly with respect to poles that have multiple attachers that must conduct complex make-ready work within a shorter timeframe, we adopt a new safeguard for existing attachers. Specifically, we adopt the BDAC recommendation that an existing attacher may deviate from the 30-day deadline for complex make-ready in the communications space (or the 75-day deadline in the case of larger orders) for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready by the deadline. An existing attacher that so deviates must immediately notify, in writing, the new attacher and other affected existing attachers, identify the affected poles, and include a detailed explanation of the basis for the deviation and a new completion date, which cannot extend beyond 60 days from the date of the utility make-ready notice to existing attachers (or 105 days in the case of larger orders). The existing attacher shall deviate from the complex make-ready time limits for a period no longer than necessary to complete make-ready on the affected poles. If the complex make-ready work is not complete within 60 days from the date that the existing attacher sends the notice to the new attacher, then the new attacher can complete the work using a utility-approved contractor. If no utility-approved contractor is available, then the new attacher must follow the procedures outlined *infra* for choosing an appropriate contractor. We require existing attachers to act in good faith in obtaining an extension, and we caution that obtaining an extension as a routine matter or for the purpose of delaying the new attachment is inconsistent with acting in good faith. If a new attacher believes the existing attacher is not using the extension period in good faith, it may file a complaint with the Commission.

75. We further accelerate communications space attachments by eliminating the optional 15-day extension period for the utility to complete the make-ready work. Many commenters and the BDAC support elimination of the extra 15 days at the end of the make-ready stage because few, if any, utilities actually invoke the extension. However, with respect to work above the communications space, we retain the optional 15-day extension period for utility make-ready. Because we are extending a new attacher's self-help remedy to attachments above the communications space, more utilities may need to use the additional 15 days to perform such make-ready work themselves. Further, retaining this extra period promotes safety and reliability of the electric grid by granting the utility extra time to undertake the work itself. To the extent utilities do not intend to avail themselves of the additional 15 days before a new attacher resorts to self-help above the communications space, we strongly encourage utilities to communicate that intent as soon as possible to new attachers so that the new attacher can promptly begin make-ready work.

76. *Notice and New Attacher Role.* We adopt the BDAC recommendation that when a utility provides the required make-ready notice to existing attachers, then it must provide the new attacher

with a copy of the notice, plus the contact information of existing attachers to which the notices were sent, and thereafter the new attacher (rather than the utility) must take responsibility for encouraging and coordinating with existing attachers to ensure completion of make-ready work on a timely basis. We adopt this additional notice requirement to empower the new attacher to promote the timely completion of make-ready. At the same time, we expect existing attachers to respond in a timely manner to requests from the new attacher for information, including estimated completion dates and work status updates, and to cooperate with the new attacher and other existing attachers to complete make-ready prior to the date set in the notice.

b. Enhancing the Self-Help Remedy

77. In the interest of speeding broadband deployment, we modify our rules to provide a self- help remedy to new attachers for work above the communications space, including the installation of wireless 5G small cells, when the utility or existing attachers have failed to complete make-ready work within the required time frames. We recognize that despite widespread agreement that make-ready work often extends past Commission-prescribed timelines, and new attachers' frustration with delays caused by missed deadlines for make-ready work, the record shows that, at present, new attachers rarely invoke the existing self-help remedy in the communications space. In the interest of ensuring that new attachers are able to exercise the self-help remedy, we take this opportunity to reiterate its availability and modify our rules to provide a process for new attachers to communicate their intent to engage in self-help to the utility and existing attachers. These steps, together with the changes we make to the process for new attachers to hire contractors to conduct self-help work, should encourage the use of self-help where necessary and strengthen the incentive for utilities and existing attachers to complete work on time.

78. *Self-Help Above the Communications Space.* In the *2011 Pole Attachment Order,* the Commission declined to apply a self-help remedy for survey and make-ready work for pole attachments ''located in, near, or above the electric space.'' After further consideration and in light of the national importance of a speedy rollout of 5G services, we amend our rules to allow new attachers to invoke the self-help remedy for work above the communications space, including the installation of wireless 5G small cells, when utilities and existing attachers have not met make-ready work deadlines. Accenture estimates that wireless providers will invest $275 billion dollars over the next decade to deploy 5G, which is expected to create three million new jobs across the country and boost the U.S. gross domestic product by half a trillion dollars. As CTIA explains, the network infrastructure needed to support 5G cannot wait, and it is incumbent on the Commission to quickly eliminate barriers to, and encourage investment in, 5G deployment. Although we do not allow wireless attachers to perform their own work in the first instance for safety and equipment integrity reasons, we nonetheless give them the ability to use self-help to complete make-ready when utilities miss their deadline.

79. Until now, the only remedy for missed deadlines for work above the communications space has been filing a complaint with the Commission's Enforcement Bureau. We agree with commenters that argue that complaints are an important but insufficient tool for encouraging compliance with our deadlines and speeding broadband deployment. We expect the availability of self-help above the communications space will strongly encourage utilities and existing attachers to meet their make-ready deadlines and give new attachers the tools to deploy quickly when they do not. As described by Crown Castle, the extension of the self-help remedy to attachments above the communications space closes a significant gap in the Commission's rules that leaves Crown Castle without a meaningful remedy when the electric utility fails to perform make-ready work in a timely fashion.

80. We recognize the valid concerns of utilities regarding the importance of safety and equipment integrity, particularly in the electric space, and we take several steps to address these important issues. As an initial matter, in response to concerns expressed by utilities, we maintain the 90-day period (135 for larger requests) for the utility to complete make-ready. In the event that new attachers must resort to self-help above the communications space, the new attacher must use a qualified contractor, that is pre-approved by the utility, to do the work. While some utilities argue that contractors working for third parties will not adhere to the utility's procedures for ensuring the integrity of electric distribution facilities, the utility will have full control over the contractor pre-approval process and therefore will be able to require that contractors who wish to be placed on the utility-approved list adhere to utility protocols for working in the electric space, even when the contractor is retained by a third-party communications attacher. In addition, we reiterate that utilities will have the opportunity to identify and address any safety and equipment concerns when they receive advance self-help notice and post-completion notice from the new attacher. Our rules also contain additional pre-existing protections for utilities that empower them to promote safety and reliability. Finally, utilities may prevent self-help from being invoked by completing make-ready on time. Because electric utilities always will have the opportunity to complete make-ready work before self-help is triggered, have control over which contractors will be allowed to perform self-help, and will have the opportunity to be present when the self-help make-ready work is performed, we disagree with FirstEnergy that our new rules risk loss of control for every expansion of capacity to accommodate new attachments.

81. *Pole Replacements.* We agree with parties that argue that the self-help remedy should not be available when pole replacements are required as part of make-ready. The record shows that pole replacements can be complicated to execute and are more likely to cause service outages or facilities damage. Given the particularly disruptive nature of this type of work, we make clear that pole replacements are not eligible for self-help.

82. *Self-Help Notices.* Similar to the pre- and post-work notice requirements we adopt in the new OTMR process, and consistent with the BDAC's recommendation, we require new attachers to give affected utilities and existing attachers (1) no less than three business days advance notice for self-help surveys and five days' advance notice of when self-help make-ready work will be performed and a reasonable opportunity to be present, and (2) notice no later than 15 days after make-ready is complete on a particular pole so that they have an opportunity to inspect the make-ready work. Just as in the OTMR context, the new attacher's post-make-ready notice must provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready work done on a particular pole. The affected utility and existing attachers have 14 days after completion of their inspection to notify the new attacher of any damage to their equipment or any code (*e.g.,* safety, electrical, engineering, construction) violations caused by make-ready conducted by the new

attacher. If the utility or existing attachers discover damage or any code violations caused by make-ready conducted by the new attacher on equipment belonging to the utility or an existing attacher, then the utility or existing attacher shall inform the new attacher and provide adequate documentation of the damage or code violations. The utility or existing attacher may either (A) complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations, or (B) require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher.

83. Just as in the OTMR context, the advance notice must include the date and time of the work, the nature of the work, and the name of the contractor being used by the new attacher. Similar to our finding with regard to the OTMR process, we find that the utility and existing attachers should be responsible for any expenses associated with double-checking the self-help work performed by the new attacher's contractors, including any post-make-ready inspections. As in the OTMR context, we also require the new attacher to provide immediate notice to the affected utility and existing attachers if the new attacher's contractor damages equipment or causes an outage that is reasonably likely to interrupt the provision of service. Upon receiving notice of damaged equipment or a service outage, the utility or existing attacher can either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher. Upon notice from the existing attacher or the utility to fix damages caused by a contractor, the new attacher must complete the repair work before it can resume its make-ready work. Where the utility or the existing attacher elects to fix the damage, the new attacher can only continue with make-ready work if it does not interfere with the repair work being conducted by the utility or existing attacher. We find that these self-help notices will promote safe, reliable work and provide the opportunity for corrections where needed, as well as allow utilities and existing attachers to alert their customers of the work. In this context, we also find that the notices will help to address complaints that utilities are not receiving consistent notices from attachers regarding critical steps in the pole attachment process.

84. At the request of numerous commenters, we also take this opportunity to reiterate that under our existing rules, the make-ready clock runs simultaneously and not sequentially for all existing attachers, and the utility must immediately notify at the same time all entities with existing attachments that are affected by the proposed make-ready work. We recognize that coordinating work among existing attachers may be difficult, particularly for poles with many attachments, and existing attachers that are not the first to move may in some circumstances receive limited or even no time for work during the make-ready stage. Despite these challenges, we expect utilities, new attachers, and existing attachers to work cooperatively to ensure that pole attachment deadlines are met. If others do not meet their deadlines, new attachers then may invoke the self-help remedy.

c. Contractor Selection for Self-Help

85. We adopt different approaches to new attacher contractor selection for simple and non-simple self-help make-ready. Given that simple self-help and OTMR are substantially similar, we adopt the same approach to contractor selection for simple self-help in the communications space as for OTMR, and we do so for the same reasons set forth above. Thus, consistent with the OTMR regime:

- A new attacher electing self-help for simple work in the communications space must select a contractor from a utility-maintained list of qualified contractors, where such a list is available. The contractor must meet the same safety and reliability criteria as contractors authorized to perform OTMR work. New and existing attachers may request that qualified contractors be added to the utility's list and the utility may not unreasonably withhold its consent for such additions.
- Where no utility-maintained list is available, or no utility-approved contractor is available within a reasonable time period, the new attacher must select a contractor that meets the same safety and reliability criteria as contractors authorized to perform OTMR work and any additional non-discriminatory, written, and publicly-available criteria relating to safety and reliability that the utility specifies. The utility may veto the new attacher's contractor selection so long as it offers another available, qualified contractor.

86. For complex work and work above the communications space, we take a different approach and require new attachers to select a contractor from the utility's list. We also require utilities to make available and keep an up-to-date a reasonably sufficient list of contractors it authorizes to perform complex and non-communications space self-help surveys and make-ready work. We thus maintain our existing contractor selection requirements as to complex self-help in the communications space and extend those requirements to self-help above the communications space.

87. We treat the utility list as mandatory for complex and above the communications space work for several reasons. These types of make-ready involve greater risks than simple make-ready, and we agree with numerous commenters that utility selection of eligible contractors promotes safe and reliable work in more challenging circumstances. Although the current selection process sometimes entails delays where utilities fail to provide a list of approved contractors, we find that as to complex work and work above the communications space—which poses heightened safety and reliability risks—the benefits of the current approach outweigh its costs. We recognize that self-help above the communications space is novel and poses particularly heightened safety and reliability risks. We therefore find it especially important to give the utility control over who performs such work. In reaching this conclusion, we decline to adopt the BDAC's recommendation that utilities need no longer provide, and requesting attachers need not use, utility-approved contractors to complete complex make-ready work in the communications space under the self-help remedy.

88. Although we treat the utility list as mandatory for complex and above the communications space make-ready, we adopt a protective measure to prevent the utility list from being a choke-point that prevents deployment. The record indicates that some new attachers have been unable to exercise their self-help remedy because a list of utility-approved contractors was not available. To alleviate this problem for complex and above the communications space work, we set forth in our rules—as we do in the context of OTMR and simple-self-help—that new and existing attachers may request that qualified contractors be added to the utility's list and that the utility may not unreasonably withhold its consent for such additions. As in the context of OTMR and simple self-help, to be reasonable, a utility's decision to withhold consent must be prompt, set forth in writing that describes the basis for rejection, nondiscriminatory, and

based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability.

d. Detailed Make-Ready Costs

89. To facilitate the planning of more aggressive deployments, we adopt additional requirements to improve the transparency and usefulness of the make-ready cost estimates currently required under our rules. We require estimates of all make-ready charges to be detailed and include documentation that is sufficient to determine the basis for all charges, as well as similarly detailed post-make-ready invoices.

90. The record reflects frustration over the lack of transparency of current estimates of make-ready work charges. ACA, Lumos, Crown Castle, and other commenters express support for a requirement that utilities provide detailed, itemized estimates and final invoices of all necessary make-ready costs. They, along with other commenters, argue that, in many cases, utilities currently do not provide detailed estimates or detailed final invoices. They claim that where utilities do not detail the basis of potential or actual charges, new attachers may reasonably fear that utilities can potentially include costs that are unnecessary, inappropriately inflated, or that attaching entities could easily avoid. Numerous commenters describe experiencing ''bill shock,'' where a utility's make-ready invoices far exceed the utility's initial estimates, and add that the lack of transparency of make-ready costs inhibits their ability to plan network expansions. Given the frustration reflected in the record, we find that requiring detailed make-ready cost estimates and post-make-ready invoices will improve transparency in the make-ready process and better enable providers to plan broadband buildouts.

91. We further clarify that our current rules require the utility to provide estimates for all make-ready work to be completed, regardless of what party completes the work. Although some utilities claim they are poorly positioned to provide estimates for make-ready work other than their own, we continue to find that utilities are best positioned to compile and submit these make-ready estimates to new attachers due to their pre-existing and ongoing relationships with the existing attachers on their poles. We recognize that in many circumstances the utility will not be able to prepare on its own an estimate for other existing attachers' make-ready work; therefore, we clarify that utilities may comply with this requirement by compiling estimates from third-parties for submission to the new attacher. We further clarify that where the utility compiles third-party estimates, it is responsible only for compilation and transmission—it is not responsible for the accuracy or content of the estimates. We do not require utilities to compile and submit final invoices of make-ready work performed by third-party existing attachers. To the extent that the utility is an existing attacher, it is still responsible, where applicable, for providing a final invoice. We anticipate that existing attachers will have sufficient incentives to ensure that their final invoice reaches the new attacher so that they receive compensation for performed work.

92. We require the utility to detail all make-ready cost estimates and final invoices on a per-pole basis when requested by the new attacher. While we recognize that requiring utilities to provide costs on a per-pole basis may be more burdensome than providing a less granular estimate, we find that a pole-by-pole estimate may be necessary to enable new attachers to understand the costs of deployment and to make informed decisions about altering their deployment plans if make-ready costs on specific poles could prove to be cost-prohibitive. Requiring per-pole estimates and invoices upon request will also enable new attachers to better determine whether invoices are accurate, saving new attachers the unnecessary time and cost they currently devote to such a task. The record shows that certain fixed costs are not necessarily charged on a per-pole basis (*e.g.,* traffic control, lock-out/tag-out, truck rolls), and therefore the rules we adopt today allow for such fixed costs to be submitted on a per-job basis, rather than a pole-by-pole basis, even where a pole-by-pole estimate or invoice is requested.

93. As part of the detailed estimate, the utility must disclose to the new attacher its projected material, labor, and other related costs that form the basis of its estimate, including specifications of what costs, if any, the utility is passing through to the new attacher from the utility's use of a third-party contractor. The utility must also provide documentation that is sufficient to determine the basis of all charges in the final invoice, including any material, labor and other related costs. While we understand that this requirement places a burden on utilities, we agree with ACA that this requirement will allow new attachers to understand the basis for each individual make-ready charge and prevent disputes over ''unreasonable or simply unnecessary make-ready charges in aggregate cost estimates.'' However, if a utility completes make-ready and the final cost of the work does not differ from the estimate, it is not required to provide the new attacher with a final invoice.

3. Treatment of Overlashing

94. We codify our longstanding policy that utilities may not require an attacher to obtain its approval for overlashing. Consistent with Commission precedent, the utility also may not require pre-approval for third party overlashing of an existing attachment, when such overlashing is conducted with the permission of an existing attacher. In addition, we adopt a rule that allows utilities to establish reasonable advance notice requirements. As the Commission has previously found, the ability to overlash often marks the difference between being able to serve a customer's broadband needs within weeks versus six or more months when delivery of service is dependent on a new attachment. In codifying the existing overlashing precedent while adopting a pre-notification option, we seek to promote faster, less expensive broadband deployment while addressing important safety concerns relating to overlashing. We find that our codification will hasten deployment by resolving disagreements over whether utilities may impose procedural requirements on overlashing by existing attachers.

95. While we make clear that pre-approval for overlashing is not permissible, we adopt a rule that utilities may, but are not required to, establish reasonable pre-notification requirements including a requirement that attachers provide 15 days (or fewer) advance notice of overlashing work. Commenters express the concern that poles may not always be able to reliably support additional weight due to age and environmental factors, such as ice and wind, and as a result, overlashing even one additional cable on a pole may cause an overloading. Such pole overloading could hamper the installation or maintenance of electric facilities, or other on-going wireline or wireless facility installations. We find these concerns to be valid and supported by the record. Thus, we agree with commenters that allowing utilities to require advance notice will promote safety and reliability and allow the utility to protect its interests without imposing unnecessary burdens on attachers. If after receiving this advance notice, a utility determines, through its own engineering analysis, that there is insufficient capacity on the pole for a

noticed overlash, the noticed overlash would be inconsistent with generally applicable engineering practices, or the noticed overlash would compromise the pole's safety or reliability, the utility must provide specific documentation demonstrating that the overlash creates a capacity, safety, reliability, or engineering issue within the 15 day advance notice period and the overlasher must address any identified issues—either by modifying its proposal or by explaining why, in the overlasher's view, a modification is unnecessary—before continuing with the overlash. Consistent with our approach to OTMR and self-help, we adopt ACA's position that a utility may not charge a fee to the party seeking to overlash for the utility's review of the proposed overlash, as such fees will increase the costs of deployment. To the extent a utility can document that an overlash would require modifications to the pole or replacement of the pole, the overlasher will be held responsible for the costs associated with ensuring that the pole can safely accommodate the overlash. A utility may not deny access to overlash due to a pre-existing violation on the pole. However, a party that chooses to overlash on a pole with a safety violation and causes damage to the pole or other equipment will be held responsible for any necessary repairs.

96. We find that an approach to overlashing that allows for pre-notification without requiring pre-approval is superior to more extreme solutions advocated by some commenters. We are unpersuaded, for example, by arguments that utility pre-approval for overlashing is necessary to ensure safety. Pre-approval is not currently required, and the record does not demonstrate that significant safety or reliability issues have arisen from the application of the current policy. Rather, the record reflects that an advance notice requirement has been sufficient to address safety and reliability concerns, as it provides utilities with the opportunity to conduct any engineering studies or inspections either prior to the overlash being completed or after completion. For instance, after an Edison Electric Institute member received advance notice of overlashing on 5,186 poles, its inspection found that 716 of those poles ''had preexisting violations for failure to meet NESC requirements for clearance between communications attachments and power facilities.'' Similarly, in 2016, Oncor Electric Delivery in Texas received advance notice of overlashing and discovered 13.8% of the poles had existing clearance violations between existing attachments and power facilities. Further requiring that attachers receive prior approval for overlashing would unnecessarily increase costs for attachers and delay deployment.

97. We also take this opportunity to clarify several points related to overlashing. First, if the utility elects to establish an advance notice requirement, the utility must provide advanced written notice to attachers or include the requirement in its pole attachment agreements. We find that providing this guidance will give clarity to all parties as to when the utility must receive advance notice, thereby reducing the likelihood of disputes. Utilities may require pre-notification of up to 15 days, the same notice period that we adopt for OTMR attachments. We also emphasize that utilities may not use advanced notice requirements to impose quasi-application or quasi-pre-approval requirements, such as requiring engineering studies. Finally, just as new attachers electing OTMR are responsible for any corrective measures needed because of their work, in the event that damage to the pole or other existing attachment or safety or engineering standard violations result from overlashing, the overlasher will be responsible for any necessary repairs arising from such overlashing. Poorly performed overlashing can create safety and reliability risks, and the Commission has consistently found that overlashers must ensure that they are complying with reasonable safety, reliability, and engineering practices. To the extent that the pole owner wishes to perform an engineering analysis of its own either within the 15-day advance notice period or after completion of the overlash, the pole owner bears the cost of such an analysis.

98. We agree with ACA that we should adopt a post-overlashing notification procedure comparable to the post-make ready notification procedure we adopt for OTMR. Therefore, we require that an overlashing party shall notify the affected utility within 15 days of completion of the overlash on a particular pole. The notice shall provide the affected utility at least 90 days from receipt in which to inspect the overlash. The utility has 14 days after completion of its inspection to notify the overlashing party of any damage or any code (*e.g.,* safety, electrical, engineering, construction) violations to its equipment caused by the overlash. If the utility discovers damage or code violations caused by the overlash on equipment belonging to the utility, then the utility shall inform the overlashing party and provide adequate documentation of the damage or code violations. The utility may either complete any necessary remedial work and bill the overlashing party for the reasonable costs related to fixing the damage or code violations or require the overlashing party to fix the damage or code violations at its expense within 14 days following notice from the utility.

B. New Attachers Are Not Responsible for Preexisting Violations

99. Consistent with the BDAC's recommendation, we clarify that new attachers are not responsible for the costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent such poles or third-party equipment were out of compliance prior to the new attachment. This includes situations where a pole has been ''red tagged''—that is, found to be non-complaint with safety standards and placed on a replacement schedule—so new attachers are not responsible for the cost of pole replacement. Although utilities have sometimes held new attachers responsible for the costs of correcting preexisting violations, this practice is inconsistent with our long-standing principle that a new attacher is responsible only for actual costs incurred to accommodate its attachment. The new attachment may precipitate correction of the preexisting violation, but it is the violation itself that causes the costs, not the new attacher. Holding the new attacher liable for preexisting violations unfairly penalizes the new attacher for problems it did not cause, thereby deterring deployment, and provides incentives for attachers to complete make-ready work irresponsibly and count on later attachers to fix the problem. This is true whether the make-ready work that corrects these preexisting violations is simple or complex. Also, if the new attacher chooses to repair a pre-existing violation it may seek reimbursement from the party responsible for the violation, including, if applicable, the utility.

100. We also clarify that utilities may not deny new attachers access to the pole solely based on safety concerns arising from a pre-existing violation, as Lightower alleges sometimes occurs. Simply denying new attachers access prevents broadband deployment and does nothing to correct the safety issue. We also clarify that a utility cannot delay completion of make-ready while the utility attempts to identify or collect from the party who should pay for correction of the preexisting violation.

C. Addressing Outdated Rate Disparities

101. In the interest of promoting infrastructure deployment, the Commission adopted a policy in 2011 that similarly situated attachers should pay similar pole attachment rates for comparable access. Incumbent LECs allege, however, that electric utilities continue to charge pole attachment rates significantly higher than the rates charged to similarly situated telecommunications attachers, and that these higher rates inhibit broadband deployment. To address this problem, we revise our rules to establish a presumption that, for newly-negotiated and newly-renewed pole attachment agreements between incumbent LECs and utilities, an incumbent LEC will receive comparable pole attachment rates, terms, and conditions as a similarly-situated telecommunications carrier or a cable television system (telecommunications attachers). The utility can rebut the presumption with clear and convincing evidence that the incumbent LEC receives net benefits under its pole attachment agreement with the utility that materially advantage the incumbent LEC over other telecommunications attachers.

102. As the Commission has recognized, historically, incumbent LECs owned approximately the same number of poles as electric utilities and were able to ensure just and reasonable rates, terms, and conditions for their attachments by negotiating long-term joint use agreements with utilities. These joint use agreements may provide benefits to the incumbent LECs that are not typically found in pole attachment agreements between utilities and other telecommunications attachers, such as lower make-ready costs, the right to attach without advance utility approval, and use of the rights-of-way obtained by the utility, among other benefits. By 2011, however, incumbent LECs owned fewer poles than utilities, and the Commission found that incumbent LECs may not be in equivalent bargaining position with electric utilities in pole attachment negotiations in some cases. In 2011, the Commission determined that it had the authority to ensure that incumbent LECs' attachments to other utilities' poles are pursuant to rates, terms and conditions that are just and reasonable, and placed the burden on incumbent LECs to rebut the presumption that they are not similarly situated to an existing telecommunications attacher in order to obtain access on rates, terms, and conditions that are comparable to the existing telecommunications attacher.

103. The record clearly demonstrates that incumbent LEC pole ownership continues to decline. Incumbent LECs argue that a reversal of the current presumption is warranted because incumbent LECs' bargaining power vis-à-vis utilities has eroded since 2011 as their percentage of pole ownership relative to utilities has dropped, thus resulting in increased attachment rates relative to their fellow telecommunications attachers. To bolster this claim, USTelecom provides the results of a recent member survey showing that its incumbent LEC members ''pay an average of $26.12 [per year] to [investor-owned utilities] today in Commission-regulated states (an *increase* from $26.00 in 2008), compared to cable and CLEC provider payments to ILECs, which average $3.00 and $3.75 [per year], respectively (a *decrease* from $3.26 and $4.45, respectively, in 2008).''

104. We are convinced by the record evidence showing that, since 2008, incumbent LEC pole ownership has declined and incumbent LEC pole attachment rates have increased (while pole attachment rates for cable and telecommunications attachers have decreased). We therefore conclude that incumbent LEC bargaining power vis-à-vis utilities has continued to decline. Therefore, based on these changed circumstances, we agree with incumbent LEC commenters' arguments that, for new and newly-renewed pole attachment agreements between utilities and incumbent LECs, we should presume that incumbent LECs are similarly situated to other telecommunications attachers and entitled to pole attachment rates, terms, and conditions that are comparable to the telecommunications attachers. We conclude that, for determining a comparable pole attachment rate for new and newly-renewed pole attachment agreements, the presumption is that the incumbent LEC should be charged no higher than the pole attachment rate for telecommunications attachers calculated in accordance with § 1.1406(e)(2) of the Commission's rules. We find that applying the presumption in these circumstances will promote broadband deployment and serve the public interest; we agree with USTelecom that greater rate parity between incumbent LECs and their telecommunications competitors can energize and further accelerate broadband deployment. However, we recognize there may be some cases in which incumbent LECs may continue to possess greater bargaining power than other attachers, for example in geographic areas where the incumbent LEC continues to own a large number of poles. Therefore, we establish a presumption that may be rebutted, rather than a more rigid rule.

105. We extend this rebuttable presumption to newly-negotiated and newly-renewed joint use agreements. A new or newly-renewed pole attachment agreement is one entered into, renewed, or in evergreen status after the effective date of this *Third Report and Order,* and renewal includes agreements that are automatically renewed, extended, or placed in evergreen status. Consistent with the Commission's conclusion in 2011, the pre-2011 pole attachment rate for telecommunications carriers will continue to serve as a reference point in complaint proceedings regarding agreements that materially advantage an incumbent LEC and which were entered into after the *2011 Pole Attachment Order* and before the effective date of the *Third Report and Order* we release today. This includes circumstances where an agreement has been terminated and the parties continue to operate under an ''evergreen'' clause.

106. We conclude that, by applying the presumption to new and newly-renewed agreements, we will give incumbent LECs parity with similarly-situated telecommunications attachers and encourage infrastructure deployment by addressing incumbent LECs' bargaining power disadvantage. We recognize that this divergence from past practice will impact privately-negotiated agreements and so the presumption will only apply, as it relates to existing contracts, upon renewal of those agreements. Until that time, for existing agreements, the *2011 Pole Attachment Order's* guidance regarding review of incumbent LEC pole attachment complaints will continue to apply. We disagree with utilities that argue that we should not apply the presumption to any existing agreements because existing joint use agreements were negotiated at a time of more equal bargaining power between the parties, and because incumbent LECs receive unique benefits under joint use agreements. To the extent incumbent LECs receive net benefits distinct from those given to other telecommunications attachers, a utility may rebut the presumption.

107. Utilities can rebut the presumption we adopt today in a complaint proceeding by demonstrating that the incumbent LEC receives net benefits that materially advantage the incumbent LEC over other telecommunications attachers. Such material benefits may include paying

significantly lower make-ready costs; no advance approval to make attachments; no post-attachment inspection costs; rights-of-way often obtained by electric company; guaranteed space on the pole; preferential location on pole; no relocation and rearrangement costs; and numerous additional rights such as approving and denying pole access, collecting attachment rents and input on where new poles are placed. If the utility can demonstrate that the incumbent LEC receives significant material benefits beyond basic pole attachment or other rights given to another telecommunications attacher, then we leave it to the parties to negotiate the appropriate rate or tradeoffs to account for such additional benefits.

108. If the presumption we adopt today is rebutted, the pre-*2011 Pole Attachment Order* telecommunications carrier rate is the maximum rate that the utility and incumbent LEC may negotiate. This conclusion builds on and clarifies the Commission's determination in the *2011 Pole Attachment Order* that the pre-2011 telecommunications carrier rate should serve ''as a reference point in complaint proceedings'' where a joint use agreement was found to give net advantages to an incumbent LEC as compared to other attachers. The Commission ''[found] it prudent to identify a specific rate to be used as a reference point in these circumstances because it [would] enable better informed pole attachment negotiations . . . [and] reduce the number of disputes'' regarding pole attachment rates. We reaffirm the conclusion that reference to this rate is appropriate where incumbent LECs receive net material advantages in a pole attachment agreement. And because we agree with commenters that establishment of an upper bound will provide further certainty within the pole attachment marketplace, and help to further limit pole attachment litigation, we make this rate a hard cap. In so doing, we remove the potential for uncertainty caused by considering the rate merely as a ''reference point.''

D. Legal Authority

109. We conclude that we have ample authority under Section 224 to take the actions above to adopt a new pole attachment process, amend our current pole attachment process, clarify responsibility for pre-existing violations, and address outdated rate disparities. Section 224 authorizes us to prescribe rules ensuring that the rates, terms, and conditions of pole attachments are just and reasonable. We find that the actions we take today to speed broadband deployment further these statutory goals. While we rely solely on Section 224 for legal authority, our prioritization of broadband deployment throughout today's *Third Report and Order* finds support in Section 706(a) of the Telecommunications Act of 1996, which exhorts us to ''encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans'' by ''remov[ing] barriers to infrastructure investment.'' While Section 706(a) does not provide a grant of regulatory authority, we look to it as guidance from Congress on how to implement our statutorily-assigned duties.

E. Effective Date of the Commission's Modified Pole Attachment Rules

110. Several parties have requested that the Commission provide a transition period in which to implement its revised rules governing pole attachments. As AT&T notes, this *Third Report and Order* would modify ''the Commission's existing timelines for application review, make-ready, and self-help and adopt new timelines for pre-application surveys, OTMR, and post OTMR and self-help inspection and repair.'' The record indicates that in some cases, these changes will require carriers and industry members to modify the automated electronic systems they use to track and coordinate pole attachment workflow and activities. Therefore, we find it appropriate to provide a transitional period. To avoid confusion and facilitate efficient compliance preparation, we also wish to make the transitional period uniform for all pole attachment-related rules. Thus, the pole attachment-related portions of this *Third Report and Order* (*i.e.,* Sections III.A–E) and the rule amendments adopted therein shall become effective on the latter of (1) six months after the release of this item or (2) 30 days after the Commission publishes a notice in the **Federal Register** announcing approval by the Office of Management and Budget of the rules adopted herein containing modified information collection requirements. We believe that this period will be sufficient, but no more than necessary, to allow affected industry members to modify their systems to account for the rule amendments adopted in this *Third Report and Order.* The remainder of this *Third Report and Order* will be effective 30 days after publication in the **Federal Register**.

F. Rebuilding and Repairing Broadband Infrastructure After Disasters

111. We will not allow state and local laws to stand in the way of post-disaster restoration of essential communciations networks. In the *Further Notice of Proposed Rulemaking* in this proceeding, we sought comment on whether there are targeted circumstances related to disasters in which the Commission should use its preemption authority. We find that Sections 253 and 332(c)(7) of the Act provide authority to preempt state or local laws that prohibit or have the effect of prohibiting the rebuilding or restoration of facilities used to provide telecommunications services, and we commit to the exercise of that authority on a case-by-case basis where needed. Sections 253 and 332(c)(7) both provide for preemption of state and local laws that ''prohibit or have the effect of prohibiting'' the deployment of telecommunications services, and we conclude that these provisions provide authority to preempt state or local legal action that effectively prohibit the deployment of telecommunications services in the wake of a disaster. We also find that our authority to interpret or act pursuant to Sections 253 and 332 is not limited to natural disasters, and also extends to *force majeure* events generally, including man-made disasters. As the Commission has previously recognized, certain federal regulations may impede restoration efforts, and we are working to address those too—where it is within our authority, we are committed to addressing all legal requirements that stand in the way of prompt restoration of communications infrastructure.

112. We prefer to exercise our authority to address the application of Section 253 to preempt state and local requirements that inhibit network restoration on an expedited adjudicatory case-by-case basis, in which we can take into account the particularized circumstances of the state or local law in question and the impact of the disaster, and other relevant factors, rather than through adoption of a rule.

113. As the City of New York suggests, state and local officials may be well positioned to respond to disasters and implement disaster response protocol and we will be cognizant not to exercise our preemption authority in a manner that could disrupt these efforts. In the wake of Hurricanes Harvey, Irma, and Maria, the Commission worked closely with state and local partners to support restoration of communications networks in affected areas, and going forward, we reiterate

the need for ongoing coordination and cooperation between the Commission and state and local governments to rebuild damaged telecommunications infrastructure as quickly as possible. As the Public Safety and Homeland Security Bureau is responsible for coordinating the Commission's disaster response and recovery activities and is most closely in contact with state, local, and Federal public safety, disaster relief and restoration agencies in such instances, it should work with the Wireline Competition Bureau and Wireless Telecommunications Bureau to report, and provide assistance to, the Commission in its adjudication of such matters.

IV. Final Regulatory Flexibility Analysis

114. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the April 2017 Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment (*Wireline Infrastructure Notice*) and into the November 2017 Report and Order and Declaratory Ruling, and Further Notice of Proposed Rulemaking (*Wireline Infrastructure Order*) in this wireline infrastructure proceeding. The Commission sought written public comment on the proposals in the *Wireline Infrastructure Notice* and in the *Wireline Infrastructure Order,* including comment on the IRFAs. The Commission received no comments on the IRFAs. Because the Commission amends its rules in this *Third Report and Order,* the Commission has included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.

A. Need for, and Objectives of, the Rules

115. In the *Wireline Infrastructure Notice,* the Commission continued its efforts to close the digital divide by removing barriers to broadband infrastructure investment. To this end, the Commission proposed numerous regulatory reforms to existing rules and procedures regarding pole attachments.

116. On November 16, 2017, the Commission adopted the *Wireline Infrastructure Order,* which enacted reforms to pole attachment rules that: (1) Bar utility pole owners from charging for certain capital costs that already have been recovered from make-ready fees; (2) set a 180-day shot clock for resolution of pole access complaints; and (3) grant incumbent local exchange carriers (LECs) reciprocal access to infrastructure controlled by other LECs. In the *Further Notice of Proposed Rulemaking,* the Commission sought comment on (1) the treatment of overlashing by utilities; and (2) what actions the Commission can take to facilitate the rebuilding and repairing of broadband infrastructure after natural disasters.

117. Concurrently, the BDAC, a federal advisory committee chartered in 2017, formed five active working groups, as well as an ad hoc committee on rates and fees, to address the issues raised in the *Wireline Infrastructure Notice.* During five public meetings, the BDAC adopted recommendations related to competitive access to broadband infrastructure. These recommendations informed the Commission's policy decisions on pole attachment reform.

118. Pursuant to the objectives set forth in the *Wireline Infrastructure Notice,* this *Third Report and Order and Declaratory Ruling* (*Order*) adopts changes to Commission rules regarding pole attachments. The *Order* adopts changes to the current pole attachment rules that: (1) Allow new attachers to perform all work, not reasonably likely to cause a service outage or facility damage, to prepare poles for new wireline attachments (make-ready work) in the communications space of a pole; (2) adopt a substantially shortened timeline for such application review and make-ready work (OTMR pole attachment timeline); (3) require new attachers to use a utility-approved contractor if a utility makes available a list of qualified contractors authorized to perform simple make-ready work in the communications space; (4) create a more efficient pole attachment timeline for complex and work above the communications space (and for new attachers that chose the non-OTMR timeline for simple work); (5) enhance the new attacher's existing self-help remedy for surveys and make-ready work by extending it to all attachments (both wireless and wireline) above the communications space of a pole; (6) require new attachers to use utility-approved contractors when utilities and existing attachers miss their deadlines and the new attacher elects self-help to complete surveys and make-ready work that is complex or that involves work above the communications space on a pole; (7) require utilities to provide new attachers with detailed, itemized estimates and final invoices for all required make-ready work; (8) codify the Commission's existing precedent that prohibits a pre-approval requirement for overlashing, and adopt a rule that allows utilities to establish reasonable advance notice requirements of up to 15 days for overlashing and holds overlashers responsible for ensuring that their practices and equipment do not cause safety or engineering issues; (9) establish a rebuttable presumption that, for newly-negotiated and newly-renewed pole attachment agreements between LECs and utilities, incumbent LECs will receive comparable pole attachment rates, terms, and conditions as similarly-situated telecommunications carriers or cable television system providing telecommunications services; and (10) establish that new attachers are not responsible for costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent that such poles or third-party equipment were out of compliance prior to the new attachment. The modifications to our pole attachment rules will facilitate deployment to and reduce barriers to access infrastructure by reducing costs and delays typically associated with the pole attachment process. Ultimately, these pole attachment reforms will contribute to increased broadband deployment, decreased costs for consumers, and increased service speeds.

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

119. The Commission did not receive comments addressing the rules and policies proposed in the IRFAs in either the *Wireline Infrastructure Notice* or the *Wireline Infrastructure Order.*

C. Response to Comments by the Chief Counsel for Advocacy of the SBA

120. The Chief Counsel did not file any comments in response to this proceeding.

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

121. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the final rules adopted pursuant to the *Order.* 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.

122. The changes to our pole attachment rules affect obligations on utilities that own poles and telecommunications carriers and cable television systems that seek to attach equipment to utility poles.

123. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards 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 29.6 million businesses.

124. 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).

125. 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 we estimate that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

126. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

127. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 14 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

128. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 14 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. One thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

129. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 14 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the adopted rules.

130. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 14 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are

small entities that may be affected by the adopted rules.

131. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 14 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers that may be affected by our rules are small.

132. *Wireless Telecommunications Carriers (Except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, 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, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services. Of this total, an estimated 261 have 1,500 or fewer employees. Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

133. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

134. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000 are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We clarify that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under *the* definition in the Communications Act.

135. *All Other Telecommunications.* ''All Other Telecommunications'' is defined as follows: ''This U.S. industry is comprised of establishments that are 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, Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million. Consequently, we conclude that the majority of All Other Telecommunications firms can be considered small.

136. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: ''This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' This category includes electric power distribution, hydroelectric power generation, fossil fuel power generation, nuclear electric power generation, solar power generation, and wind power generation. The SBA has developed a small business size standard for firms in this category based on the number of employees working in a given business. According to Census Bureau data for 2012, there were 1,742 firms in this category that operated for the entire year.

137. *Natural Gas Distribution.* This economic census category comprises: ''(1) establishments primarily engaged in operating gas distribution systems (*e.g.,* mains, meters); (2) establishments known as gas marketers that buy gas from the well and sell it to a distribution system; (3) establishments known as gas brokers or agents that arrange the sale of

gas over gas distribution systems operated by others; and (4) establishments primarily engaged in transmitting and distributing gas to final consumers.'' The SBA has developed a small business size standard for this industry, which is all such firms having 1,000 or fewer employees. According to Census Bureau data for 2012, there were 422 firms in this category that operated for the entire year. Of this total, 399 firms had employment of fewer than 1,000 employees, 23 firms had employment of 1,000 employees or more, and 37 firms were not operational. Thus, the majority of firms in this category can be considered small.

138. *Water Supply and Irrigation Systems.* This economic census category ''comprises establishments primarily engaged in operating water treatment plants and/or operating water supply systems. The water supply system may include pumping stations, aqueducts, and/or distribution mains. The water may be used for drinking, irrigation, or other uses.'' The SBA has developed a small business size standard for this industry, which is all such firms having $27.5 million or less in annual receipts. According to Census Bureau data for 2012, there were 3,261 firms in this category that operated for the entire year. Of this total, 3,035 firms had annual sales of less than $25 million. Thus, the majority of firms in this category can be considered small.

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

139. *OTMR Alternative Pole Attachment Process.* The *Order* adopts an OTMR pole attachment alternative to the Commission's existing pole attachment timeline. New attachers may perform all simple make-ready work required to accommodate new wireline attachments in the communications space on a pole. First, any OTMR work will be performed by a utility-approved contractor, although a new attacher can use its own qualified contractor to perform OTMR work when the utility does not provide a list of approved contractors. Second, new attachers must provide advanced notice and allow representatives of existing attachers and the utility a reasonable opportunity to be present when OTMR surveys and make-ready work are performed. Third, new attachers must allow existing attachers and the utility the ability to inspect and request any corrective measures soon after the new attacher performs the OTMR work.

140. The *Order* sets forth that the OTMR process begins upon utility receipt of a complete application by a new attacher to attach to its facilities. A complete application is defined as one that provides the utility with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission of the application, to begin to survey the affected poles. The *Order* further establishes that a utility has ten business days after receipt of a pole attachment application to determine if the application is complete and notify the attacher of that decision. If the utility notifies the attacher that its application is not complete within the ten business-day review period, then the utility must specify where and how the application is deficient. If the utility provides no response within ten business days, or if the utility rejects the application as incomplete but fails to specify any deficiencies in the application, then the application is deemed complete. If the utility timely notifies the attacher that its application is incomplete and specifies the deficiencies, then a resubmitted application need only supplement the previous application by addressing the issues identified by the utility, and the application will be deemed complete within five business days after its resubmission, unless the utility specifies which deficiencies were not addressed. A new attacher may follow the resubmission procedure as many times as it chooses, so long as in each case it makes a bona fide attempt to correct the issues identified by the utility. A utility must respond to new attachers within 15 days of receiving complete pole attachment application, or within 30 days for larger requests.

141. The *Order* provides that under the OTMR process, it is the responsibility of the new attacher to conduct a survey of the affected poles to determine the make-ready work to be performed. In performing a field inspection as part of any pre-construction survey, the new attacher must permit representatives of the utility and any existing attachers potentially affected by the proposed make-ready work to be present for the survey, using commercially reasonable efforts to provide advance notice of the date, time, and location of the survey of not less than three (3) business days.

142. The *Order* requires that the new attacher ensures that its contractor determines whether the make-ready work identified in the survey is simple or complex, subject to an electric utility's right to reasonably object to the determination. The new attacher—if it wants to use the OTMR process and is eligible to do so based on the survey—must elect OTMR in its pole attachment application and identify in its application the simple make-ready work to be performed. The *Order* requires a utility that wishes to object to a simple make-ready determination to raise such an objection during the 15-day application review period (or within 30 days in the case of larger orders). Any such objection by the utility is final and determinative, so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, provides a good faith explanation of how such evidence and information relate to a determination that the make-ready is not simple. In this case, the work is deemed complex and must follow the existing pole attachment timeline that is modified in this *Order.* If the make-ready work involves a mix of simple and complex work, then the new attacher may elect to bifurcate the work and must submit separate applications for simple and complex work.

143. The *Order* provides that the new attacher can elect to proceed with the necessary simple make-ready work by giving 15 days prior written notice to the utility and all affected existing attachers. The new attacher may provide the required 15-day notice any time after the utility deems its pole attachment application complete. If the new attacher cannot start make-ready work on the date specified in its 15-day notice, then the new attacher must provide 15 days advance notice of its revised make-ready date. The new attacher's notice must provide representatives of the utility and existing attachers: (1) The date and time of the make-ready work, (2) a description of the make-ready work involved, (3) a reasonable opportunity to be present when the make-ready work is being performed, and (4) the name of the contractor chosen by the new attacher to perform the make-ready work. Further, the new attacher must notify the existing attacher immediately if the new attacher's contractor damages another company's or the utility's equipment or causes an outage that is reasonably likely to interrupt the provision of service.

144. Finally, the *Order* requires the new attacher to provide notice to the utility and affected existing attachers within 15 days after OTMR make-ready work is completed on a particular pole. In its post-make-ready notice, the new attacher must provide the utility and existing attachers at least a 90-day period for the inspection of make-ready work performed by the new attacher's contractors. The *Order* requires the utility and the existing attachers to

notify the new attacher of any damage or any code violations caused to their equipment by the new attacher's make-ready work and provide adequate documentation of the damage or violations within 14 days after any post-make ready inspection. The utility or existing attacher can either complete any necessary remedial work and bill the new attacher for reasonable costs to fix the damage or violations, or require the new attacher to fix the damage at its expense within 14 days following notice from the utility or existing attacher.

145. The *Order* also establishes that new attachers must use a utility-approved contractor to perform OTMR if a utility makes available a list of qualified contractors authorized to perform simple make-ready work in the communications space of its poles. New and existing attachers may request that contractors meeting the minimum qualification requirements be added to the utility's list and utilities may not unreasonably withhold consent to add a new contractor to the list. To be reasonable, a utility's decision to withhold consent must be prompt, set forth in writing that describes the basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability. If the use of an approved contractor is not required by the utility or no approved contractor is available within a reasonable time period, then the *Order* allows new attachers to use qualified contractors of their choosing to perform simple make-ready work in the communications space of poles. The utility may mandate additional commercially reasonable requirements for contractors relating to issues of safety and reliability, but such requirements must clearly communicate the safety or reliability issue, be non-discriminatory, in writing, and publicly available. New attachers must provide the name of their chosen contractor in the three-business-day advance notice for surveys or the 15-day notices sent to utilities and existing attachers in advance of commencing OTMR work. The utility may veto any contractor chosen by the new attacher as long as the veto is based on reasonable safety or reliability concerns related to the contractor's ability to meet one or more of the minimum qualifications or the utility's previously posted safety standards, and the utility identifies at least one qualified contractor available to do the work. When vetoing an attacher's chosen contractor, the utility must identify at least one qualified contractor available to do the work. The utility must exercise its veto within either the three-business-day notice period for surveys or the 15-day notice period for make-ready. The objection by the utility is determinative and final.

146. The utility or new attacher must certify to the utility, within either the three-business-day notice period for surveys or the 15-day notice period for make-ready, that any contractors perform OTMR meet the following minimum requirements: (1) Follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor agrees to follow NESC guidelines; (2) read and follow licensed-engineered pole designs for make-ready work, if required by the utility; (3) follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules; (4) meet or exceed any uniformly applied and reasonable safety record thresholds set by the utility, if made available, *i.e.,* the contractor does not have an unsafe record of significant safety violations or worksite accidents; and (5) be adequately insured or be able to establish an adequate performance bond for the make-ready work it will perform, including work it will perform on facilities owned by existing attachers. The utility may mandate additional commercially reasonable requirements for contractors relating to issues of safety and reliability, but such requirements must be non-discriminatory, in writing, and publicly-available (*i.e.,* on the utility's website).

147. *Existing Pole Attachment Process Reforms.* The *Order* makes targeted changes to the Commission's existing pole attachment timeline for attachments that are not eligible for the OTMR process and attachers that prefer the existing process. These reforms include revising the definition of a complete pole attachment application and establishing a timeline for a utility's determination whether application is complete; requiring utilities to provide at least three business days' advance notice of any surveys to the new attacher; establishing a 30-day deadline for all make-ready work in the communications space; streamlining the utility's notice requirements; eliminating the 15-day utility make-ready period for communications space attachments; streamlining the utility's notice requirements; requiring utilities to provide detailed estimates and final invoices to new attachers regarding make-ready costs; enhancing the new attacher's self-help remedy by making the remedy available for surveys and make-ready work for all attachments anywhere on the pole in the event that the utility or the existing attachers fail to meet the required deadlines; and revising the contractor selection process for a new attacher's self-help work.

148. The *Order* retains the existing requirement that the pole attachment timeline begins upon utility receipt of a complete application to attach facilities to its poles, but revises the definition of a complete application to an application that provides the utility with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission, to begin to survey the affected poles. The *Order* then adopts the same timeline as set out in the OTMR-process for a utility to determine whether a pole attachment application is complete.

149. The *Order* also requires a utility to permit the new attacher and any existing attachers potentially affected by the new attachment to be present for any pole surveys. The utility must use commercially reasonable efforts to provide at least three business days' advance notice of any surveys to the new attacher and each existing attacher, including the date, time, location of the survey, and the name of the contractor performing the survey. The *Order* provides that the utility may meet the survey requirement of our existing timeline by electing to use surveys previously prepared on the poles in question by new attachers.

150. The *Order* amends the existing make-ready timeline by (1) reducing the deadlines for both simple and complex make-ready work from 60 to 30 days (and from 105 to 75 for large requests in the communications space); and (2) eliminating the optional 15-day extension for the utility to complete communications space make-ready work. The *Order* maintains the current make-ready deadline of 90 days (and 135 days for large requests) for make-ready above the communications space. However, for all attachments, the *Order* retains as a safeguard our existing rule allowing utilities to deviate from the make-ready timelines for good and sufficient cause when it is infeasible for the utility to complete make-ready work within the prescribed timeframe. Further, an existing attacher may deviate from the 30-day deadline for complex make-ready in the communications space (or the 75-day deadline in the case of larger orders) for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready by the deadline. An existing

attacher that so deviates must immediately notify, in writing, the new attacher and other affected existing attachers, identify the affected poles, and include a detailed explanation of the basis for the deviation and a new completion date, which cannot extend beyond 60 days from the date of the utility make-ready notice to existing attachers (or 105 days in the case of larger orders). The existing attacher cannot deviate from the complex make-ready time limits for a period longer than necessary to complete make-ready on the affected poles. If complex make-ready is not complete within 60 days from the date that the existing attacher sends notice to the new attacher, the new attacher can complete the work using a utility-approved contractor. Existing attachers must act in good faith in obtaining an extension. The *Order* also provides that when a utility provides the required make-ready notice to existing attachers, then it must provide the new attacher with a copy of the notice, plus the contact information of existing attachers to which the notices were sent, and thereafter the new attacher (rather than the utility) must take responsibility for encouraging and coordinating with existing attachers to ensure completion of make-ready work on a timely basis.

151. Expanding upon the Commission's existing make-ready cost estimate requirement for utilities, the *Order* requires a utility to detail all make-ready cost estimates and final invoices on a per-pole basis where requested by the new attacher. Fixed costs that are not necessarily charged on a per-pole basis may be submitted on a per-job basis, rather than a pole-by-pole basis, even where a pole-by-pole estimate or invoice is requested. As part of the detailed estimate, the utility is required to disclose to the new attacher its projected material, labor, and other related costs that form the basis of its estimate, including specifying what, if any costs, the utility is passing through to the new attacher from the utility's use of a third-party contractor. The utility must also provide documentation that is sufficient to determine the basis of all charges in the final invoice, including any material, labor and other related costs. If a utility completes make-ready and the final cost of the work does not differ from the estimate, it is not required to provide the new attacher with the invoice.

152. To increase broadband deployment, the *Order* modifies our existing pole attachment rules by extending a new attacher's self-help remedy for surveys and make-ready work to all attachments above the communications space, including the installation of wireless 5G small cells, when the utility or existing attachers have not met make-ready work deadlines. To address the safety concerns of utilities with regard to self-help work, the *Order* requires that new attachers, when invoking the self-help remedy, (1) use a utility-approved contractor to do the make-ready work; (2) provide no less than three business days advance notice for self-help surveys and five business days advance notice of when self-help make-ready work will be performed and a reasonable opportunity to be present; (3) provide notice to the utility and existing attachers no later than 15 days after make-ready is complete on a particular pole so that they have an opportunity to inspect the make-ready work. The advance notice must include the date and time of the work, nature of the work, and the name of the contractor being used by the new attacher. The new attacher is required to provide immediate notice to the affected utility and existing attachers if the new attacher's contractor damages equipment or causes an outage that is reasonably likely to interrupt the provision of service.

153. The *Order* adopts a contractor selection process for self-help that requires a new attacher electing self-help for simple work in the communications space to select a contractor from a utility-maintained list of qualified contractors that meet the same safety and reliability criteria as contractors authorized to perform OTMR work, where such a list is available. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualification requirements and the utility may not unreasonably withhold consent. If no list is available or no approved contractor is available within a reasonable time period, the new attacher must select a contractor that meets the same safety and reliability criteria as contractors authorized to perform OTMR work and any additional non-discriminatory, written, and publicly-available criteria relating to safety and reliability that the utility specifies. The utility may veto the new attacher's contractor selection so long as such veto is prompt, set forth in writing that describes the reasonable basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety and reliability. Additionally, the utility must offer another available, qualified contractor. For complex work and work above the communications space, the *Order* requires (1) the utility to make available and keep up-to-date reasonably sufficient list of contractors it authorizes to perform complex and non-communications space self-help surveys and make-ready work; and (2) the new attacher to choose a contractor from the utility's list. New and existing attachers may request that qualified contractors be added to the utility's list and that the utility may not unreasonably withhold its consent for such additions. A utility's decision to withhold consent must be prompt, set forth in writing that describes the reasonable basis for the rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety.

154. *Additional Pole Attachment Reforms.* The *Order* codifies the Commission's existing precedent that prohibits a pre-approval requirement for overlashing. In addition, the *Order* adopts a rule on overlashing that allows utilities to establish a reasonable 15-day advance notice requirement, and holds overlashers responsible for ensuring that their practices and equipment do not cause safety or engineering issues. If after receiving advance notice, a utility determines that an overlash create a capacity, safety, reliability, or engineering issue, it must provide specific documentation of the issue to the party seeking to overlash within the 15 day advance notice period and the party seeking to overlash must address any identified issues before continuing with the overlash either by modifying its proposal or by explaining why, in the party's view, a modification is unnecessary. The *Order* also provides that a utility may not charge a fee to the party seeking to overlash for the utility's review of the proposed overlash. The *Order* also includes a post-overlashing review process where an overlashing party is required to notify the affected utility within 15 days of completion of the overlash on a particular pole. The notice must provide the affected utility 90 days from receipt in which to inspect the overlash. The utility has 14 days after completion of its inspection to notify the overlashing party of any damage to its equipment caused by the overlash. It the utility discovers damage caused by the overlash on equipment belonging to the utility, then the utility must inform the overlashing party and provide adequate documentation of the damage. The *Order* sets forth that the utility may either (A) complete any necessary remedial work and bill the overlashing party for the reasonable

costs related to fixing the damage, or (B) require the overlashing party to fix the damage at its expense within 14 days following notice from the utility.

155. The *Order* provides that a utility may not prevent an attacher from overlashing because another attacher has not fixed a preexisting violation or require an existing attacher that overlashes its existing wires on a pole to fix preexisting violations caused by another existing attacher. The *Order* sets forth that new attachers are not responsible for the costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent such poles or third-party equipment were out of compliance prior to the new attachment. Further, utilities may not deny new attachers access to the pole solely based on safety concerns arising from a pre-existing violation. They also cannot delay completion of make-ready while the utility attempts to identify or collect from the party who should pay for correction of the preexisting violation. The *Order* also establishes a presumption that, for newly-negotiated and newly renewed pole attachment agreements between incumbent LECs and utilities, an incumbent LEC will receive comparable pole attachment rates, terms, and conditions as a similarly-situated telecommunications carrier or telecommunications attacher, unless the utility can rebut the presumption with clear and convincing evidence that the incumbent LEC receives net benefits under its pole attachment agreement with the utility, that materially advantage the incumbent LEC over other telecommunications attachers. If the presumption is rebutted, the pre-*2011 Pole Attachment Order* telecommunications carrier rate is the maximum rate that the utility and incumbent LEC may negotiate.

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

156. In this *Order,* the Commission modifies its pole attachment rules to improve the efficiency and transparency of the pole attachment process, as well as to increase access to infrastructure for certain types of broadband providers. Overall, we believe the actions in this document will reduce burdens on the affected carriers, including any small entities.

157. The *Order* also finds that adopting the OTMR process will reduce delays and costs for new attachers, enhance competition, improve public safety and reliability of networks, and accelerate broadband buildout. As detailed in the *Order,* the Commission rejects alternative proposals, such as ''right-touch, make-ready'' and NCTA's ''ASAP'' proposal—which merely modify the current framework. These approaches diffuse responsibility among parties that lack the new attacher's incentive to ensure that the work is done quickly, cost effectively, and properly. Further, these proposals fail to address the existing problems created by sequential make-ready, such as numerous separate climbs and construction stoppages in the public-rights-of-way.

158. As described in the *Order,* applying targeted changes to the existing pole attachment process, such as a more efficient pole attachment timeline, detailed and itemized estimates and final invoices on a per-pole basis, and an enhanced self-help remedy, will increase broadband deployment by reducing the number of unreasonable delays, and encouraging transparency and collaboration between all interested parties at an early stage in the pole attachment process. The *Order* also concluded that codifying the Commission's existing precedent prohibiting a pre-approval requirement for overlashing, and adopting a rule allowing utilities to require advance notice of overlashing will eliminate the industry uncertainty that currently exists regarding overlashing, a practice that is essential to broadband deployment. In addition, by eliminating outdated disparities between the pole attachment rates that incumbent carriers must pay compared to other similarly-situated cable and telecommunications attachers, the *Order* sought to increase incumbent LEC access to infrastructure by addressing the bargaining disparity between utilities and incumbent LECs.

G. Report to Congress

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

V. Procedural Matters

160. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this *Third Report and Order.* The FRFA is contained in Section IV above.

161. *Paperwork Reduction Act.* The *Third Report and Order* contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other federal agencies will be invited to comment on the new or modified 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), we seek specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

162. In this document, we have assessed the effects of reforming our pole attachment regulations and find that doing so will serve the public interest and is unlikely to directly affect businesses with fewer than 25 employees.

163. *Congressional Review Act.* The Commission will send a copy of the *Third 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).

VI. Ordering Clauses

164. Accordingly, *it is ordered* that, pursuant to Sections 1–4, 201, 224, 253, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 224, 253, 303(r), and 332, and Section 5(e) of the Administrative Procedure Act, 5 U.S.C. 554(e), this *Third Report and Order and Declaratory Ruling is adopted.*

165. *It is further ordered* that Part 1 of the Commission's rules *is amended* as set forth below.

166. *It is further ordered* that this *Third Report and Order shall be* effective 30 days after publication in the **Federal Register**, except for Sections III.A–E of this *Third Report and Order,* which will be effective on the latter of six months after release of this *Third Report and Order* or 30 days after the announcement in the **Federal Register** of Office of Management and Budget (OMB) approval of information collection requirements modified in this *Third Report and Order.* OMB approval is necessary for the information collection requirements in 47 CFR 1.1411(c)(1) and (3), (d) introductory text and (d)(3), (e)(3), (h)(2) and (3), (i)(1) and (2), (j)(1) through (5), 1.1412(a) and (b), 1.1413(b), and 1.1415(b).

167. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Third 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 Part 1

Administrative practice and procedure, Communications common carriers, Pole attachment complaint procedures, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority for part 1 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (j), 155, 157, 160, 201, 224, 225, 227, 303, 309, 310, 332, 1403, 1404, 1451, 1452, and 1455.

■ 2. Amend § 1.1402 by adding paragraphs (o) through (r) to read as follows:

§ 1.1402 Definitions.

* * * * *

(o) The term *make-ready* means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.

(p) The term *complex make-ready* means transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex.

(q) The term *simple make-ready* means make-ready where existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.

(r) The term *communications space* means the lower usable space on a utility pole, which typically is reserved for low-voltage communications equipment.

■ 3. Amend § 1.1403 by revising paragraphs (c) introductory text and (c)(3) to read as follows:

§ 1.1403 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay; and cable operator notice.

* * * * *

(c) A utility shall provide a cable television system or telecommunications carrier no less than 60 days written notice prior to:

* * * * *

(3) Any modification of facilities by the utility other than make-ready noticed pursuant to § 1.1411(e), routine maintenance, or modification in response to emergencies.

* * * * *

■ 4. Amend § 1.1411 by:

■ a. Revising paragraphs (a), (c), and (d) introductory text and (d)(2);

■ b. Adding paragraphs (d)(3) and (4);

■ c. Revising paragraphs (e)(1) and (2);

■ d. Adding paragraph (e)(3);

■ e. Revising paragraphs (f), (g)(1), (g)(4) and (5), (h), and (i); and

■ f. Adding paragraph (j).

The revisions and additions read as follows:

§ 1.1411 Timeline for access to utility poles.

(a) *Definitions.*

(1) The term ''attachment'' means any attachment by a cable television system or provider of telecommunications service to a pole owned or controlled by a utility.

(2) The term ''new attacher'' means a cable television system or telecommunications carrier requesting to attach new or upgraded facilities to a pole owned or controlled by a utility.

(3) The term ''existing attacher'' means any entity with equipment on a utility pole.

* * * * *

(c) *Application review and survey*—(1) *Application completeness.* A utility shall review a new attacher's attachment application for completeness before reviewing the application on its merits. A new attacher's attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in requirements that are available in writing publicly at the time of submission of the application, to begin to survey the affected poles.

(i) A utility shall determine within 10 business days after receipt of a new attacher's attachment application whether the application is complete and notify the attacher of that decision. If the utility does not respond within 10 business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in its response, then the application is deemed complete. If the utility timely notifies the new attacher that its attachment application is not complete, then it must specify all reasons for finding it incomplete.

(ii) Any resubmitted application need only address the utility's reasons for finding the application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The new attacher may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility's review.

(2) *Application review on the merits.* A utility shall respond to the new attacher either by granting access or, consistent with § 1.1403(b), denying access within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of larger orders as described in paragraph (g) of this section). A utility may not deny the new attacher pole access based on a preexisting violation not caused by any prior attachments of the new attacher.

(3) *Survey.* (i) A utility shall complete a survey of poles for which access has been requested within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of larger orders as described in paragraph (g) of this section).

(ii) A utility shall permit the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of the utility's survey. A utility shall use commercially reasonable efforts to provide the affected attachers with advance notice of not less than 3 business days of any field inspection as part of the survey and shall provide the date, time, and location of the survey, and name of the contractor performing the survey.

(iii) Where a new attacher has conducted a survey pursuant to

paragraph (j)(3) of this section, a utility can elect to satisfy its survey obligations in this paragraph by notifying affected attachers of its intent to use the survey conducted by the new attacher pursuant to paragraph (j)(3) of this section and by providing a copy of the survey to the affected attachers within the time period set forth in paragraph (c)(3)(i) of this section. A utility relying on a survey conducted pursuant to paragraph (j)(3) of this section to satisfy all of its obligations under paragraph (c)(3)(i) of this section shall have 15 days to make such a notification to affected attachers rather than a 45 day survey period.

(d) *Estimate.* Where a new attacher's request for access is not denied, a utility shall present to a new attacher a detailed, itemized estimate, on a pole-by-pole basis where requested, of charges to perform all necessary make-ready within 14 days of providing the response required by paragraph (c) of this section, or in the case where a new attacher has performed a survey, within 14 days of receipt by the utility of such survey. Where a pole-by-pole estimate is requested and the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility present charges on a per-job basis rather than present a pole-by-pole estimate for those fixed cost charges. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate.

* * * * *

(2) A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except it may not accept after the estimate is withdrawn.

(3) Final invoice: After the utility completes make-ready, if the final cost of the work differs from the estimate, it shall provide the new attacher with a detailed, itemized final invoice of the actual make-ready charges incurred, on a pole-by-pole basis where requested, to accommodate the new attacher's attachment. Where a pole-by-pole estimate is requested and the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility may present charges on a per-job basis rather than present a pole-by-pole invoice for those fixed cost charges. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate.

(4) A utility may not charge a new attacher to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards guidelines if such poles, attachments, or third-party equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.

(e) * * *

(1) For attachments in the communications space, the notice shall:

(i) Specify where and what make-ready will be performed.

(ii) Set a date for completion of make-ready in the communications space that is no later than 30 days after notification is sent (or up to 75 days in the case of larger orders as described in paragraph (g) of this section).

(iii) State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

(iv) State that if make-ready is not completed by the completion date set by the utility in paragraph (e)(1)(ii) in this section, the new attacher may complete the make-ready specified pursuant to paragraph (e)(1)(i) in this section.

(v) State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(2) For attachments above the communications space, the notice shall:

(i) Specify where and what make-ready will be performed.

(ii) Set a date for completion of make-ready that is no later than 90 days after notification is sent (or 135 days in the case of larger orders, as described in paragraph (g) of this section).

(iii) State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

(iv) State that the utility may assert its right to 15 additional days to complete make-ready.

(v) State that if make-ready is not completed by the completion date set by the utility in paragraph (e)(2)(ii) in this section (or, if the utility has asserted its 15-day right of control, 15 days later), the new attacher may complete the make-ready specified pursuant to paragraph (e)(1)(i) of this section.

(vi) State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(3) Once a utility provides the notices described in this section, it then must provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage their completion of make-ready by the dates set forth by the utility in paragraph (e)(1)(ii) of this section for communications space attachments or paragraph (e)(2)(ii) of this section for attachments above the communications space.

(f) A utility shall complete its make-ready in the communications space by the same dates set for existing attachers in paragraph (e)(1)(ii) of this section or its make-ready above the communications space by the same dates for existing attachers in paragraph (e)(2)(ii) of this section (or if the utility has asserted its 15-day right of control, 15 days later).

(g) * * *

(1) A utility shall apply the timeline described in paragraphs (c) through (e) of this section to all requests for attachment up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state.

* * * * *

(4) A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(5) A utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another.

(h) *Deviation from the time limits specified in this section.* (1) A utility may deviate from the time limits specified in this section before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment.

(2) A utility may deviate from the time limits specified in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits specified in this section. A utility that so deviates shall immediately notify, in writing, the new attacher and affected existing attachers and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The utility shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination when it returns to routine operations. A utility cannot delay completion of make-ready because of a preexisting violation on an affected pole not caused by the new attacher.

(3) An existing attacher may deviate from the time limits specified in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the time limits specified in this section. An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond 60 days from the date the notice described in paragraph (e)(1) of this section is sent by the utility (or up to 105 days in the case of larger orders described in paragraph (g) of this section). The existing attacher shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles.

(i) *Self-help remedy*—(1) *Surveys.* If a utility fails to complete a survey as specified in paragraph (c)(3)(i) of this section, then a new attacher may conduct the survey in place of the utility and, as specified in § 1.1412, hire a contractor to complete a survey.

(i) A new attacher shall permit the affected utility and existing attachers to be present for any field inspection conducted as part of the new attacher's survey.

(ii) A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 3 business days of a field inspection as part of any survey it conducts. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacher.

(2) *Make-ready.* If make-ready is not complete by the date specified in paragraph (e) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers, and, as specified in § 1.1412, hire a contractor to complete the make-ready.

(i) A new attacher shall permit the affected utility and existing attachers to be present for any make-ready. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 5 days of the impending make-ready. The notice shall include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacher.

(ii) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher. Upon receiving notice from the new attacher, the utility or existing attacher may either:

(A) Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or

(B) Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.

(iii) A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready. The affected utility and existing attachers have 14 days after completion of their inspection to notify the new attacher of any damage or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher of such damage or code violations, then the utility or existing attacher shall provide adequate documentation of the damage or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher.

(3) *Pole replacements.* Self-help shall not be available for pole replacements.

(j) One-*touch make-ready option.* For attachments involving simple make-ready, new attachers may elect to proceed with the process described in this paragraph in lieu of the attachment process described in paragraphs (c) through (f) and (i) of this section.

(1) *Attachment application.* (i) A new attacher electing the one-touch make-ready process must elect the one-touch make-ready process in writing in its attachment application and must identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines whether the make-ready requested in an attachment application is simple.

(ii) The utility shall review the new attacher's attachment application for completeness before reviewing the application on its merits. An attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission of the application, to make an informed decision on the application.

(A) A utility has 10 business days after receipt of a new attacher's attachment application in which to determine whether the application is complete and notify the attacher of that decision. If the utility does not respond within 10 business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in the application, then the application is deemed complete.

(B) If the utility timely notifies the new attacher that its attachment application is not complete, then the utility must specify all reasons for finding it incomplete. Any resubmitted application need only address the utility's reasons for finding the application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The applicant may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility's review.

(2) *Application review on the merits.* The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within 15 days of the utility's receipt of a complete application (or within 30 days in the case of larger orders as described in paragraph (g) of this section).

(i) If the utility denies the application on its merits, then its decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

(ii) Within the 15-day application review period (or within 30 days in the case of larger orders as described in paragraph (g) of this section), a utility

may object to the designation by the new attacher's contractor that certain make-ready is simple. If the utility objects to the contractor's determination that make-ready is simple, then it is deemed complex. The utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relate to a determination that the make-ready is not simple.

(3) *Surveys.* The new attacher is responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as specified in § 1.1412(b).

(i) The new attacher shall permit the utility and any existing attachers on the affected poles to be present for any field inspection conducted as part of the new attacher's surveys. The new attacher shall use commercially reasonable efforts to provide the utility and affected existing attachers with advance notice of not less than 3 business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys, and name of the contractor performing the surveys.

(ii) [Reserved].

(4) *Make-ready.* If the new attacher's attachment application is approved and if it has provided 15 days prior written notice of the make-ready to the affected utility and existing attachers, the new attacher may proceed with make-ready using a contractor in the manner specified for simple make-ready in § 1.1412(b).

(i) The prior written notice shall include the date and time of the make-ready, a description of the work involved, the name of the contractor being used by the new attacher, and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready.

(ii) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher. Upon receiving notice from the new attacher, the utility or existing attacher may either:

(A) Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or

(B) Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.

(iii) In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then that specific make-ready must be halted and the determining party must provide immediate notice to the other party of its determination and the impacted poles. The affected make-ready shall then be governed by paragraphs (d) through (i) of this section and the utility shall provide the notice required by paragraph (e) of this section as soon as reasonably practicable.

(5) *Post-make-ready timeline.* A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready. The affected utility and existing attachers have 14 days after completion of their inspection to notify the new attacher of any damage or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher of such damage or code violations, then the utility or existing attacher shall provide adequate documentation of the damage or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher.

■ 5. Amend § 1.1412 by revising paragraphs (a), (b), and (c) to read as follows:

§ 1.1412 Contractors for surveys and make-ready.

(a) *Contractors for self-help complex and above the communications space make-ready.* A utility shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform self-help surveys and make-ready that is complex and self-help surveys and make-ready that is above the communications space on its poles. The new attacher must use a contractor from this list to perform self-help work that is complex or above the communications space. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in paragraphs (c)(1) through (5) of this section and the utility may not unreasonably withhold its consent.

(b) *Contractors for simple work.* A utility may, but is not required to, keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and simple make-ready. If a utility provides such a list, then the new attacher must choose a contractor from the list to perform the work. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in paragraphs (c)(1) through (5) of this section and the utility may not unreasonably withhold its consent.

(1) If the utility does not provide a list of approved contractors for surveys or simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that meets the requirements in paragraph (c) of this section. When choosing a contractor that is not on a utility-provided list, the new attacher must certify to the utility that its contractor meets the minimum qualifications described in paragraph (c) of this section when providing notices required by § 1.1411(i)(1)(ii), (i)(2)(i), (j)(3)(i), and (j)(4).

(2) The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but such disqualification must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in paragraph (c) of this section or to meet the utility's publicly available and commercially reasonable safety or reliability standards. The utility must provide notice of its contractor objection within the notice periods provided by the new attacher in § 1.1411(i)(1)(ii), (i)(2)(i), (j)(3)(i), and (j)(4) and in its objection must identify at least one available qualified contractor.

(c) *Contractor minimum qualification requirements.* Utilities must ensure that contractors on a utility-provided list, and new attachers must ensure that contractors they select pursuant to paragraph (b)(1) of this section, meet the following minimum requirements:

(1) The contractor has agreed to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NESC) guidelines;

(2) The contractor has acknowledged that it knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility;

(3) The contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational and

Safety Health Administration (OSHA) rules;

(4) The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available; and

(5) The contractor is adequately insured or will establish an adequate performance bond for the make-ready it will perform, including work it will perform on facilities owned by existing attachers.

* * * * *

■ 6. Revise § 1.1413 to read as follows:

§ 1.1413 Complaints by incumbent local exchange carriers.

(a) A complaint by an incumbent local exchange carrier (as defined in 47 U.S.C. 251(h)) or an association of incumbent local exchange carriers alleging that it has been denied access to a pole, duct, conduit, or right-of-way owned or controlled by a local exchange carrier or that a utility's rate, term, or condition for a pole attachment is not just and reasonable shall follow the same complaint procedures specified for other pole attachment complaints in this part.

(b) In complaint proceedings challenging utility pole attachment rates, terms, and conditions for pole attachment contracts entered into or renewed after the effective date of this section, there is a presumption that an incumbent local exchange carrier (or an association of incumbent local exchange carriers) is similarly situated to an attacher that is a telecommunications carrier (as defined in 47 U.S.C. 251(a)(5)) or a cable television system providing telecommunications services for purposes of obtaining comparable rates, terms, or conditions. In such complaint proceedings challenging pole attachment rates, there is a presumption that incumbent local exchange carriers (or an association of incumbent local exchange carriers) may be charged no higher than the rate determined in accordance with § 1.1406(e)(2). A utility can rebut either or both of the two presumptions in this paragraph (b) with clear and convincing evidence that the incumbent local exchange carrier receives benefits under its pole attachment agreement with a utility that materially advantages the incumbent local exchange carrier over other telecommunications carriers or cable television systems providing telecommunications services on the same poles.

■ 7. Add § 1.1415 to read as follows:

§ 1.1415 Overlashing.

(a) *Prior approval.* A utility shall not require prior approval for:

(1) An existing attacher that overlashes its existing wires on a pole; or

(2) For third party overlashing of an existing attachment that is conducted with the permission of an existing attacher.

(b) *Preexisting violations.* A utility may not prevent an attacher from overlashing because another existing attacher has not fixed a preexisting violation. A utility may not require an existing attacher that overlashes its existing wires on a pole to fix preexisting violations caused by another existing attacher.

(c) *Advance notice.* A utility may require no more than 15 days' advance notice of planned overlashing. If a utility requires advance notice for overlashing, then the utility must provide existing attachers with advance written notice of the notice requirement or include the notice requirement in the attachment agreement with the existing attacher. If after receiving advance notice, the utility determines that an overlash would create a capacity, safety, reliability, or engineering issue, it must provide specific documentation of the issue to the party seeking to overlash within the 15 day advance notice period and the party seeking to overlash must address any identified issues before continuing with the overlash either by modifying its proposal or by explaining why, in the party's view, a modification is unnecessary. A utility may not charge a fee to the party seeking to overlash for the utility's review of the proposed overlash.

(d) *Overlashers' responsibility.* A party that engages in overlashing is responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices. If damage to a pole or other existing attachment results from overlashing or overlashing work causes safety or engineering standard violations, then the overlashing party is responsible at its expense for any necessary repairs.

(e) *Post-overlashing review.* An overlashing party shall notify the affected utility within 15 days of completion of the overlash on a particular pole. The notice shall provide the affected utility at least 90 days from receipt in which to inspect the overlash. The utility has 14 days after completion of its inspection to notify the overlashing party of any damage or code violations to its equipment caused by the overlash. If the utility discovers damage or code violations caused by the overlash on equipment belonging to the utility, then the utility shall inform the overlashing party and provide adequate documentation of the damage or code violations. The utility may either complete any necessary remedial work and bill the overlashing party for the reasonable costs related to fixing the damage or code violations or require the overlashing party to fix the damage or code violations at its expense within 14 days following notice from the utility.

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Part IV

The President

Executive Order 13848—Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election

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Presidential Documents

Title 3—

The President

Executive Order 13848 of September 12, 2018

Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, DONALD J. TRUMP, President of the United States of America, find that the ability of persons located, in whole or in substantial part, outside the United States to interfere in or undermine public confidence in United States elections, including through the unauthorized accessing of election and campaign infrastructure or the covert distribution of propaganda and disinformation, constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States. Although there has been no evidence of a foreign power altering the outcome or vote tabulation in any United States election, foreign powers have historically sought to exploit America's free and open political system. In recent years, the proliferation of digital devices and internet-based communications has created significant vulnerabilities and magnified the scope and intensity of the threat of foreign interference, as illustrated in the 2017 Intelligence Community Assessment. I hereby declare a national emergency to deal with this threat.

Accordingly, I hereby order:

Section 1. (a) Not later than 45 days after the conclusion of a United States election, the Director of National Intelligence, in consultation with the heads of any other appropriate executive departments and agencies (agencies), shall conduct an assessment of any information indicating that a foreign government, or any person acting as an agent of or on behalf of a foreign government, has acted with the intent or purpose of interfering in that election. The assessment shall identify, to the maximum extent ascertainable, the nature of any foreign interference and any methods employed to execute it, the persons involved, and the foreign government or governments that authorized, directed, sponsored, or supported it. The Director of National Intelligence shall deliver this assessment and appropriate supporting information to the President, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, and the Secretary of Homeland Security.

(b) Within 45 days of receiving the assessment and information described in section 1(a) of this order, the Attorney General and the Secretary of Homeland Security, in consultation with the heads of any other appropriate agencies and, as appropriate, State and local officials, shall deliver to the President, the Secretary of State, the Secretary of the Treasury, and the Secretary of Defense a report evaluating, with respect to the United States election that is the subject of the assessment described in section 1(a):

(i) the extent to which any foreign interference that targeted election infrastructure materially affected the security or integrity of that infrastructure, the tabulation of votes, or the timely transmission of election results; and

(ii) if any foreign interference involved activities targeting the infrastructure of, or pertaining to, a political organization, campaign, or candidate, the

extent to which such activities materially affected the security or integrity of that infrastructure, including by unauthorized access to, disclosure or threatened disclosure of, or alteration or falsification of, information or data.

The report shall identify any material issues of fact with respect to these matters that the Attorney General and the Secretary of Homeland Security are unable to evaluate or reach agreement on at the time the report is submitted. The report shall also include updates and recommendations, when appropriate, regarding remedial actions to be taken by the United States Government, other than the sanctions described in sections 2 and 3 of this order.

(c) Heads of all relevant agencies shall transmit to the Director of National Intelligence any information relevant to the execution of the Director's duties pursuant to this order, as appropriate and consistent with applicable law. If relevant information emerges after the submission of the report mandated by section 1(a) of this order, the Director, in consultation with the heads of any other appropriate agencies, shall amend the report, as appropriate, and the Attorney General and the Secretary of Homeland Security shall amend the report required by section 1(b), as appropriate.

(d) Nothing in this order shall prevent the head of any agency or any other appropriate official from tendering to the President, at any time through an appropriate channel, any analysis, information, assessment, or evaluation of foreign interference in a United States election.

(e) If information indicating that foreign interference in a State, tribal, or local election within the United States has occurred is identified, it may be included, as appropriate, in the assessment mandated by section 1(a) of this order or in the report mandated by section 1(b) of this order, or submitted to the President in an independent report.

(f) Not later than 30 days following the date of this order, the Secretary of State, the Secretary of the Treasury, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence shall develop a framework for the process that will be used to carry out their respective responsibilities pursuant to this order. The framework, which may be classified in whole or in part, shall focus on ensuring that agencies fulfill their responsibilities pursuant to this order in a manner that maintains methodological consistency; protects law enforcement or other sensitive information and intelligence sources and methods; maintains an appropriate separation between intelligence functions and policy and legal judgments; ensures that efforts to protect electoral processes and institutions are insulated from political bias; and respects the principles of free speech and open debate.

Sec. 2. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any foreign person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and the Secretary of Homeland Security:

(i) to have directly or indirectly engaged in, sponsored, concealed, or otherwise been complicit in foreign interference in a United States election;

(ii) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any activity described in subsection (a)(i) of this section or any person whose property and interests in property are blocked pursuant to this order; or

(iii) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property or interests in property are blocked pursuant to this order.

(b) Executive Order 13694 of April 1, 2015, as amended by Executive Order 13757 of December 28, 2016, remains in effect. This order is not

intended to, and does not, serve to limit the Secretary of the Treasury's discretion to exercise the authorities provided in Executive Order 13694. Where appropriate, the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, may exercise the authorities described in Executive Order 13694 or other authorities in conjunction with the Secretary of the Treasury's exercise of authorities provided in this order.

(c) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order.

Sec. 3. Following the transmission of the assessment mandated by section 1(a) and the report mandated by section 1(b):

(a) the Secretary of the Treasury shall review the assessment mandated by section 1(a) and the report mandated by section 1(b), and, in consultation with the Secretary of State, the Attorney General, and the Secretary of Homeland Security, impose all appropriate sanctions pursuant to section 2(a) of this order and any appropriate sanctions described in section 2(b) of this order; and

(b) the Secretary of State and the Secretary of the Treasury, in consultation with the heads of other appropriate agencies, shall jointly prepare a recommendation for the President as to whether additional sanctions against foreign persons may be appropriate in response to the identified foreign interference and in light of the evaluation in the report mandated by section 1(b) of this order, including, as appropriate and consistent with applicable law, proposed sanctions with respect to the largest business entities licensed or domiciled in a country whose government authorized, directed, sponsored, or supported election interference, including at least one entity from each of the following sectors: financial services, defense, energy, technology, and transportation (or, if inapplicable to that country's largest business entities, sectors of comparable strategic significance to that foreign government). The recommendation shall include an assessment of the effect of the recommended sanctions on the economic and national security interests of the United States and its allies. Any recommended sanctions shall be appropriately calibrated to the scope of the foreign interference identified, and may include one or more of the following with respect to each targeted foreign person:

(i) blocking and prohibiting all transactions in a person's property and interests in property subject to United States jurisdiction;

(ii) export license restrictions under any statute or regulation that requires the prior review and approval of the United States Government as a condition for the export or re-export of goods or services;

(iii) prohibitions on United States financial institutions making loans or providing credit to a person;

(iv) restrictions on transactions in foreign exchange in which a person has any interest;

(v) prohibitions on transfers of credit or payments between financial institutions, or by, through, or to any financial institution, for the benefit of a person;

(vi) prohibitions on United States persons investing in or purchasing equity or debt of a person;

(vii) exclusion of a person's alien corporate officers from the United States;

(viii) imposition on a person's alien principal executive officers of any of the sanctions described in this section; or

(ix) any other measures authorized by law.

Sec. 4. I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by,

to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by section 2 of this order.

Sec. 5. The prohibitions in section 2 of this order include the following:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 6. I hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of aliens whose property and interests in property are blocked pursuant to this order would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants or nonimmigrants, of such persons. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 7. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 8. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person (including a foreign person) in the United States;

(d) the term ''election infrastructure'' means information and communications technology and systems used by or on behalf of the Federal Government or a State or local government in managing the election process, including voter registration databases, voting machines, voting tabulation equipment, and equipment for the secure transmission of election results;

(e) the term ''United States election'' means any election for Federal office held on, or after, the date of this order;

(f) the term ''foreign interference,'' with respect to an election, includes any covert, fraudulent, deceptive, or unlawful actions or attempted actions of a foreign government, or of any person acting as an agent of or on behalf of a foreign government, undertaken with the purpose or effect of influencing, undermining confidence in, or altering the result or reported result of, the election, or undermining public confidence in election processes or institutions;

(g) the term ''foreign government'' means any national, state, provincial, or other governing authority, any political party, or any official of any governing authority or political party, in each case of a country other than the United States;

(h) the term ''covert,'' with respect to an action or attempted action, means characterized by an intent or apparent intent that the role of a foreign government will not be apparent or acknowledged publicly; and

(i) the term ''State'' means the several States or any of the territories, dependencies, or possessions of the United States.

Sec. 9. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence

in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 2 of this order.

Sec. 10. Nothing in this order shall prohibit transactions for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof.

Sec. 11. The Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may re-delegate any of these functions to other officers within the Department of the Treasury consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 12. The Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 13. This order shall be implemented consistent with 50 U.S.C. 1702(b)(1) and (3).

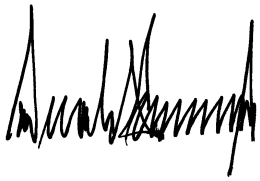
Sec. 14. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
September 12, 2018.

[FR Doc. 2018–20203
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