AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 83 Wednesday,
No. 196 October 10, 2018

Pages 50803–51300

OFFICE OF THE FEDERAL REGISTER

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

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

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

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

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

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

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

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

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

Printed on recycled paper.

Contents

Federal Register

Vol. 83, No. 196

Wednesday, October 10, 2018

Agriculture Department
See Animal and Plant Health Inspection Service

Animal and Plant Health Inspection Service
NOTICES
Environmental Assessments; Availability, etc.:
Field Testing of a Swine Influenza Vaccine, DNA, 50884–50885
Oral Rabies Vaccine Trial, 50885

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50933–50936

Centers for Medicare & Medicaid Services
NOTICES
Privacy Act; Systems of Records, 50936

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50936–50938

Commerce Department
See Economic Development Administration
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Comptroller of the Currency
RULES
Margin and Capital Requirements for Covered Swap Entities, 50805–50813

Defense Department
See Navy Department
NOTICES
Meetings:
Defense Innovation Board, 50901–50902
Defense Policy Board, 50901

Economic Development Administration
NOTICES
Trade Adjustment Assistance; Petitions, 50885–50886

Education Department
NOTICES
Privacy Act; Matching Programs, 50903–50905

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Energy Conservation Program:
Extension of Waiver to Apple, Inc. From Department of Energy External Power Supply Test Procedure, 50905–50907
Extension of Waiver to Panasonic Appliances Refrigeration Systems Corp. of America From Department of Energy Consumer Refrigerator and Refrigerator-Freezer Test Procedures, 50907–50909
Meetings:
High Energy Physics Advisory Panel, 50905
Requests for Comments:
Interpretation of High-Level Radioactive Waste, 50909–50911

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Illinois; Permit-by-Rule Provisions, 50854–50857
Minnesota; Infrastructure SIP Requirements for 2012 PM2.5 NAAQS; Multistate Transport, 50849–50851
Pennsylvania; Interstate Transport Requirements for 2012 Fine Particulate Matter Standard, 50851–50854
Significant New Use Rules on Certain Chemical Substances, 50838–50849
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
North Dakota; Revisions to Infrastructure Requirements for All National Ambient Air Quality Standards; Carbon Monoxide ; Lead; Nitrogen Dioxide; Ozone; Particle Pollution; Sulfur Dioxide; Recodification, 50865–50867
Oregon; Removal of Obsolete Regulations, 50867–50868
Significant New Use Rules on Certain Chemical Substances, 50872
State Hazardous Waste Management Program:
Michigan, 50869–50872
NOTICES
Meetings:
Pesticide Program Dialogue Committee, 50921–50922

Farm Credit Administration
RULES
Margin and Capital Requirements for Covered Swap Entities, 50805–50813

Federal Aviation Administration
RULES
Airworthiness Directives:
CFM International S.A. Turbofan Engines, 50818–50820
General Electric Company Turbofan Engines, 50814–50816
GEVEN S.p.A. Seat Assemblies, Type D1–02 and D1–03, 50816–50818
Hoffmann GmbH and Co. KG Propellers, 50821–50822
Amendment of Class D and Class E Airspace; and Establishment of Class E Airspace:
Pensacola, FL; and Milton, FL, 50823
PROPOSED RULES
Airworthiness Directives:
Pratt and Whitney Division (PW) Turbofan Engines, 50862–50864
Pratt and Whitney Turbofan Engines, 50860–50862

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50922–50926

Federal Deposit Insurance Corporation
RULES
Margin and Capital Requirements for Covered Swap Entities, 50805–50813
NOTICES
Meetings:
Advisory Committee on Economic Inclusion, 50926

Federal Emergency Management Agency
NOTICES
Major Disaster and Related Determinations:
Commonwealth of Northern Mariana Islands, 50947
Guam, 50949
New York, 50948
Major Disaster Declarations:
California; Amendment No. 3, 50949
Hawaii; Amendment No. 4, 50947–50948
North Carolina; Amendment No. 2, 50948–50949

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50919–50920
Combined Filings, 50911–50912, 50914–50919
Complaints:
Tipmont Rural Electric Member Coop. v. Wabash Valley Power Authority, 50916–50917
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Flanders Energy, LLC, 50920–50921
Mankato Energy Center II, LLC, 50916
Sweetwater Solar, LLC, 50913
Petitions for Declaratory Orders:
NorthWestern Corp., 50914
Petitions for Enforcement:
Red Lake Falls Community Hybrid, LLC, 50916
Records Governing Off-the-Record Communications, 50921
Requests for Waivers:
Andeavor Field Services, LLC, 50912–50913
Staff Attendances, 50913–50914

Federal Housing Finance Agency
RULES
Margin and Capital Requirements for Covered Swap Entities, 50805–50813

Federal Motor Carrier Safety Administration
NOTICES
Meetings; Sunshine Act, 51042

Federal Reserve System
RULES
Margin and Capital Requirements for Covered Swap Entities, 50805–50813
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 50926–50927

Federal Retirement Thrift Investment Board
NOTICES
Senior Executive Service Performance Review Board, 50927

Federal Trade Commission
NOTICES
Proposed Consent Agreements:
IDmission, LLC, 50930–50932
mResource, LLC, 50932–50933
SmartStart Employment Screening, Inc., 50928–50930
VenPath, Inc., 50927–50928

Fish and Wildlife Service
NOTICES
Endangered and Threatened Species:
Recovery Permit Applications, 50951–50955

Food and Drug Administration
NOTICES
Guidance:
Assessing Adhesion With Transdermal and Topical Delivery Systems for Abbreviated New Drug Applications, 50942–50943
Assessing the Irritation and Sensitization Potential of Transdermal and Topical Delivery Systems for Abbreviated New Drug Applications, 50945–50946
Product-Specific Guidances, 50943–50945
International Drug Scheduling:
Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; ADB-FUBINACA; ADB-CHMINACA; Cyclopropyl Fentanyl; Methoxyacetyl Fentanyl; para-Fluoro Butyrfentanyl; Tramadol; Pregabalin; Cannabis Plant and Resin; and Eight Additional Substances, 50938–50942

Foreign Assets Control Office
NOTICES
Blocking or Unblocking of Persons and Properties, 51047–51068

Foreign–Trade Zones Board
NOTICES
Production Activities:
Patheon Softgels; Foreign-Trade Zone 230; Greensboro, NC, 50886

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See Federal Emergency Management Agency
PROPOSED RULES
Inadmissibility on Public Charge Grounds, 51114–51296
NOTICES
Determinations:
Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended, 50949–50951

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
PROPOSED RULES
Availability of Additional Guidance Under Section 965, 50864
Guidance:
Global Intangible Low-Taxed Income, 51072–51111
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 51068–51069

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Lined Paper Products From India, 50886–50888, 50896–50897
Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Mexico, 50888–50891
Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Republic of Korea, 50892–50894
Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China, 50891–50892
Stainless Steel Butt-Weld Pipe Fittings From the Philippines, 50894–50896

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Sodium Hexametaphosphate From China, 50958–50959

Land Management Bureau
NOTICES
Plats of Surveys:
Alaska; Correction, 50956–50957
Montana, 50957–50958
Public Land Orders:
Partial Revocation of Withdrawal Established by Secretarial Orders, Klamath River Project, CA, 50956
Realty Actions:
Classification for Lease and/or Conveyance for Recreation and Public Purposes of Public Lands for Elementary School in Southwest Portion of Las Vegas Valley, Clark County, NV, 50955
Reopen Comment Period on Withdrawal Application and of Public Meeting in Methow Valley, WA, 50957

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 50959–50961

National Archives and Records Administration
NOTICES
Records Schedules, 50961–50962

National Credit Union Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Credit Union Service Organizations, 50962–50963

National Highway Traffic Safety Administration
PROPOSED RULES
Pilot Program for Collaborative Research on Motor Vehicles with High or Full Driving Automation, 50872–50883

National Institute of Standards and Technology
NOTICES
Requests for Information:
Measurement Science Needs for Water Use Efficiency and Water Quality in Premise Plumbing Systems, 50897–50899

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 50946–50947

National Oceanic and Atmospheric Administration
RULES
Atlantic Highly Migratory Species:
Atlantic Bluefin Tuna Fisheries, 50857–50859
NOTICES
Meetings:
Fisheries of the Caribbean; Southeast Data, Assessment, and Review, 50899–50900
New England Fishery Management Council, 50900–50901
Pacific Fishery Management Council, 50900

National Park Service
NOTICES
Minor Boundary Revision at Harpers Ferry National Historical Park, 50958

National Science Foundation
NOTICES
Meetings; Sunshine Act, 50963

Navy Department
NOTICES
Exclusive Patent Licenses; Approvals:
Aviation Devices and Electronic Components, LLC, 50903
CHEMEON Surface Technology, LLC, 50903
Meetings:
Naval Academy Board of Visitors, 50902–50903

Nuclear Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50969–50970
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certification of Medical Examination by Facility Licensee, 50963–50964
Personal Qualification Statement—Licensee, 50970–50971
Dry Storage and Transportation of High Burnup Spent Nuclear Fuel, 50965–50966
Environmental Assessments; Availability, etc.:
NorthStar Group Services, Inc. on behalf of Entergy Nuclear Vermont Yankee, LLC; Vermont Yankee Nuclear Power Station, 50966–50969
License Applications; Amendments:
NexEra Energy Duane Arnold, LLC; Duane Arnold Energy Center, 50964–50965
Vistra Operations Co., LLC; Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2, 50971–50975
Meetings; Sunshine Act, 50966

Personnel Management Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50975

Pipeline and Hazardous Materials Safety Administration
NOTICES
Special Permit Applications:
Hazardous Materials, 51042–51045

Presidential Documents
PROCLAMATIONS
Special Observances:
German-American Day (Proc. 9799), 51297–51300
National Manufacturing Day (Proc. 9798), 50803–50804

Presidio Trust
RULES
Freedom of Information Act; Privacy Act; Federal Tort Claims Act; Debt Collection Regulations, 50826–50838

Securities and Exchange Commission
NOTICES
Meetings:
Fixed Income Market Structure Advisory Committee, 51026–51027
Self-Regulatory Organizations; Proposed Rule Changes:
Miami International Securities Exchange, LLC, 50976–50980
MIAX PEARL, LLC, 51022–51026
Nasdaq BX, Inc., 50999–51015
Nasdaq PHLX, LLC, 50981–50999
Nasdaq Stock Market, LLC, 51015–51020
New York Stock Exchange, LLC, 50980–50981, 51020–51022
NYSE Arca, Inc., 51027–51030
NYSE National, Inc., 51030–51040

Small Business Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 51040–51041

State Department
RULES
Organization, 50823–50826

Surface Transportation Board
NOTICES
Abandonment Exemptions:
Norfolk Southern Railway Co., Detroit, MI, 51041–51042

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration
See Pipeline and Hazardous Materials Safety Administration
NOTICES
Meetings:
National Advisory Committee on Travel and Tourism Infrastructure, 51045–51047

Treasury Department
See Comptroller of the Currency
See Foreign Assets Control Office
See Internal Revenue Service

Separate Parts In This Issue

Part II
Treasury Department, Internal Revenue Service, 51072–51111

Part III
Homeland Security Department, 51114–51296

Part IV
Presidential Documents, 51297–51300

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

9798 50803
9799 51299

8 CFR

Proposed Rules:

103 51114
212 51114
213 51114
214 51114
245 51114
248 51114

12 CFR

45 50805
237 50805
349 50805
624 50805
1221 50805

14 CFR

39 (4 documents) 50814, 50816, 50818, 50821
71 50823

Proposed Rules:

39 (2 documents) 50860, 50862

22 CFR

5 50823

26 CFR

Proposed Rules:

1 (2 documents) 50864, 51072

36 CFR

1007 50826
1008 50826
1009 50826
1011 50826

40 CFR

9 50838
52 (3 documents) 50849, 50851, 50854
721 50838

Proposed Rules:

52 (2 documents) 50865, 50867
271 50869
721 50872

49 CFR

Proposed Rules:

555 50872
571 50872
591 50872

50 CFR

635 50857

Federal Register
Vol. 83, No. 196
Wednesday, October 10, 2018

Presidential Documents

Title 3—

The President

Proclamation 9798 of October 4, 2018

National Manufacturing Day, 2018

By the President of the United States of America

A Proclamation

On National Manufacturing Day, we renew our commitment to restoring America to its rightful place as a global leader in manufacturing. Revitalizing our Nation's manufacturing sector is a pillar of my Administration's economic agenda. Through clear-eyed economic and trade policies and advances made possible by cutting-edge research and development, American industry is thriving once again. Today, our country's manufacturers are more confident than ever before about investing in factories and workers right here at home.

My Administration is working tirelessly to create an environment wherein manufacturers and their workers have increased opportunities to grow and create jobs. Our economic policies, including the Tax Cuts and Jobs Act and the elimination of unnecessary and burdensome regulations, are delivering real results. Since my election, we have created nearly 400,000 manufacturing jobs. Last year alone, American manufacturers contributed $2.2 trillion to our economy; and in the past 12 months, the manufacturing sector has experienced one of the best job market performances in 23 years.

Against this background, we continue to champion a level playing field for American manufacturers and American workers. I delivered on my promise to renegotiate the North American Free Trade Agreement (NAFTA) when I recently announced the United States-Mexico-Canada Agreement (USMCA). For years, NAFTA incentivized the offshoring of American businesses, and many manufacturing jobs left the United States as a result. Once approved by the Congress, the USMCA will rebalance and modernize trade between the United States, Mexico, and Canada in a manner that greatly benefits American manufacturing, agriculture, and services—and so many other sectors of our robust economy. Additionally, earlier this year, we revised our bilateral trade agreement with South Korea to strengthen America's manufacturing sector and bring back high-paying manufacturing jobs for American workers. Furthermore, in July of 2017, I issued an Executive Order that directed the Secretary of Defense to assess how to strengthen the manufacturing and defense industrial base and supply chain resiliency of the United States. The Department of Defense has completed this assessment, and my Administration is committed to taking action in response to ensure that we can meet new and unforeseen challenges to our defense industrial base.

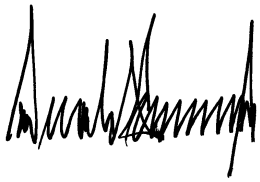
The credit for the success of these efforts rests with our great American workers. That is why I have pledged to invest in both students and workers by providing opportunities for education and training that will help more hardworking men and women thrive in the modern workplace. In July of 2018, I issued an Executive Order establishing the President's National Council for the American Worker and the American Workforce Policy Advisory Board. The order emphasizes our economy's high demand for workers with the technical acumen to fill open jobs in today's workforce. I also signed into law a reauthorization of the Carl D. Perkins Career and Technical Education Act, which provides students and workers with the critical skills sought by manufacturers. We will continue efforts to provide our students with access to high-quality education in science, technology, engineering,

and mathematics so that they are better equipped to innovate and compete in today's economy.

On this National Manufacturing Day, we acknowledge the changes that have swept across our economy, including the widespread adoption of innovative technology, advances in artificial intelligence, and the application of the internet to everyday objects and appliances. We recognize that these changes bring new challenges for our workers in a technologically advanced, increasingly dynamic world. With the same determination and resourcefulness that has always defined America, we rise to meet these challenges, and we proudly stand with our manufacturers and their workers as they continue to set the global standard for quality and innovation.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 5, 2018, as National Manufacturing Day. I call upon all Americans to celebrate the entrepreneurs, innovators, and workers in manufacturing who are making our communities strong.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2018–22186
Filed 10–9–18; 8:45 am]
Billing code 3295–F9–P

Rules and Regulations

Federal Register

Vol. 83, No. 196

Wednesday, October 10, 2018

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

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 45

[Docket No. OCC–2018–0003]

RIN 1557–AE29

FEDERAL RESERVE SYSTEM

12 CFR Part 237

[Docket No. R–1596]

RIN 7100–AE96

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 349

RIN 3064–AE70

FARM CREDIT ADMINISTRATION

12 CFR Part 624

RIN 3052–AD28

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1221

RIN 2590–AA92

Margin and Capital Requirements for Covered Swap Entities; Final Rule

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); and the Federal Housing Finance Agency (FHFA).

ACTION: Final rule.

SUMMARY: The Board, OCC, FDIC, FCA, and FHFA (each an Agency and, collectively, the Agencies) are adopting amendments to their rules establishing minimum margin requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants (Swap Margin Rule). These amendments conform the Swap Margin Rule to rules recently adopted by the Board, the OCC, and the FDIC that impose restrictions on certain qualified financial contracts, including certain non-cleared swaps subject to the Swap Margin Rule (the QFC Rules). Specifically, the final amendments to the Swap Margin Rule conform the definition of ''Eligible Master Netting Agreement'' to the definition of ''Qualifying Master Netting Agreement'' in the QFC Rules. The amendment to the Swap Margin Rule ensures that netting agreements of firms subject to the Swap Margin Rule are not excluded from the definition of ''Eligible Master Netting Agreement'' based solely on their compliance with the QFC Rules. The amendment also ensures that margin amounts required for non-cleared swaps covered by agreements that otherwise constitute Eligible Master Netting Agreements can continue to be calculated on a net portfolio basis, notwithstanding changes to those agreements that will be made in some instances by firms revising their netting agreements to achieve compliance with the QFC Rules. In addition, for any non-cleared swaps that were ''entered into'' before the compliance dates of the Swap Margin Rules—and which are accordingly grandfathered from application of the rule's margin requirements—the amendments state that any changes to netting agreements that are required to conform to the QFC Rules will not render grandfathered swaps covered by that netting agreement as ''new'' swaps subject to the Swap Margin Rule.

DATES: The final rule is effective November 9, 2018.

FOR FURTHER INFORMATION CONTACT:

OCC: Allison Hester-Haddad, Counsel, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Peter Clifford, Manager, 202–785–6057, or Christopher Powell, Supervisory Financial Analyst, 202–452–3442, or Kelly Tomera, Financial Analyst, (202) 912–7861, Division of Supervision and Regulation; Patricia Yeh, Senior Counsel, (202) 452–3089, or Jason Shafer, Senior Attorney, (202) 728–5811, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

FDIC: Irina Leonova, Senior Policy Analyst, Capital Markets Branch, Division of Risk Management Supervision, (202) 898–3843, *ileonova@fdic.gov;* Phillip E. Sloan, Counsel, Legal Division, *psloan@fdic.gov,* (703) 562–6137, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

FCA: J.C. Floyd, Associate Director, Finance & Capital Markets Team, Timothy T. Nerdahl, Senior Policy Analyst, Jeremy R. Edelstein, Senior Policy Analyst, Office of Regulatory Policy, (703) 883–4414, TTY (703) 883–4056, or Richard A. Katz, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

FHFA: Ron Sugarman, Principal Policy Analyst, Office of Policy Analysis and Research, (202) 649–3208, *Ron.Sugarman@fhfa.gov,* or James Jordan, Assistant General Counsel, Office of General Counsel, (202) 649–3075, *James.Jordan@fhfa.gov,* Federal Housing Finance Agency, Constitution Center, 400 7th St. SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

I. Background

A. The Swap Margin Rule

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was enacted on July 21, 2010.[1] Title VII of the Dodd-Frank Act established a comprehensive new regulatory framework for derivatives, which the Dodd-Frank Act generally characterizes as ''swaps'' (swap is defined in section 721 of the Dodd-Frank Act to include, among other things, an interest rate swap, commodity swap, equity swap, and credit default swap) and ''security-based swaps'' (security-based swap is defined in section 761 of the Dodd-Frank Act to include a swap based on a single security or loan or on a narrow-based

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

security index).[2] For the remainder of this preamble, the term ''swaps'' refers to swaps and security-based swaps unless the context requires otherwise.

Sections 731 and 764 of the Dodd-Frank Act required the Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); and the Federal Housing Finance Agency (FHFA) (collectively, the Agencies) to adopt rules jointly that establish capital and margin requirements for swap entities [3] that are prudentially regulated by one of the Agencies (covered swap entities),[4] to offset the greater risk to the covered swap entity and the financial system arising from swaps that are not cleared by a registered derivatives clearing organization or a registered clearing agency (non-cleared swaps).[5] On November 30, 2015, the Agencies published a joint final rule (Swap Margin Rule) to establish minimum margin and capital requirements for covered swap entities.[6]

In the Swap Margin Rule, the Agencies adopted a risk-based approach for initial and variation margin requirements for covered swap entities.[7] To implement the risk-based approach, the Agencies established requirements for a covered swap entity to collect and post initial margin for non-cleared swaps with a counterparty that is either: (1) A financial end user with material swaps exposure,[8] or (2) a swap entity.[9] A covered swap entity must collect and post variation margin for non-cleared swaps with all swap entities and financial end user counterparties, even if such financial end users do not have material swaps exposure.[10] Other counterparties, including nonfinancial end users, are not subject to specific, numerical minimum requirements for initial and variation margin.[11]

The effective date for the Swap Margin Rule was April 1, 2016, but the Agencies established a phase-in compliance schedule for the initial margin and variation margin requirements.[12] On or after March 1, 2017, all covered swap entities were required to comply with the variation margin requirements for non-cleared swaps with other swap entities and financial end user counterparties. By September 1, 2020, all covered swap entities will be required to comply with the initial margin requirements for non-cleared swaps with all financial end users with a material swaps exposure and all swap entities.

The Swap Margin Rule's requirements apply only to a non-cleared swap entered into on or after the applicable compliance date (covered swap); a non-cleared swap entered into prior to a covered swap entity's applicable compliance date (legacy swap) is generally not subject to the margin requirements in the Swap Margin Rule.[13] However, the compliance date provisions of the Swap Margin Rule contain no safe harbor from the rule's application to a legacy swap that is later amended or novated on or after the applicable compliance date.[14]

Whether a non-cleared swap is deemed to be a legacy swap or a covered swap also affects the treatment of a covered swap entity's netting portfolios. The Swap Margin Rule permits a covered swap entity to (1) calculate initial margin requirements for covered swaps under an eligible master netting agreement (EMNA) with a counterparty on a portfolio basis in certain circumstances, if it does so using an initial margin model; and (2) calculate variation margin on an aggregate net basis under an EMNA.[15] In addition, the Swap Margin Rule permits swap counterparties to identify one or more separate netting portfolios under an EMNA, including netting sets of covered swaps and netting sets of non-cleared swaps that are not subject to margin requirements.[16] Specifically, a netting portfolio that contains only legacy swaps is not subject to the margin requirements set out in the Swap Margin Rule.[17] However, if a netting

[2] *See* 7 U.S.C. 1a(47); 15 U.S.C. 78c(a)(68).

[3] *See* 7 U.S.C. 6s; 15 U.S.C. 78o–10. Sections 731 and 764 of the Dodd-Frank Act added a new section 4s to the Commodity Exchange Act of 1936, as amended, and a new section, section 15F, to the Securities Exchange Act of 1934, as amended, respectively, which require registration with the Commodity Futures Trading Commission (CFTC) of swap dealers and major swap participants and the U.S. Securities and Exchange Commission (SEC) of security-based swap dealers and major security-based swap participants (each a swap entity and, collectively, swap entities). The CFTC is vested with primary responsibility for the oversight of the swaps market under Title VII of the Dodd-Frank Act. The SEC is vested with primary responsibility for the oversight of the security-based swaps market under Title VII of the Dodd-Frank Act. Section 712(d)(1) of the Dodd-Frank Act requires the CFTC and SEC to issue joint rules further defining the terms swap, security-based swap, swap dealer, major swap participant, security-based swap dealer, and major security-based swap participant. The CFTC and SEC issued final joint rulemakings with respect to these definitions in May 2012 and August 2012, respectively. *See* 77 FR 30596 (May 23, 2012); 77 FR 39626 (July 5, 2012) (correction of footnote in the Supplementary Information accompanying the rule); and 77 FR 48207 (August 13, 2012). 17 CFR part 1; 17 CFR parts 230, 240 and 241.

[4] Section 1a(39) of the Commodity Exchange Act of 1936, as amended, defines the term ''prudential regulator'' for purposes of the margin requirements applicable to swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. The Board is the prudential regulator for any swap entity that is (i) a state-chartered bank that is a member of the Federal Reserve System, (ii) a state-chartered branch or agency of a foreign bank, (iii) a foreign bank which does not operate an insured branch, (iv) an organization operating under section 25A of the Federal Reserve Act of 1913, as amended, or having an agreement with the Board under section 25 of the Federal Reserve Act, or (v) a bank holding company, a foreign bank that is treated as a bank holding company under section 8(a) of the International Banking Act of 1978, as amended, or a savings and loan holding company (on or after the transfer date established under section 311 of the Dodd-Frank Act), or a subsidiary of such a company or foreign bank (other than a subsidiary for which the OCC or the FDIC is the prudential regulator or that is required to be registered with the CFTC or SEC as a swap dealer or major swap participant or a security-based swap dealer or major security-based swap participant, respectively). The OCC is the prudential regulator for any swap entity that is (i) a national bank, (ii) a federally chartered branch or agency of a foreign bank, or (iii) a Federal savings association. The FDIC is the prudential regulator for any swap entity that is (i) a State-chartered bank that is not a member of the Federal Reserve System, or (ii) a State savings association. The FCA is the prudential regulator for any swap entity that is an institution chartered under the Farm Credit Act of 1971, as amended. The FHFA is the prudential regulator for any swap entity that is a ''regulated entity'' under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (*i.e.,* the Federal National Mortgage Association and its affiliates, the Federal Home Loan Mortgage Corporation and its affiliates, and the Federal Home Loan Banks). *See* 7 U.S.C. 1a(39).

[5] *See* 7 U.S.C. 6s(e)(3)(A); 15 U.S.C. 78o–10(e)(3)(A).

[6] 80 FR 74840 (November 30, 2015).

[7] 80 FR 74843.

[8] ''Material swaps exposure'' for an entity means that the entity and its affiliates have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July, and August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days. *See* § ____.2 of the Swap Margin Rule.

[9] *See* §§ ____.3 and ____.4 of the Swap Margin Rule.

[10] *Id.*

[11] *Id.*

[12] The applicable compliance date for a covered swap entity is based on the average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps of the covered swap entity and its counterparty (accounting for their respective affiliates) for each business day in March, April and May of that year. The applicable compliance dates for initial margin requirements, and the corresponding average daily notional thresholds, are: September 1, 2016, $3 trillion; September 1, 2017, $2.25 trillion; September 1, 2018, $1.5 trillion; September 1, 2019, $0.75 trillion; and September 1, 2020, all swap entities and counterparties. *See* § ____.1(e) of the Swap Margin Rule.

[13] *See* § ____.1(e) of the Swap Margin Rule.

[14] *See* 80 FR 74850–51 (discussing commenters' requests for addition of three safe-harbors to the Swap Margin Rule and the Agencies' rationale for rejecting those requests).

[15] *See* §§ __.2 and __.5 of the Swap Margin Rule.

[16] Typically, this is accomplished by using a separate Credit Support Annex for each netting set, subject to the terms of a single master netting agreement.

[17] *See* §§ ____.2 and ____.5 of the Swap Margin Rule.

portfolio contains any covered swaps, the entire netting portfolio is subject to the margin requirements of the Swap Margin Rule.[18]

B. The QFC Rules

As part of the broader regulatory reform effort following the financial crisis to increase the resolvability and resiliency of U.S. global systemically important banking institutions [19] (U.S. GSIBs) and the U.S. operations of foreign GSIBs (together, GSIBs),[20] the Board, the OCC, and the FDIC adopted final rules that establish restrictions on and requirements for certain non-cleared swaps and other financial contracts (collectively, Covered QFCs) of GSIBs and their subsidiaries (the QFC Rules).[21]

Subject to certain exemptions, the QFC Rules require U.S. GSIBs, together with their subsidiaries, and the U.S. operations of foreign GSIBs (each a Covered QFC Entity and, collectively, Covered QFC Entities) to conform Covered QFCs to the requirements of the rules.[22] The QFC Rules generally require the Covered QFCs of Covered QFC Entities to contain contractual provisions that opt into the ''temporary stay-and-transfer treatment'' of the Federal Deposit Insurance Act (FDI Act) [23] and title II of the Dodd-Frank Act, thereby reducing the risk that the stay-and-transfer treatment would be challenged by a Covered QFC Entity's counterparty or a court in a foreign jurisdiction.[24] The temporary stay-and-transfer treatment is part of the special resolution framework for failed financial firms created by the FDI Act and title II of the Dodd-Frank Act. The stay-and-transfer treatment provides that the rights of a failed insured depository institution's or financial company's counterparties to terminate, liquidate, or net certain qualified financial contracts on account of the appointment of the FDIC as receiver for the entity (or the insolvency or financial condition of the entity for which the FDIC has been appointed receiver) are temporarily stayed when the entity enters a resolution proceeding to allow for the transfer of the failed firm's Covered QFCs to a solvent party.[25] The QFC Rules also generally prohibit Covered QFCs from allowing the exercise of default rights related, directly or indirectly, to the entry into resolution of an affiliate of the Covered QFC Entity (cross-default rights).[26]

C. The Definitions of Qualifying Master Netting Agreement

As part of the QFC Rules, the Federal banking agencies amended the definition of qualifying master netting agreement (QMNA) in their capital and liquidity rules to prevent the QFC Rules from having disruptive effects on the treatment of netting sets of Board-regulated firms, OCC-regulated firms, and FDIC-regulated firms.[27] The FCA plans to propose several technical and clarifying amendments to its capital regulations, including a revision to the definition of QMNA so it continues to be identical to both the definition in the regulations of the Federal banking agencies' regulatory capital and liquidity rules, and the amended definition of EMNA in this rulemaking.[28]

The amendments to the Federal banking agencies' capital and liquidity rules were necessary because the previous QMNA definition did not recognize some of the new close-out restrictions on Covered QFCs imposed by the QFC Rules.[29] Pursuant to the previous definition of QMNA, a banking organization's rights under a QMNA generally could not be stayed or avoided in the event of its counterparty's default. However, the definition of QMNA permitted certain exceptions to this general prohibition to accommodate certain restrictions on the exercise of default rights that are important to the prudent resolution of a banking organization, including a limited stay under a special resolution regime, such as title II of the Dodd-Frank Act, the FDI Act, and comparable foreign resolution regimes. The previous QMNA definition did not explicitly recognize all the restrictions on the exercise of cross-default rights.[30] Therefore, a master netting agreement that complies with the QFC Rules by limiting the rights of a Covered QFC Entity's counterparty to close out against the Covered QFC Entity would not meet the previous QMNA definition. A failure to meet the definition of QMNA would result in a banking organization subject to one of the Federal banking agencies' capital and liquidity rules losing the ability to net offsetting exposures under its applicable capital and liquidity requirements when its counterparty is a Covered QFC Entity. If netting were not permitted, the banking organization would be required to calculate its capital and liquidity requirements relating to certain Covered QFCs on a gross basis rather than on a net basis, which would typically result in higher capital and liquidity requirements. The Federal banking agencies do not believe that such an outcome would accurately reflect the risks posed by the affected Covered QFCs.

The amendments to the QMNA definition maintain the netting treatment for these contracts under the Federal banking agencies' capital and liquidity rules. The amendments permit a master netting agreement to meet the definition of QMNA even if it limits the banking organization's right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of a counterparty that is a Covered QFC Entity to the extent necessary for the Covered QFC Entity to comply fully with the QFC Rules. The amended definition of QMNA continues

[18] *Id.*

[19] *See* 12 CFR 217.402 (defining global systemically important banking institution). The eight firms currently identified as U.S. GSIBs are Bank of America Corporation, The Bank of New York Mellon Corporation, Citigroup Inc., Goldman Sachs Group, Inc., JP Morgan Chase & Co., Morgan Stanley Inc., State Street Corporation, and Wells Fargo & Company.

[20] The U.S. operations of 21 foreign GSIBs are currently subject to the Board's QFC Rule.

[21] The QFC Rules are codified as follows: 12 CFR part 47 (OCC's QFC Rule); 12 CFR part 252, subpart I (Board's QFC Rule); 12 CFR part 382 (FDIC's QFC Rule). The QFC Rules include a phased-in conformance period for a Covered QFC Entity that varies depending upon the counterparty type of the Covered QFC Entity. The first conformance date is January 1, 2019, and applies to Covered QFCs with GSIBs. The QFC Rules provide Covered QFC Entities an additional six months or one year to conform its Covered QFCs with other types of counterparties.

The Board's QFC Rule applies to U.S. GSIBs and their subsidiaries, as well as other U.S. operations of foreign GSIBs, with the exception of banks regulated by the FDIC or OCC, Federal branches, or Federal agencies. The FDIC's QFC Rule applies to GSIB subsidiaries that are state savings associations and state-chartered banks that are not members of the Federal Reserve System. The OCC's QFC Rule applies to national bank subsidiaries and Federal savings association subsidiaries of GSIBs, and Federal branches and agencies of foreign GSIBs.

[22] To the extent a U.S. GSIB, any of its subsidiaries, or the U.S. operations of a foreign GSIB include a swap entity for which one of the Agencies is a prudential regulator, a Covered QFC Entity may be a covered swap entity.

[23] 12 U.S.C. 1811 *et seq.*

[24] 12 CFR part 47; 12 CFR part 252, subpart I; 12 CFR part 382.

[25] 12 U.S.C. 1821(e)(10)(B), 5390(c)(10)(B). Title II of the Dodd-Frank Act also provides the FDIC with the power to enforce Covered QFCs (and other contracts) of subsidiaries and affiliates of the financial company for which the FDIC has been appointed receiver. 12 U.S.C. 5390(c)(16); 12 CFR 380.12.

[26] *See supra* note 24.

[27] 82 FR 42882, 42915; 82 FR 50228, 50258; 82 FR 56630, 56659.

[28] *See* FCA's Fall 2018 Unified Agenda (*www.RegInfo.gov*). The FCA's Tier 1/Tier 2 Capital Framework's existing definition of QMNA is identical to the previous definition of QMNA used in the Federal banking agencies' capital and liquidity rules.

[29] 12 CFR 3.2 (2017); 12 CFR 50.3 (2017); 12 CFR 217.2 (2017); 12 CFR 249.3 (2017); 12 CFR 324.2; 12 CFR 329.3.

[30] *See, e.g.,* 12 CFR 252.84(b)(1).

to recognize that default rights may be stayed if the defaulting counterparty is in resolution under the Dodd-Frank Act, the FDI Act, a substantially similar law applicable to government-sponsored enterprises, or a substantially similar foreign law, or where the agreement is subject by its terms to, or incorporates, any of those laws. By recognizing these required restrictions on the ability of a banking organization to exercise close-out rights when its counterparty is a Covered QFC Entity, the amended definition allows a master netting agreement that includes such restrictions to continue to meet the definition of QMNA under the Federal banking agencies' capital and liquidity rules.

II. Discussion of the Final Rule

On February 21, 2018, the Agencies published a request for comment on a proposed rule to amend the definition of EMNA in the Swap Margin Rule and to clarify the impact of the amendment on legacy swaps.[31] The Agencies are adopting the proposed rule as final without change. The final amendment clarifies that a master netting agreement meets the definition of EMNA under the Swap Margin Rule when the agreement limits the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of the QFC Rules. This final rule text is identical to the corresponding text used in the amended definition of QMNA in the Federal banking agencies' capital and liquidity rules.

In addition, the Agencies are adopting as proposed the amendment to the Swap Margin Rule that provides that amendments made to an EMNA that a firm enters into solely to comply with the QFC Rules will not be taken into account for purposes of determining the date on which swaps subject to that agreement were entered into. This amendment establishes that a legacy swap will not be deemed a covered swap under the Swap Margin Rule if it is amended solely to comply with one of the QFC Rules. For example, to comply with the restrictions on Covered QFCs, a Covered QFC Entity may directly amend the contractual provisions of its Covered QFCs or, alternatively, cause its Covered QFCs to be subject to the International Swaps and Derivatives Association 2015 Resolution Stay Protocol (Universal Protocol) or the U.S. Protocol, as defined in the QFC Rules. The Swap Margin Rule amendment will provide certainty to a covered swap entity and its counterparties about the treatment of legacy swaps and any applicable netting arrangements in light of the QFC Rules.

The Agencies received five substantive comments on the proposal. All five substantive comments generally supported the proposed amendment clarifying the treatment of legacy swaps, while two of the comments also specifically expressed support for the proposed amendment to the definition of EMNA. Two comments raised issues unrelated to the proposal.[32]

As described below, three of the comments also recommended alternative approaches to clarify the treatment of legacy swaps. One comment stated that it supported the proposed amendment on the treatment of a legacy swap after it is amended to comply with a QFC Rule because such an amendment does not change the economic nature of the original transaction and therefore would not require such legacy swap to become subject to margin requirements.

The three comments that recommended alternatives to the proposed amendment on the treatment of legacy swaps urged the Agencies to issue guidance that clarifies certain ''non-material'' amendments will not result in a legacy swap becoming subject to margin requirements rather than adopting the proposed amendment. Specifically, a comment requested that the Agencies, in consultation with global authorities, issue guidance that provides clarity on the circumstances under which a legacy swap is considered a new swap. This comment also recommended that such guidance should make clear that non-material amendments (*i.e.,* administrative amendments, contract-intrinsic events, risk-reducing amendments, and amendments required by regulation or legislation) would not cause a legacy swap to be treated as a new swap subject to the Swap Margin Rule. This same commenter also recommended that in the near term the Agencies should clarify the effect of amendments to legacy swaps related to: (i) Ring fencing of derivative transactions into non-bank entities; (ii) interest rate benchmark reform, such as the movement away from LIBOR; and (iii) novations or other amendments necessitated by the United Kingdom leaving the European Union. Another comment recommended that, instead of adopting the proposal as a final rule, the Agencies issue principles-based guidance that clarifies that certain amendments to legacy swaps, including risk-reducing amendments and amendments made to satisfy other regulatory requirements, do not require such legacy swap to become a covered swap, and therefore, subject to margin requirements. This comment requested that, if the Agencies decide to adopt the proposed amendments to the Swap Margin Rule, the amendment should be described as a ''safe harbor'' that is intended to provide clarity to the industry and, thus, should not imply that other immaterial amendments would cause a legacy swap to become subject to margin requirements.

The Agencies are adopting the amendment to the Swap Margin Rule as proposed. Under the final rule, revisions to a master netting agreement that comply with the QFC Rules will not cause the agreement to fall out of the Swap Margin Rule's EMNA definition. The Agencies' approach provides clarity and certainty to swap market participants as to the effect of changes required by the QFC Rules. Further changes requested by the commenters are not within the scope of the Agencies' proposal, so the Agencies are not making revisions to address those comments. As explained in the preamble to the Swap Margin Rule, the Agencies declined to include language requested by commenters in the rule that would classify certain new swap transactions as being ''entered into prior to the compliance date.'' The Agencies noted that doing so could create significant incentives to engage in amendments and novations for the purpose of evading the margin requirement. The Agencies further explained that limiting the extension to ''material'' amendments or ''legitimate'' novations would be difficult to effect within the final rule because the specific motivation for an amendment or novation is generally not observable, and such classifications would make the process of identifying those swaps to which the rule applies overly complex and non-transparent.[33]

As the Agencies continue to assess industry developments such as interest rate benchmark reform, the Agencies will take into account any associated implementation ramifications

[31] 83 FR 7413 (February 21, 2018).

[32] A comment urging a change to the inter-affiliate provisions of the Swap Margin Rule and a comment requesting that the Agencies clarify that a legacy swap that is amended or novated not be subject to margin requirements if it is entered into by special purpose vehicles for purposes of a certain securitization transaction are outside the scope of the proposal.

[33] *See* 80 FR 78450–51.

surrounding the treatment of legacy swaps under the Swap Margin Rule.

III. Regulatory Analysis

A. Paperwork Reduction Act

OCC: In accordance with 44 U.S.C. 3512, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC reviewed the final rule and concluded that it contains no requirements subject to the PRA.

Board: In accordance with section 3512 of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board reviewed the final rule under the authority delegated to it by OMB. The rule contained no requirements subject to the PRA, and the Board received no comments on its PRA analysis in the proposed rule. The final rule adopts the proposed rule as proposed, and contains no requirements subject to the PRA.

FDIC: In accordance with the requirements of the PRA, the FDIC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The FDIC reviewed the final rule and concludes that it contains no requirements subject to the PRA. Therefore, no submission will be made to OMB for review.

FCA: The FCA has determined that the final rule does not involve a collection of information pursuant to the Paperwork Reduction Act for Farm Credit System institutions because Farm Credit System institutions are Federally chartered instrumentalities of the United States and instrumentalities of the United States are specifically excepted from the definition of ''collection of information'' contained in 44 U.S.C. 3502(3).

FHFA: The final rule amendments do not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

B. Final Regulatory Flexibility Analysis

OCC: In general, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires that in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities. Under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a brief explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises approximately 886 small entities.[34] Among these 886 small entities, 61 might be affected by the final rule if the small entities are a party to a QFC that falls within the scope of the QFC Rules and must be amended to comply with those rules. Because the OCC assumes that the standards set forth in the final rule will be implemented by OCC-supervised small entities before any of them are required to comply with the QFC Rules, the OCC believes that the final rule will not result in savings—or more than *de minimis* costs—for OCC-supervised entities. Therefore, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small OCC-regulated entities.

Board: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (the ''RFA''), generally requires that an agency prepare and make available for public comment an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking.[35] The Board solicited public comment on this rule in a notice of proposed rulemaking[36] and has since considered the potential impact of this final rule on small entities in accordance with section 604 of the RFA. Based on the Board's analysis, and for the reasons stated below, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the final rule.* As described above, the final rule amends the definition of Eligible Master Netting Agreement in the Swap Margin Rule so that it remains harmonized with the amended definition of ''Qualifying Master Netting Agreement'' in the Federal banking agencies' regulatory capital and liquidity rules. The final rule also makes clear that a legacy swap (*i.e.,* a non-cleared swap entered into before the applicable compliance date) that is not subject to the requirements of the Swap Margin Rule will not be deemed a covered swap under the Swap Margin Rule if it is amended solely to conform to the QFC Rules.

2. *Summary of the significant issues raised by public comment on the Board's initial analysis, the Board's assessment of such issues, and a statement of any changes made as a result of such comments.* Commenters did not raise any issues in response to the initial RFA analysis. The Chief Counsel for the Advocacy of the Small Business Administration (''SBA'') did not file any comments in response to the proposed rule.

3. *Description and estimate of number of small entities to which the final rule will apply.* This final rule applies to financial institutions that are covered swap entities (CSEs) that are subject to the requirements of the Swap Margin Rule. Under SBA regulations, the finance and insurance sector includes commercial banking, savings institutions, credit unions, other depository credit intermediation and credit card issuing entities (financial institutions). With respect to financial institutions that are CSEs under the Swap Margin Rule, a financial institution generally is considered small if it has assets of $550 million or less.[37] CSEs would be considered financial institutions for purposes of the RFA in accordance with SBA regulations. The Board does not expect that any CSE is likely to be a small financial institution, because a small financial institution is unlikely to engage in the level of swap activity that would require it to register as a swap dealer or a major swap participant with the CFTC or a security-based swap dealer or security-based major swap participant with the SEC.[38] None of the current Board-regulated CSEs are small entities.

[34] The OCC bases its estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2017, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[35] *See* 5 U.S.C. 603(a).

[36] *See* 83 FR 7413 (February 21, 2018).

[37] *See* 13 CFR 121.201 (effective December 2, 2014); *see also* 13 CFR 121.103(a)(6) (noting factors that the SBA considers in determining whether an entity qualifies as a small business, including receipts, employees, and other measures of its domestic and foreign affiliates).

[38] The CFTC has published a list of provisionally registered swap dealers as of October 17, 2017 that does not include any small financial institutions. *See http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.* The SEC has not yet imposed a registration requirement on entities that meet the definition of security-based swap dealer or major security-based swap participant.

4. *Description of the projected reporting, recordkeeping and other compliance requirements of the final rule.* The Board does not believe the final rule will result in any new reporting, recordkeeping or other compliance requirements.

5. *Significant alternatives to the final rule.* In light of the foregoing, the Board does not believe that this final rule would have a significant economic impact on a substantial number of small entities and therefore there are no significant alternatives to the final rule that would reduce the impact on small entities.

FDIC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires an agency to provide a final regulatory flexibility analysis with a final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of $550 million or less).

According to data from recent Consolidated Reports of Income and Condition (CALL Report),[39] the FDIC supervised 3,603 institutions. Of those, 2,885 are considered ''small,'' according to the terms of the Regulatory Flexibility Act. This final rule directly applies to covered swap entities (which includes persons registered with the CFTC as swap dealers or major swap participants pursuant to the Commodity Exchange Act of 1936 and persons registered with the SEC as security-based swap dealers and major security-based swap participants under the Securities Exchange Act of 1934) that are subject to the requirements of the Swap Margin Rule. The FDIC has identified 101 swap dealers and major swap participants that, as of May 17, 2018, have registered as swap entities.[40] None of these institutions are supervised by the FDIC.

As discussed previously, the final rule clarifies that a master netting agreement meets the definition of EMNA under the Swap Margin Rule when the agreement limits the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of the QFC Rules. Without adoption of the final rule, covered entities would be required to calculate capital and liquidity requirements relating to certain Covered QFCs on a gross basis rather than on a net basis, which would typically result in higher capital and liquidity requirements. Therefore, this rule is expected to benefit any potential covered swap entity.

The Swap Margin Rule implements sections 731 and 764 of the Dodd-Frank Act, as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2015 (''TRIPRA''). TRIPRA excludes non-cleared swaps entered into for hedging purposes by a financial institution with total assets of $10 billion or less from the requirements of the Swap Margin Rule. Given this exclusion, a non-cleared swap between a covered swap entity and a small FDIC-supervised entity that is used to hedge a commercial risk of the small entity will not be subject to the Swap Margin Rule. The FDIC believes that it is unlikely that any small entity it supervises will engage in non-cleared swaps for purposes other than hedging.

Given that no FDIC-supervised small entities are covered swap entities, that the potential effects are expected to be beneficial to covered swap entities, and that it is unlikely that FDIC-supervised small entities enter into non-cleared swaps for purposes other than hedging, this final rule is not expected to have a significant economic impact on a substantial number of small entities supervised by the FDIC. For these reasons, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. Accordingly, a regulatory flexibility analysis is not required.

FCA: Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities; nor does the Federal Agricultural Mortgage Corporation meet the definition of ''small entity.'' Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

FHFA: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis if the agency has certified the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act, and certifies that the final rule does not have a significant economic impact on a substantial number of small entities because the final rule is applicable only to FHFA's regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

C. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the U.S. banking agencies to use plain language in proposed and final rulemakings.[41] The Agencies received no comment on these matters and believe that the final rule is written plainly and clearly.

D. OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that the OCC prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the OCC to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the proposed rule does not impose any new mandates and will not result in expenditures by State, local, and Tribal governments, or by the private sector of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or

[39] FDIC CALL Reports, March 31, 2018.

[40] While the SEC had adopted a regulation that would require registration of security-based swap dealers and major security-based swap participants, as of June 18, 2018, there was no date established as the compliance date and no SEC-published list of any such entities that so registered. Accordingly, no security-based swap dealers and major security-based swap participants have been identified as swap entities by the FDIC. In identifying the 101 institutions referred to in the text, the FDIC used the list of swap dealers set forth, on June 18, 2018 (providing data as of May 17, 2018) at *https://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.html.* Major swap participants, among others, are required to apply for registration through a filing with the National Futures Association. Accordingly, the FDIC reviewed the National Futures Association *https://www.nfa.futures.org/members/sd/index.html* to determine whether there were registered major swap participants. As of June 18, 2018, there were no Major Swaps Participants listed on this link.

[41] 12 U.S.C. 4809(a).

specifically addressed the regulatory alternatives considered.

E. Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[42] Each Federal banking agency has determined that the final rule would not impose additional reporting, disclosure, or other requirements; therefore the requirements of the RCDRIA do not apply.

List of Subjects

12 CFR Part 45

Administrative practice and procedure, Capital, Margin Requirements, National banks, Federal savings associations, Reporting and recordkeeping requirements, Risk.

12 CFR Part 237

Administrative practice and procedure, Banks and banking, Capital, Foreign banking, Holding companies, Margin requirements, Reporting and recordkeeping requirements, Risk.

12 CFR Part 349

Administrative practice and procedure, Banks, Holding companies, Margin Requirements, Capital, Reporting and recordkeeping requirements, Savings associations, Risk.

12 CFR Part 624

Accounting, Agriculture, Banks, Banking, Capital, Cooperatives, Credit, Margin requirements, Reporting and recordkeeping requirements, Risk, Rural areas, Swaps.

[42] 12 U.S.C. 4802.

12 CFR Part 1221

Government-sponsored enterprises, Mortgages, Securities.

DEPARTMENT OF THE TREASURY

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the preamble, the Office of the Comptroller of the Currency amends part 45 of chapter I of title 12, Code of Federal Regulations, as follows:

PART 45—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 1. The authority citation for part 45 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 12 U.S.C. 1 *et seq.,* 12 U.S.C. 93a, 161, 481, 1818, 3907, 3909, 5412(b)(2)(B), and 15 U.S.C. 78o–10(e).

■ 2. Section 45.1 is amended by adding paragraph (e)(7) to read as follows:

§ 45.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(7) For purposes of determining the date on which a non-cleared swap or a non-cleared security-based swap was entered into, a Covered Swap Entity will not take into account amendments to the non-cleared swap or the non-cleared security-based swap that were entered into solely to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable.

* * * * *

■ 3. Section 45.2 is amended by revising paragraph (2) of the definition of *Eligible master netting agreement* to read as follows:

§ 45.2 Definitions.

* * * * *

Eligible master netting agreement * * *

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case:

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 *et seq.*), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971, as amended (12 U.S.C. 2183 and 2279cc), or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (2)(i)(A) in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable;

* * * * *

BOARD OF GOVENORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System amends 12 CFR part 237 to read as follows:

PART 237—SWAPS MARGIN AND SWAPS PUSH-OUT

■ 4. The authority citation for part 237 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 15 U.S.C. 8305, 12 U.S.C. 221 *et seq.,* 12 U.S.C. 343–350, 12 U.S.C. 1818, 12 U.S.C. 1841 *et seq.,* 12 U.S.C. 3101 *et seq.,* and 12 U.S.C. 1461 *et seq.*

Subpart A—Margin and Capital Requirements for Covered Swap Entities (Regulation KK)

■ 5. Section 237.1 paragraph (e)(7) is added to read as follows:

§ 237.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(7) For purposes of determining the date on which a non-cleared swap or a non-cleared security-based swap was entered into, a Covered Swap Entity will not take into account amendments to the non-cleared swap or the non-cleared

security-based swap that were entered into solely to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable.

* * * * *

■ 6. Section 237.2 is amended by revising paragraph (2) of the definition of *Eligible master netting agreement* to read as follows:

§ 237.2 Definitions

* * * * *

Eligible master netting agreement * * *

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case,

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 *et seq.*), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971, as amended (12 U.S.C. 2183 and 2279cc), or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (2)(i)(A) in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable;

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR part 349 as follows:

PART 349—DERIVATIVES

Subpart A—Margin and Capital Requirements for Covered Swap Entities

■ 7. The authority citation for subpart A continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e) and 12 U.S.C. 1818 and 12 U.S.C. 1819(a)(Tenth), 12 U.S.C. 1813(q), 1818, 1819, and 3108.

■ 8. Section 349.1 is amended by adding paragraph (e)(7) as follows:

§ 349.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(7) For purposes of determining the date on which a non-cleared swap or a non-cleared security-based swap was entered into, a Covered Swap Entity will not take into account amendments to the non-cleared swap or the non-cleared security-based swap that were entered into solely to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable.

* * * * *

■ 9. Section 349.2 is amended by revising of the definition of *Eligible master netting agreement* to read as follows:

§ 349.2 Definitions.

* * * * *

Eligible master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case,

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 *et seq.*), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971, as amended (12 U.S.C. 2183 and 2279cc), or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (2)(i)(A) in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) A covered swap entity that relies on the agreement for purposes of calculating the margin required by this part must:

(i) Conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(A) The agreement meets the requirements of paragraph (2) of this definition; and

(B) In the event of a legal challenge (including one resulting from default or from receivership, conservatorship, insolvency, liquidation, or similar proceeding), the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions; and

(ii) Establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of this definition.

* * * * *

FARM CREDIT ADMINISTRATION

Authority and Issuance

For the reasons set forth in the preamble, the Farm Credit

Administration amends chapter VI of title 12, Code of Federal Regulations, as follows:

PART 624—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 10. The authority citation for part 624 continues to read as follows:

Authority: 7 U.S.C 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 2154, 12 U.S.C. 2243, 12 U.S.C. 2252, 12 U.S.C. 2279bb–1.

■ 11. Section 624.1 is amended by adding paragraph (e)(7) to read as follow:

§ 624.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(7) For purposes of determining the date on which a non-cleared swap or a non-cleared security-based swap was entered into, a Covered Swap Entity will not take into account amendments to the non-cleared swap or the non-cleared security-based swap that were entered into solely to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable.

* * * * *

■ 12. Section 624.2 is amended by revising paragraph (2) of the definition of *Eligible master netting agreement* to read as follows:

§ 624.2 Definitions.

* * * * *

Eligible master netting agreement * * *

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case,

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 *et seq.*), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971, as amended (12 U.S.C. 2183 and 2279cc), or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (2)(i)(A) in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable;

* * * * *

FEDERAL HOUSING FINANCE AGENCY

Authority and Issuance

For the reasons set forth in the preamble, the Federal Housing Finance Agency amends chapter XII of title 12, Code of Federal Regulations, as follows:

PART 1221—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 13. The authority citation for part 1221 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 4513, and 12 U.S.C. 4526(a).

■ 14. Section 1221.1 is amended by adding paragraph (e)(7) to read as follows:

§ 1221.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(7) For purposes of determining the date on which a non-cleared swap or a non-cleared security-based swap was entered into, a Covered Swap Entity will not take into account amendments to the non-cleared swap or the non-cleared security-based swap that were entered into solely to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable.

* * * * *

■ 15. Section 1221.2 is amended by revising paragraph (2) of the definition of *Eligible master netting agreement* to read as follows:

§ 1221.2 Definitions.

* * * * *

Eligible master netting agreement * * *

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case,

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 *et seq.*), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971, as amended (12 U.S.C. 2183 and 2279cc), or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (2)(i)(A) in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of part 47, Subpart I of part 252 or part 382 of Title 12, as applicable;

* * * * *

Dated: September 18, 2018.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 19, 2018.

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC, on September 19, 2018.

Federal Deposit Insurance Corporation.

Valerie Jean Best,

Assistant Executive Secretary.

Dated: September 11, 2018.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

Dated: September 17, 2018.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2018–22021 Filed 10–9–18; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 8070–01–P; 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0863; Product Identifier 2018–NE–30–AD; Amendment 39–19423; AD 2018–19–22]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all General Electric Company (GE) CF34–10A16, CF34–10E2A1, CF34–10E5, CF34–10E5A1, CF34–10E6, CF34–10E6A1, CF34–10E7, and CF34–10E7–B turbofan engines with certain high-pressure turbine (HPT) front rotating air seals. This AD requires replacement of the affected HPT front rotating air seal. This AD was prompted by cracks found in the HPT front rotating air seal. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 25, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 25, 2018.

We must receive comments on this AD by November 26, 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 final rule, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; telephone 513–552–3272; email: *aviation.fleetsupport@ge.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. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0863.

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–2018–0863; 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 final rule, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Michael Richardson-Bach, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *michael.richardson-bach@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received a report that multiple cracks were found in the HPT front rotating air seal during a scheduled shop visit. After further investigation, GE determined that a rabbet surface on certain parts was not shot-peened after machining during the original manufacturing. The lack of shot-peening caused the parts to be more susceptible to crack initiation. This condition, if not addressed, could result in uncontained HPT front rotating air seal release, damage to the engine, and damage to the airplane. We are issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

We reviewed GE CF34–10E Service Bulletin (SB) 72–0347 R00, dated August 3, 2018. The SB describes procedures for inspection and repair or replacement of the affected HPT front rotating air seals. 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 issuing 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.

AD Requirements

This AD requires replacement of the affected HPT front rotating air seal.

Differences Between the AD and the Service Information

GE CF34–10E SB 72–0347 R00, dated August 3, 2018, recommends inspecting affected HPT front rotating air seal and repairing parts that do not have linear indications. This AD does not require inspecting or repairing the affected HPT front rotating air seal but allows installation of parts that have been inspected and repaired.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the compliance time for the required action is shorter than the time necessary for the public to comment and for us to publish the final rule. The highest risk HPT front rotating air seals must be removed within approximately one month to ensure that they are replaced before cracks develop that could result in the failure of these seals. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2018–0863 and Product Identifier 2018–NE–30–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule 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 final rule.

Costs of Compliance

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

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace the HPT front rotating air seal.	2 work-hours × $85 per hour = $170	$243,700	$243,870	$731,610

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–19–22 General Electric Company: Amendment 39–19423; Docket No. FAA–2018–0863; Product Identifier 2018–NE–30–AD.

(a) Effective Date

This AD is effective October 25, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all General Electric Company (GE) CF34–10A16, CF34–10E2A1, CF34–10E5, CF34–10E5A1, CF34–10E6, CF34–10E6A1, CF34–10E7, and CF34–10E7–B turbofan engines with high-pressure turbine (HPT) front rotating air seals listed in Appendices A and B, of GE CF34–10E Service Bulletin (SB) 72–0347 R00, dated August 3, 2018, that were not inspected and repaired using GE CF34–10E SB 72–0347 R00, dated August 3, 2018.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Engine Turbine Section.

(e) Unsafe Condition

This AD was prompted by cracks found in the HPT front rotating air seal. We are issuing this AD to prevent failure of the HPT front rotating air seal. The unsafe condition, if not addressed, could result in an uncontained release of the HPT front rotating air seal, 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

(1) Remove the HPT front rotating air seal listed in Appendix A, of GE CF34–10E SB 72–0347 R00, dated August 3, 2018, and replace with a part eligible for installation within the following cycles:

(i) If the HPT front rotating air seal has 17,499 cycles since new (CSN) or more on the effective date of this AD, remove within 250 cycles in service (CIS).

(ii) If the HPT front rotating air seal has 16,500 to 17,498 CSN on the effective date of this AD, remove within 500 CIS but not to exceed 17,750 CSN.

(iii) If the HPT front rotating air seal has 15,500 to 16,499 CSN on the effective date of this AD, remove within 750 CIS but not to exceed 17,000 CSN.

(iv) If the HPT front rotating air seal has 14,500 to 15,499 on the effective date of this AD, remove within 1,000 CIS but not to exceed 16,250 CSN.

(v) If the HPT front rotating air seal has 12,800 to 14,499 on the effective date of this AD, remove within 1,500 CIS but not to exceed 15,500 CSN.

(vi) If the HPT front rotating air seal has 10,800 to 12,799 CSN on the effective date of this AD, remove within 2,000 CIS but not to exceed 14,300 CSN.

(vii) If the HPT front rotating air seal has 8,450 to 10,799 CSN on the effective date of this AD, remove within 2,500 CIS but not to exceed 12,800 CSN.

(viii) If the HPT front rotating air seal has fewer than 8,450 CSN on the effective date of this AD, remove at next piece-part exposure or before accumulating 10,950 CSN, whichever comes first.

(2) Remove the HPT front rotating air seal, listed in Appendix B, of GE CF34–10E SB 72–0347 R00, dated August 3, 2018, from

service and replace with a part eligible for installation before exceeding the CSN listed in Appendix B, of GE CF34–10E SB 72–0347 R00, dated August 3, 2018.

(h) Definitions

(1) For the purpose of this AD, a part that is ''eligible for installation'' is defined as:

(i) An HPT front rotating air seal with a part number (P/N) and serial number (S/N) that is not listed in Appendix A or B, of GE CF34–10E SB 72–0347 R00, dated August 3, 2018; or,

(ii) an HPT front rotating air seal with a P/N and S/N listed in Appendix A or B, of GE CF34–10E SB 72–0347 R00, dated August 3, 2018, that was inspected and repaired using GE SB CF34–10E SB 72–0347 R00, dated August 3, 2018.

(2) For the purpose of this AD, ''piece-part exposure'' is defined as the separation of the HPT front rotating air seal from the disk.

(i) Special Flight Permit

A special flight permit will not be issued.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, 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) of this AD. You may email your request to: *ANE-AD-AMOC@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.

(k) Related Information

For more information about this AD, contact Michael Richardson-Bach, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *michael.richardson-bach@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) General Electric Company CF34–10E Service Bulletin 72–0347 R00, dated August 3, 2018.

(ii) Reserved.

(3) For service information identified in this AD, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; telephone 513–552–3272; email: *aviation.fleetsupport@ge.com.*

(4) 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.

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

Issued in Burlington, Massachusetts, on September 28, 2018.

Robert J. Ganley,

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

[FR Doc. 2018–21863 Filed 10–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0504; Product Identifier 2017–NE–12–AD; Amendment 39–19415; AD 2018–19–15]

RIN 2120–AA64

Airworthiness Directives; GEVEN S.p.A. Seat Assemblies, Type D1–02 and D1–03

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain GEVEN S.p.A. (Geven) Type D1–02 and D1–03 seat assemblies. This AD was prompted by a report that seat belt attachment bolts were found detached or partially detached from the seat. This AD requires inspection, torque verification, and modification of certain model seats. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 14, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 14, 2018.

ADDRESSES: For service information identified in this final rule, contact Geven Technical Assistance Department, Via Boscofangone, Zona Industriale Nola-Marigliano, 80035 Nola (NA), Italy; phone: +39 081 31 21 396; fax: +39 081 31 21 321; email: *Technical.assistance@geven.com.* You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0504.

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–2017–0504; 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 final rule, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Neil Doh, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7757; fax: 781–238–7199; email: *neil.doh@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Geven, Type D1–02 and D1–03 seat assemblies. The NPRM published in the **Federal Register** on July 14, 2017 (82 FR 32494). The NPRM was prompted by a report that seat belt attachment bolts were found detached or partially detached from the seat. The NPRM proposed to require inspection, torque verification, and modification of certain model seats. We are issuing this AD to address the unsafe condition on these products.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2014–0187, dated August 20, 2014 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> An operator reported that seat belt attachment bolts were found detached or partially detached from the seat. A further check on several aeroplanes revealed that on a large number of seats of the same model, the seat belt attachment bolts were not properly torqued and secured as defined. This condition, if not detected and corrected, could lead to failure of the seats to perform their intended function, possibly resulting in injury to occupants in case of an emergency landing. To address this potential unsafe

condition, Geven published SB No. D103–25–004 to provide inspection instructions to verify if the seat belt attachment bolts are properly torqued and secured, and correction of any deficiencies. In addition, for certain D1–03 seats, the SB provides instructions to modify the seat belt attachment assembly. For the reasons described above, this EASA AD requires a one-time inspection of all safety belt attachment bolts and, depending on findings, accomplishment of the applicable corrective action(s). This EASA AD also requires modification of the seat belt attachment assembly on certain D1–03 seats.

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–2017–0504.

Comments

We gave the public the opportunity to participate in developing this final rule. We received no comments on the NPRM or on the determination of the cost to the public.

Clarification to the Number of Affected Airplanes

Since we issued the NPRM, we determined that we needed to identify the specific number of affected Avions de transport regional (ATR) 42 and ATR 72 airplanes rather than list the overall number of airplanes that are affected. The estimated costs have not changed.

Clarification to Required Actions

We also determined that the compliance in the NPRM was not clear as to which Geven seats required modification and which required bushing replacement. We have clarified the Required Actions in this AD. Additionally, all Geven Type D1–02 and D1–03 safety belt assemblies are torque checked, but, only Geven Type D1–03 seat belt attachment assemblies on the aisle side spreader must be modified.

Clarification of Service Information Reporting Requirements

We also determined that Geven Service Bulletin (SB) No. D103–25–004, Revision 4, dated March 15, 2016, specifies to submit certain information to the manufacturer. This AD does not include that requirement.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed except for minor editorial changes. We have determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

We reviewed Geven SB No. D103–25–004, Revision 4, dated March 15, 2016. The SB describes procedures for inspection, torque verification, and modification of certain model seats known to be installed on ATR 42 and ATR 72 airplanes. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects an unknown number of seat assemblies installed on, but not limited to, 25 ATR 42 airplanes and 13 ATR 72 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Seat modification—ATR 42	1.5 work-hours × $85 per hour = $127.50	$302	$429.50	$10,737.50
Torque check—ATR 42	0.8 work-hours × $85 per hour = $68.00	0	68.00	1,700.00
Seat modification—ATR 72	2.3 work-hours × $85 per hour = $195.50	368	563.50	7,325.50
Seat remove and replace—ATR 72	1.2 work-hours × $85 per hour = $102.00	0	102.00	1,326.00

According to the manufacturer, some of the costs of this 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

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–19–15 GEVEN S.p.A.: Amendment 39–19415; Docket No. FAA–2017–0504; Product Identifier 2017–NE–12–AD.

(a) Effective Date

This AD is effective November 14, 2018.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to certain GEVEN S.p.A. (Geven) Type D1–02 (also known as ''Lightweight AFT facing seats'') and D1–03 (also known as ''Lightweight'' Classic and Prestige) in-arm table, standard, and last row seats, with part numbers (P/Ns) and Effectivity Codes listed in Table 1.1.1 of Geven Service Bulletin (SB) No. D103–25–004, Revision 4, dated March 15, 2016.

(2) 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) 2500 Code, Cabin Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a report that seat belt attachment bolts were found detached or partially detached from the seat. We are issuing this AD to prevent failure of the seats to perform their intended function, which, if not detected and corrected, could possibly result in injury to occupants in case of an emergency landing.

(f) Compliance

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

(g) Required Actions

(1) Within six months after the effective date of this AD, in accordance with Geven SB No. D103–25–004, Revision 4, dated March 15, 2016, for all Geven Type D1–03 (also known as ''Lightweight'' Classic and Prestige) in-arm table, standard, and last row seats, P/N D1–03–()()()–()()(), modify the safety belt attachment assemblies on the aisle side spreader, and torque check the safety belt attachment assemblies on the central and fuselage side spreaders to 71 in-lbs. (8 nm).

(2) Within six months after the effective date of this AD, in accordance with Geven SB No. D103–25–004, Revision 4, dated March 15, 2016, for all Geven Type D1–02 (also known as ''Lightweight aft facing seats'') in-arm table, standard, and last row seats, P/N D1–02–()()()–()()(), perform the following:

(i) Torque check the seat belt attachment assemblies on the aisle side, central, and fuselage side spreaders to 71 in-lbs., and verify that the safety belt attachment is free to rotate.

(ii) If the safety belt attachment is not free to rotate following paragraph (g)(2)(i), replace the bushing in accordance with paragraph 3.3.1 of Geven SB No. D103–25–004, Revision 4, dated March 15, 2016, or block each affected seat until the bushing replacement is accomplished.

(h) No Reporting Requirement

Although the service information identified in paragraph (g) of this AD specifies to submit certain information to the manufacturer, this AD does not include that reporting requirement.

(i) 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 Boston ACO Branch, send it to the attention of the person identified in paragraph (j)(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.

(j) Related Information

(1) For more information about this AD, contact Neil Doh, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7757; fax: 781–238–7199; email: *neil.doh@faa.gov.*

(2) Refer to European Aviation Safety Agency (EASA) AD 2014–0187, dated August 20, 2014, 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 Docket No. FAA–2017–0504.

(k) Material Incorporated by Reference

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

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

(i) GEVEN S.p.A. Service Bulletin No. D103–25–004, Revision 4, dated March 15, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact Geven Technical Assistance Department, Via Boscofangone, Zona Industriale Nola-Marigliano, 80035 Nola (NA), Italy; phone: +39 081 31 21 396; fax: +39 081 31 21 321; email: *Technical.assistance@geven.com.*

(4) You may view this service information at FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

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

Issued in Burlington, Massachusetts, on September 27, 2018.

Robert J. Ganley,

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

[FR Doc. 2018–21872 Filed 10–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0855; Product Identifier 2018–NE–31–AD; Amendment 39–19416; AD 2018–19–16]

RIN 2120–AA64

Airworthiness Directives; CFM International S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all CFM International S.A. (CFM) LEAP–1A23, –1A24, –1A24E1, –1A26, –1A26E1, –1A26CJ, –1A29, –1A29CJ, –1A30, –1A32, –1A33, –1A33B2, and –1A35A turbofan engines with certain full authority digital engine control (FADEC) and prognostic health monitoring (PHM) software installed. This AD requires removing certain FADEC and PHM software and installing versions eligible for installation. This AD was prompted by aborted takeoffs after engines did not advance to the desired takeoff fan speed due to icing in the pressure sensor line. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 25, 2018.

We must receive comments on this AD by November 26, 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 final rule, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: 877–432–3272; fax: 877–432–3329; email: *aviation.fleetsupport@ge.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. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0855.

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–2018–0855; 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 final rule, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Christopher McGuire, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7120; fax: 781–238–7199; email: *chris.mcguire@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received reports of six aborted takeoffs that occurred after engines did not advance to the desired takeoff fan speed. The aborted takeoffs happened on the first takeoff of the day after the airplane was exposed to sub-freezing temperatures for more than six hours. After further investigation, the operator found water and ice in the pressure sensor lines, which prevented the pressure sensor from accurately measuring the pressure. As a result, CFM improved the FADEC and PHM software to detect and accommodate pressure sensor line freezing. This condition, if not addressed, could result in icing in the pressure sensor lines and inaccurate pressure sensor readings, failure of one or more engines, loss of thrust control, and loss of the airplane. We are issuing this AD to address the unsafe condition on these products.

Related Service Information

We reviewed CFM Service Bulletin (SB) LEAP–1A–73–00–0027–01A–930A–D, Issue 001, dated July 30, 2018. The SB introduces new FADEC and PHM software and describes procedures for replacing the software.

FAA's Determination

We are issuing 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.

AD Requirements

This AD requires removing certain FADEC and PHM software and installing software that is eligible for installation.

Differences Between the AD and the Service Information

CFM SB LEAP–1A–73–00–0027–01A–930A–D, Issue 001, dated July 30, 2018, recommends that you install the new FADEC and PHM software. This AD requires that you install the new FADEC and PHM software, and prohibits the use of earlier FADEC and PHM software versions.

Interim Action

We consider this AD interim action. CFM is developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the compliance time for the required action is shorter than the time necessary for the public to comment and for us to publish the final rule. The software must be removed and replaced within 90 days to ensure that icing does not develop in the pressure sensor lines on the affected engines. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2018–0855 and Product Identifier 2018–NE–31–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule 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 final rule.

Costs of Compliance

We estimate that this AD affects 82 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Software installation	1 work-hour × $85 per hour = $85	$0	$85	$6,970

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–19–16 CFM International S.A.: Amendment 39–19416; Docket No. FAA–2018–0855; Product Identifier 2018–NE–31–AD.

(a) Effective Date

This AD is effective October 25, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all CFM LEAP–1A23, –1A24, –1A24E1, –1A26, –1A26E1, –1A26CJ, –1A29, –1A29CJ, –1A30, –1A32, –1A33, –1A33B2, and –1A35A turbofan engines with full authority digital engine control (FADEC) software, part number (P/N) 2590M00P07, version L1A0510, or earlier, installed; and prognostic health monitoring (PHM) software, P/N 2784M64P01, version PL1A0510, or earlier, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7600, Engine Controls.

(e) Unsafe Condition

This AD was prompted by aborted takeoffs after engines did not advance to the desired takeoff fan speed due to icing in the pressure sensor line. We are issuing this AD to prevent icing in the pressure sensor lines and inaccurate pressure sensor readings. The unsafe condition, if not addressed, could result failure of one or more engines, loss of thrust control, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within 90 days after the effective date of this AD, remove FADEC software, P/N 2590M00P07, version L1A0510, or earlier; and PHM software, P/N 2784M64P01, version PL1A0510, or earlier, from the engine.

(2) Before further flight after the removal of the FADEC and PHM software required by paragraph (g)(1), install FADEC and PHM software that is eligible for installation.

(h) Installation Prohibition

After 90 days from the effective date of this AD, do not operate any engine with FADEC software, P/N 2590M00P07, version L1A0510, or earlier, installed; and PHM software, P/N 2784M64P01, version PL1A0510, or earlier, installed.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, 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 (j) of this AD. You may email your request to: *ANE-AD-AMOC@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.

(j) Related Information

For more information about this AD, contact Christopher McGuire, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7120; fax: 781–238–7199; email: *chris.mcguire@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on September 27, 2018.

Robert J. Ganley,

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

[FR Doc. 2018–21508 Filed 10–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0281; Product Identifier 2018–NE–06–AD; Amendment 39–19437; AD 2018–20–03]

RIN 2120–AA64

Airworthiness Directives; Hoffmann GmbH & Co. KG Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Hoffmann GmbH & Co. KG model HO–V 62 propellers. This AD was prompted by the failure of the propeller blade lag screws. This AD requires removal of the affected propeller blades and installation of modified propeller blades marked with change letter ''A'' or ''B.'' We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 14, 2018.

ADDRESSES: For service information identified in this final rule, contact Hoffmann Propeller GmbH & Co. KG, Sales and Service, Küpferlingstrasse 9, 83022 Rosenheim, Germany; phone: +49 (0) 8031 1878 0; fax: +49 (0) 8031 1878 78; email: *info@hoffmann-prop.com.* You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0281.

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–2018–0281; 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 final rule, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Maureen Maisttison, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Ave, Burlington, MA 01803; phone: 781–238–7076; fax: 781–238–7151; email: *maureen.maisttison@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Hoffmann GmbH & Co. KG model HO–V 62 propellers. The NPRM published in the **Federal Register** on July 12, 2018 (83 FR 32219). The NPRM was prompted by the failure of the propeller blade lag screws. The NPRM proposed to require removal of the affected propeller blades and installation of modified propeller blades marked with change letter ''A'' or ''B.'' We are issuing this AD to address the unsafe condition on these products.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2017–0220, dated November 10, 2017 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> In 1983, occurrences were reported of fatigue failure of propeller blade lag screws, at rotation speeds between 2950 and 3250 revolutions per minute (RPM) in flight.
>
> This condition, if not detected and corrected, could lead to in-flight propeller blade detachment, possibly resulting in damage to the powered sailplane and/or injury to persons on the ground.
>
> To address this potential unsafe condition, Hoffmann issued Service Bulletin (SB) 4, providing the necessary instructions. Consequently, LBA Germany issued AD 83–150 (later revised), which applied only to HO–V 62 propellers with R/L 160T blades, when in combination with a Limbach L 2000 engine, to require a limitation of continuous operation to 2 900 RPM, to prohibit aerobatic flights, calibrate the tachometer, install a placard, and inspection of the propeller blades. LBA AD 83–150/4 also required overhaul and replacement of the affected propeller blades with modified blades, either having 5 lag screws with 12 mm diameter, or 6 screws, and required implementing a time between overhaul (TBO) of 600 flight hours (FH).
>
> Since that [LBA] AD was issued, based on a stress analysis of lag screws on blades with continuous operating speed above 2 900 RPM, it was determined that the 6-screws configuration or the 5 screws configuration with increased strength is necessary to ensure safe propeller operation. In addition, since the LBA AD applied only to a limited population (Limbach engine only), many propellers have not been modified as described in Hoffmann SB 4C. Consequently, Hoffmann issued SB E34 Revision B, to provide blade replacement instructions

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–2018–0281.

Comments

We gave the public the opportunity to participate in developing this final rule. We received no comments on the NPRM or on the determination of the cost to the public.

Revised the Name of the Type Certificate Holder

We determined that the name of the type certificate (TC) design holder that we used in the NPRM does not match the name used in the type certificate data sheet. We have revised references in this AD from ''Hoffmann Propeller GmbH & Co. KG'' to ''Hoffmann GmbH & Co. KG'' when we are referring to the name of the TC design holder.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed except for minor editorial changes. We have determined that these minor changes:

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

Related Service Information

We reviewed Hoffmann Propeller GmbH & Co. KG Service Bulletin (SB) E34 Rev. B, dated September 18, 2017. The SB describes the instructions for the removal and installation of the propeller blades.

Costs of Compliance

We estimate that this AD affects 50 propellers installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace blades between overhaul	3 work-hours × $85 per hour = $255	$3,150	$3,405	$85,125
Replace blades at overhaul	0 work-hours × $85 per hour = $0	3,150	3,150	78,750

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

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–20–03 Hoffmann GmbH & Co. KG: Amendment 39–19437; Docket No. FAA–2018–0281; Product Identifier 2018–NE–06–AD.

(a) Effective Date

This AD is effective November 14, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Hoffmann GmbH & Co. KG model HO–V 62 propellers without modified blades marked with change letter ''A'' or ''B'' suffix to the serial number (S/N).

(d) Subject

Joint Aircraft System Component (JASC) Code 6110, Propeller Assembly.

(e) Unsafe Condition

This AD was prompted by the failure of the propeller blade lag screws. We are issuing the AD to prevent failure of the propeller. The unsafe condition, if not addressed, could result in the release of the propeller blade, damage to the aircraft, and injury and/or loss of life.

(f) Compliance

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

(g) Required Actions

Within 30 days of the effective date of this AD, remove the applicable propeller blades and install modified propeller blades marked with a change letter ''A'' or ''B'' suffix to the S/N marked on the blade.

(h) Installation Prohibition

After the effective date of this AD, do not install a propeller blade if it is not marked with a change letter ''A'' or ''B'' suffix to the S/N marked on the blade.

(i) 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 Boston ACO Branch, send it to the attention of the person identified in paragraph (j)(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.

(j) Related Information

(1) For more information about this AD, contact Maureen Maisttison, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Ave, Burlington, MA, 01803; phone: 781–238–7076; fax: 781–238–7151; email: *maureen.maisttison@faa.gov.*

(2) Refer to European Aviation Safety Agency AD 2017–0220, dated November 10, 2017, 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 Docket No. FAA–2018–0281.

Issued in Burlington, Massachusetts, on September 27, 2018.

Robert J. Ganley,

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

[FR Doc. 2018–21507 Filed 10–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0062; Airspace Docket No. 18–ASO–3]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Pensacola, FL, and Establishment of Class E Airspace; Milton, 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 29, 2018, amending Class D airspace and Class E airspace extending upward from 700 feet above the surface, and establishing Class E surface airspace at Choctaw Naval Outlying Field (NOLF), Milton, FL. Additional text was inadvertently omitted from the NOTAM information of Class D airspace and Class E surface airspace for Choctaw NOLF.

DATES: Effective 0901 UTC, January 3, 2019. 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 Avenue, College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (83 FR 43968, August 29, 2018) for Doc. No. FAA–2018–0062, amending Class D airspace and Class E airspace extending upward from 700 feet or more above the surface, and establishing Class E surface airspace at Choctaw Naval Outlying Field (NOLF), Milton, FL. Subsequent to publication, the FAA found that the NOTAM information listed in the legal description of the airport in Class D airspace and Class E surface airspace omitted text. This action corrects the error.

Class D airspace and Class E airspace designations are published in paragraphs 5000 and 6002, respectively, of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which was incorporated by reference in 14 CFR part 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, in the **Federal Register** of August 29, 2018 (83 FR 43968) FR Doc. 2018–18644, the amendment of Class D Airspace and Class E Airspace; Pensacola, FL, and Establishment of Class E Airspace; Milton, FL is corrected as follows:

§ 71.1 [Amended]

ASO FL D Milton, FL [Corrected]

■ On page 43970, column 1, line 10, insert the words ''in advance'' after the word ''established''.

ASO FL E2 Milton, FL [Corrected]

■ On page 43970, column 1 line 30, insert the words ''in advance'' after the word ''established''.

Issued in College Park, Georgia, on October 2, 2018.

Kenneth Brissenden,

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

[FR Doc. 2018–21884 Filed 10–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 5

[Public Notice 10513]

RIN 1400–AE18

Organization

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: The Department of State (the Department) updates and revises the rules that set forth its organization, rules of procedure, place at which the public may obtain forms, and its substantive rules of general applicability.

DATES: This rule is effective on November 9, 2018.

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Attorney Adviser, Office of Management, Office of the Legal Adviser, (202) 647–2318, *kottmyeram@state.gov.*

SUPPLEMENTARY INFORMATION:

Why is the Department promulgating this rule?

The Freedom of Information Act (5 U.S.C. 552(a)(1) requires that agencies publish in the **Federal Register** certain information.[1] The Department provides this information in Part 5 of Title 22, Code of Federal Regulations. The Department last amended Part 5 in 1968; it is, therefore, obsolete. This rulemaking provides the necessary updates.

What are the substantive changes from the current Part 5?

The Authorities section and §§ 5.1 and 5.2 are updated to reflect current authorities. Section 5.2 contains a new provision that refers to the Department's practice of publishing certain delegations of authority in the **Federal Register**. Section 5.2 also contains a reference to the new § 5.5, which describes the Foreign Affairs Manual and Foreign Affairs Handbook.

Section 5.3, containing the bureau names, contact addresses, and websites of Department offices, is totally revised from the last amendment of this rule in 1968.

Section 5.4 provides a list of substantive rules of general applicability, and where the public can find them in 22 CFR. Provisions that were not listed in 1968 include: Part 22 (Schedule of Fees for Consular Services); Part 103 (Chemical Weapons Convention Regulations); Part 104 (International Trafficking in Persons); Part 141 *et seq.* (Civil Rights); Part 171 (Availability of Information and Records to the Public); Part 172 (Service of Process); Part 173 (Availability of Public

[1] (A) Descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions; (B) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available; (C) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations; (D) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and (E) Each amendment, revision, or repeal of the foregoing.

Diplomacy Material in the United States); and Part 181 (Coordination, Reporting, and Publication of International Agreements).

Section 5.5 is new. It describes the Foreign Affairs Manual and the Foreign Affairs Handbook, which is a collection of directives that provide procedures and policies on matters relating to Department management and personnel.

Regulatory Findings

Administrative Procedure Act

This rule is a rule of agency organization, procedure, or practice. The Department publishes it as a final rule in accordance with 5 U.S.C. 553(b)(A).

Regulatory Flexibility Act/Executive Order 13272: Small Business

The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804. The Department is aware of no monetary effect on the economy that would result from this rulemaking, nor will there be any increase in costs or prices; or any effect on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. This rule deals with Department organization and procedures and will not impose any costs on the public. The Department has determined that the benefits of this regulation, *i.e.,* ensuring compliance with FOIA and providing information and transparency to the public, outweigh any costs.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13563: Improving Regulation and Regulatory Review

The Department has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

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

Paperwork Reduction Act

This rule does not impose new or revised information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 5

Organization and functions (Government agencies).

For the reasons set forth in the preamble, the Department of State revises 22 CFR part 5 to read as follows:

PART 5—ORGANIZATION

Sec.

5.1 Introduction.
5.2 Central and field organization.
5.3 Rules of procedure, description of forms available, or the places at which forms may be obtained.
5.4 Substantive rules of general applicability adopted as authorized by law.
5.5 The Foreign Affairs Manual and the Foreign Affairs Handbook.

Authority: 22 U.S.C. 2651a; 5 U.S.C. 552.

§ 5.1 Introduction.

This part provides information to the public as required by the Freedom of Information Act, 5 U.S.C. 552(a)(1).

§ 5.2 Central and field organization.

(a) The central organization of the Department of State is prescribed by the State Department Basic Authorities Act of 1956, as amended (Pub. L. 84–885), codified at 22 U.S.C. 2651 *et seq.* and the Foreign Affairs Manual (see § 5.5).

(b) As used in this part, the term ''Department of State'' includes all offices within the Department in Washington, its domestic field offices in the United States, all U.S. diplomatic and consular posts throughout the world, and U.S. missions to international organizations unless otherwise specified.

(c) Any person desiring information concerning a matter handled by the Department of State, or any person desiring to make a submittal or request in connection with such a matter, should communicate either orally or in writing with the appropriate office. If the office receiving the communication does not have jurisdiction to handle the matter, the communication, if written, will be forwarded to the proper office, or, if oral, the person will be advised how to proceed. When the submittal or request from a member of the public consists of a formal application for one of the documents, privileges, or other benefits provided for in the laws administered by the Department of State, or in the regulations implementing these laws, the member of the public should follow the instructions on the form as to preparation and place of submission.

(d) From time to time, the Secretary of State will, to the extent authorized by law, delegate statutory or other authorities to subordinate officers, as authorized by 22 U.S.C. 2651a(a)(4). The Department will generally publish such delegations of authority in the **Federal Register**.

§ 5.3 Rules of procedure, description of forms available, or the places at which forms may be obtained.

Rules of procedure regarding the following listed matters may be consulted under the corresponding regulations referenced in § 5.4, or obtained upon application to the offices listed below. Forms pertaining to the following listed matters, and instructions relating thereto may also be obtained at the offices indicated in the following table 1 to § 5.3:

TABLE 1 TO § 5.3

Subject matter	Office	Address
Access to Information and Records	Bureau of Administration	Office of Information Programs and Services (IPS), U.S. Department of State, State Annex 2 (SA–2), 515 22nd Street NW, Washington, DC, Suite 8100, 20522–0208, Fax: (202) 261–8579, URL: *FOIA.state.gov*. For passport records and records of the Office of the Inspector General, please see 22 CFR 171.4(a).
Appointment of Foreign Service Officers.	Board of Examiners for the Foreign Service.	Board of Examiners for the Foreign Service, Department of State, SA–1, H–518, 2401 E Street NW. Washington, DC 20522.
Authentications	Office of Authentications	U.S. Department of State, 600 19th Street NW, Washington, DC 20006.
Civil Rights	Office of Civil Rights	Office of Civil Rights (S/OCR), 2201 C Street NW, Suite 7428, Washington, DC 20520.
Forms		*https://eforms.state.gov*.
International educational and cultural exchange programs.	Bureau of Educational and Cultural Affairs.	For ECA-funded programs, Department of State, 2200 C Street NW, Washington, DC 20522–0500, *ECA.state.gov;* phone (202) 632–6445. For the Exchange Visitor Program, Department of State, SA–4E, Room E–B001—2201 C Street NW, Washington, DC 20520. *Jexchanges@state.gov*; phone (202) 632–6445.
International Traffic in Arms Regulations.	Directorate of Defense Trade Controls.	U.S. Department of State, Directorate of Defense Trade Controls, 2401 E Street NW, SA–1, Room H1200, Washington, DC 20037.
U.S. Passports	Passport Services	*https://travel.state.gov/*, National Passport Information Center, 877–487–2778, 888–874–7793 (TDD/TTY), 8:00 am to 10:00 pm ET Monday–Friday, 10:00 am to 3:00 pm ET Saturday (excluding federal holidays), *NPIC@state.gov*.
Organizational chart		*https://www.state.gov/r/pa/ei/rls/dos/99484.htm*.
Procurements and assistance, domestic/international acquisition and federal assistance policy.	Office of the Procurement Executive.	U.S. Department of State, A/OPE (SA–15, Suite 1060), Washington, DC 20522, FAX 703–875–6155.
Protection and welfare of U.S. citizens, intercountry adoption, international child abduction, and other consular services abroad.	Overseas Citizen Services	*https://travel.state.gov/*, 888–407–4747 (from U.S. and Canada), +1 202–501–4444 (from Overseas).
Treaties and international agreements.	Office of the Assistant Legal Adviser for Treaty Affairs.	*https://www.state.gov/s/l/treaty/*.
Visa issuance	Office of Visa Services	*https://travel.state.gov/*, National Visa Center—Public Inquiries, 603–334–0700 (immigrant visas only), 603–334–0888 (nonimmigrant visas only), 7:00 a.m.—12:00 a.m. ET Monday–Friday (excluding federal holidays), *https://secureforms.travel.state.gov/ask-nvc.php*.

§ 5.4 Substantive rules of general applicability adopted as authorized by law.

(a) The regulations of the Department of State required to be published under the provisions of the Administrative Procedure Act are found in the Code of Federal Regulations (generally in title 22) and in the **Federal Register**. Any person desiring information with respect to a particular procedure should examine the pertinent regulation cited in paragraph (b) of this section.

(b) The following paragraphs (b)(1) through (18) are citations to regulations within the scope of this section:

(1) Appointment of Foreign Service Officers. 22 CFR part 11 *et seq.*

(2) Schedule of Fees for Consular Services. 22 CFR part 22.

(3) Claims and Stolen Property. 22 CFR part 31 *et seq.*

(4) Issuance of Visas. 22 CFR parts 41–42 *et seq.*

(5) Nationality and Passports. 22 CFR part 50 *et seq.*

(6) International Educational and Cultural Exchanges. 22 CFR part 62 *et seq.*

(7) Protection and Welfare of Americans Abroad. 22 CFR part 71 *et seq.*

(8) Other Consular Services Abroad. 22 CFR part 92 *et seq.*

(9) Chemical Weapons Convention Regulations. 22 CFR part 103.

(10) International Trafficking in Persons. 22 CFR part 104.

(11) International Traffic in Arms Regulations. 22 CFR part 121 *et seq.*

(12) Certificates of Authentication. 22 CFR part 131 *et seq.*

(13) Civil Rights, including implementation of Sections 504 and 508 of the Rehabilitation Act of 1973. 22 CFR part 141 *et seq.*

(14) Department of State Acquisition Regulation. 48 CFR chapter 6.

(15) Availability of Information and Records to the Public. 22 CFR part 171.

(16) Service of Process. 22 CFR part 172.

(17) Availability of Public Diplomacy Program Material in the United States. 22 CFR part 173.

(18) Coordination, Reporting, and Publication of International Agreements. 22 CFR part 181.

(c) The regulations listed in paragraph (b) of this section are supplemented from time to time by amendments appearing initially in the **Federal Register**.

§ 5.5. The Foreign Affairs Manual and the Foreign Affairs Handbook.

The Department articulates official guidance, including procedures and policies, on matters relating to Department management and personnel in the Foreign Affairs Manual (FAM) and the Foreign Affairs Handbook (FAH) series. Some of these directives are promulgated pursuant to statute, such as the Secretary of State's authority to prescribe regulations for the Foreign Service as provided in Section 206 of the Foreign Service Act of 1980, as amended, 22 U.S.C. 3926. The FAMs

and FAHs that are publicly available are located on the Department's public website, at *https://fam.state.gov/.*

Dated: September 26, 2018.

Alicia A. Frechette,

Executive Director, Office of the Legal Adviser and Bureau of Legislative Affairs, Department of State.

[FR Doc. 2018–22011 Filed 10–9–18; 8:45 am]

BILLING CODE 4710–10–P

PRESIDIO TRUST

36 CFR Parts 1007, 1008, 1009 and 1011

RIN 3212–AA08; 3212–AA09; 3212–AA10; 3212–AA11

Freedom of Information Act; Privacy Act; Federal Tort Claims Act; Debt Collection Regulations

AGENCY: Presidio Trust.

ACTION: Final rule.

SUMMARY: This final rule revises Presidio Trust (Trust) regulations addressing requests under the Freedom of Information Act (FOIA), requests under the Privacy Act, administrative claims under the Federal Tort Claims Act (FTCA), and Debt Collection. The Trust is revising these regulations to update, clarify and streamline the language of several procedural provisions, and to incorporate amendments pursuant to the OPEN Government Act of 2007, the FOIA Improvement Act of 2016, and the Digital Accountability and Transparency Act of 2014.

DATES: These final rules are effective November 15, 2018.

FOR FURTHER INFORMATION CONTACT: Steve Carp, Legal Analyst, (415) 561–5300, *scarp@presidiotrust.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 104(j) of the Presidio Trust Act (16 U.S.C. 460bb appendix) authorizes the Trust to prescribe regulations governing the manner in which it conducts its business and exercises its powers. This final rule revises the Trust's administrative regulations at 36 CFR part 1007 (FOIA), part 1008 (Privacy Act), part 1009 (FTCA), and part 1011 (Debt Collection), as described below. In addition, the Trust has made minor ministerial changes and corrected typographical errors to these parts of its regulations.

Revisions to 36 CFR Part 1007 (Requests Under the FOIA)

The Trust adopted FOIA regulations effective January 29, 1999. The OPEN Government Act of 2007 (OPEN Act), among other things, provided a statutory definition of a ''representative of the news media'' on September 14, 2007. The FOIA Improvement Act of 2016 (FOIA Act) amended the FOIA on June 30, 2016. The Trust's final rule conforms its regulations to the definition of a ''representative of the news media'' in the OPEN Act and conforms its regulations to the FOIA Act, as well as to the Department of Justice's revised FOIA regulations. Specifically, this rule revises § 1007.1 (Purpose and scope) by adding references to the text of FOIA and the Trust's Privacy Act regulations; § 1007.2 (Records available) by adopting a policy of presumption of openness and the ''foreseeable harm'' standard; § 1007.3 (Requests for records) by providing a requester an opportunity to consult with the Trust's FOIA Officer to perfect a request and adding procedures to verify the requester's identity; § 1007.4 (Preliminary processing of requests) by specifying the date used for searching, adding consultation and referral procedures for requests of records of other departments and agencies, clarifying that consultation with submitters of commercial or financial information includes consultation with entities that are not individuals, and adding procedures to notify submitters and requesters of actions taken with respect to requests containing commercial or financial information; § 1007.5 (Action on initial requests) by specifying decisions that constitute adverse determinations of requests, adding procedures for notifying requesters of dispute resolution services, and adding types of requests that would qualify for expedited processing; § 1007.6 (Time limits for processing initial requests) by adding procedures for a requester to modify a request when an extension of time is necessary to respond to a request, and adding procedures for notifying requesters of dispute resolution services; § 1007.7 (Appeals) by changing the time period for requesters to file an administrative appeal from 20 working days to 90 calendar days and requiring an appeal of an adverse determination before seeking a court order; § 1007.8 (Action on appeals) by adding procedures for notifying requesters of dispute resolution services; and § 1007.9 (Fees) by adding definitions for the terms ''direct costs'' and ''review'' and modifying the definition for ''representative of the news media.''

This rule also revises § 1007.9 to update the fees charged by the Trust for processing FOIA requests. The Trust previously published its fees on December 2, 1998 in its Interim Compendium. Under this final rule, the Trust's Executive Director will set fees for processing these requests and will publish the fees on the Trust's website instead of the Interim Compendium. With these changes, the fees previously listed in § 1007.9 of the Interim Compendium will no longer be effective.

Revisions to 36 CFR Part 1008 (Requests Under the Privacy Act)

The Trust adopted Privacy Act regulations effective January 29, 1999. There has been little statutory change to the Privacy Act of 1974 since the Trust adopted its Privacy Act regulations. However, this rule conforms its regulations to guidance issued by the Department of Justice and the Office of Management and Budget. Specifically, this rule revises § 1008.2 (Definitions) by changing the definition of ''individual''; § 1008.9 (Disclosure of records) by adding procedures for notice of court-ordered and emergency disclosures; and §§ 1008.11 (Request for notification of existence of records: Submission), 1008.14 (Requests for access to records: Submission), and 1008.19 (Petitions for amendment: Submission and form) by adding procedures to verify the requester's identity.

This rule also revises § 1008.15 (Requests for access to records: Initial decision) to update the fees charged by the Trust for processing Privacy Act requests. The Trust previously published its fees on December 2, 1998 in its Interim Compendium. Under this final rule, the Trust's Executive Director will set fees for processing these requests and will publish the fees on the Trust's website instead of the Interim Compendium. With these changes, the fees previously listed in § 1008.15 of the Interim Compendium will no longer be effective.

Revisions to 36 CFR Part 1009 (Administrative Claims Under the FTCA)

The Trust adopted FTCA regulations effective January 29, 1999. This final rule revises § 1009.4 (Payment of claims) by adding procedures the Trust uses to pay FTCA claims from its proceeds or revenues.

Revisions to 36 CFR Part 1011 (Debt Collection)

The Trust adopted debt collection regulations effective January 12, 2006. The Digital Accountability and Transparency Act of 2014 amended federal debt collection law to require

federal agencies to refer eligible delinquent debts to the Department of the Treasury for administrative offset after 120 days, rather than 180 days. This final rule makes minor revisions to §§ 1011.4 (What notice will the Presidio Trust send to a debtor when collecting a debt?), 1011.9 (When will the Presidio Trust transfer a debt to the Financial Management Service for collection?), and 1011.10 (How will the Presidio Trust use administrative offset (offset of non-tax federal payments) to collect a debt?) to reflect this requirement.

Response to Comments

On March 6, 2018, the Trust published a proposed rulemaking in the **Federal Register** (83 FR 9459) and requested comments over a 49-day period ending on April 24, 2018. The Trust received three comment submissions, and these submissions were considered in drafting this final rule, as follows:

1. One comment suggested changing the word ''must'' to ''should'' in § 1007.3(b)(1) when invoking the FOIA in a request for records. The Trust has made this revision.

2. One comment suggested replacing the phrase ''To expedite processing'' with ''To facilitate handling'' in § 1007.3(b)(5) and § 1007.7(c)(3) to avoid confusion with the term of art ''expedited processing'' in § 1007.5(g). The Trust has made these revisions.

3. One comment suggested that for purposes of consulting with submitters of commercial or financial information, ''person'' in § 1007.4(c) should incorporate a wider range of entities, including corporations, states, and Native American tribes or nations. The Trust has revised this section to approximate the Department of Justice's template for agency FOIA regulations.

4. One comment suggested striking ''[i]f neither a statute nor an Executive order requires withholding'' from § 1007.5(f)(iii) addressing adverse determinations of document requests. The commenter wrote that the language could be read to indicate that there are reasons other than the exemptions identified in the FOIA statute itself for withholding, and that it is the FOIA exemption itself, not a statute or executive order standing alone, that provides the basis for withholding a document. The Trust has made this revision.

5. One comment suggested adding in the Trust's notice to requesters under § 1007.6(d) the availability of dispute resolution services offered by the Office of Government Information Services in the event unusual circumstances necessitate the extension of the time limit for processing initial requests beyond ten additional working days. The Trust has revised this section to approximate the Department of Justice's template for agency FOIA regulations.

6. One comment suggested modifying §§ 1007.8(c)(3) and 1007.8(d)(1) with broader language to indicate that requesters may file a FOIA-related lawsuit against the Trust in venues other than the United States District Court for the Northern District of California. The Trust declines to make this revision. Section 104(h) of the Presidio Trust Act provides that ''[t]he District Court for the Northern District of California shall have exclusive jurisdiction over any suit filed against the Trust.''

7. One comment suggested adding in the Trust's notice to appellants under § 1007.8(c)(4) the availability of dispute resolution services offered by the Office of Government Information Services when the Trust cannot reach a determination on an appeal within the applicable time limit. The Trust has made this revision.

8. One comment suggested adding in § 1007.8(d)(1) language that if the Trust agrees to participate in the dispute resolution services offered by the Office of Government Information Services, the Trust will actively engage in the process in an attempt to resolve the dispute. The Trust has revised this section to approximate the Department of Justice's template for agency FOIA regulations.

9. Two comments suggested revising the definition of ''representative of the news media'' in § 1007.9(a)(5)(vi) to make it consistent with the OPEN Act. The Trust has revised this section to approximate the Department of Justice's template for agency FOIA regulations.

Compliance With Laws and Executive Orders

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. This rule:

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

(2) Will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule only affects administrative procedures of the Trust;

(3) Does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and

(4) Does not raise novel legal or policy issues.

This final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the ORIA has not reviewed this regulation. Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The Trust has developed this rule in a manner consistent with these requirements.

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new rege:ulation. In furtherance of this requirement, section 2(c) of the Executive order requires that the new incremental costs associated with new regulations must, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. The OMB's interim guidance issued on February 2, 2017 explains that the above requirements only apply to each new ''significant regulatory action that imposes costs.'' Further, *see* OMB's Memorandum M–17–21 titled ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs''' (April 5, 2017). As this rule only relates to the Trust's administrative procedures, many of the revisions are statutorily required, and the rule is not a ''significant regulatory action,'' this final rule is exempt from the requirements of Executive Order 13771.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

This rule will not have a significant economic effect on a substantial number

of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million or more; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rule relates to internal administrative procedures and management of government function. It does not regulate external entities, impose any costs on them, or eliminate any procedures or functions that would result in a loss of employment or income on the part of the private sector.

Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. This rule produces no costs outside of the Federal government and does not create an additional burden on State, local, or tribal governments, or the private sector.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

This rule does not have sufficient federalism implications, as defined by section 1 of Executive Order 13132, to warrant the preparation of a federalism summary impact statement. This rule only affects use of Trust administered lands. It has no outside effects on other areas. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Effects on the Energy Supply (Executive Order 13211)

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

Consultation With Indian Tribes (Executive Order 13175)

This rule has no tribal implications or imposes substantial direct compliance costs on federally recognized Indian tribes. A tribal summary impact statement is not required.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

This rule does not contain new collections of information that require approval by the OMB under the Paperwork Reduction Act. The rule does not impose new recordkeeping or reporting requirements on State, tribal, or local governments; individuals; businesses; or organizations.

National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act (NEPA) and the Trust's NEPA regulations at 36 CFR 1010.16. It is a modification of existing Trust regulations in order to make them clearer, more complete, and consistent with current Federal statutory law. Moreover, a detailed statement under the NEPA is not required because the rule is covered by a categorical exclusion. The Trust has determined that the rule is categorically excluded under 36 CFR 1010.7(a)(10)(i) as it is a revision of Trust regulations that does not increase public use to the extent of compromising the nature and character of the Presidio Area B or of causing significant physical damage to it. Further, the rule will not result in the introduction of non-compatible uses, which might compromise the nature and characteristics of the Presidio Area B or cause significant physical damage to it. Finally, the rule will not conflict with adjacent ownerships or land uses or cause a significant nuisance to adjacent owners or occupants. The Trust has also determined that the rule does not involve any of the extraordinary circumstances listed in 36 CFR 1010.7(b) that would require further analysis under the NEPA.

Clarity of the Regulations

The Trust is required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule the Trust publishes must: (a) Be logically organized; (b) use the active voice to address readers directly; (c) use common, everyday words and clear language rather than jargon; (d) be divided into short sections and sentences; and (e) use lists and tables wherever possible.

List of Subjects

36 CFR Part 1007

Administrative practice and procedure, Archives and records, Freedom of information, National parks, Natural resources, Public lands, Records, Recreation and recreation areas.

36 CFR Part 1008

Administrative practice and procedure, National parks, Natural resources, Personally identifiable information, Privacy, Public lands, Recreation and recreation areas.

36 CFR Part 1009

Administrative practice and procedure, Claims, National parks, Natural resources, Public lands, Recreation and recreation areas, Tort claims.

36 CFR Part 1011

Administrative practice and procedure, Claims, Credit, Debt collection, Government employees, National parks, Natural resources, Public lands, Recreation and recreation areas, Reporting and recordkeeping requirements, Wages.

For the reasons set forth in the preamble, the Presidio Trust amends Chapter X of title 36 of the Code of Federal Regulations as follows:

PART 1007—REQUESTS UNDER THE FREEDOM OF INFORMATION ACT

■ 1. The authority citation for part 1007 continues to read as follows:

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note); 5 U.S.C. 552; E.O. 12,600, 52 FR 23781, 3 CFR 1988 Comp., p. 235.

■ 2. Revise § 1007.1 to read as follows:

§ 1007.1 Purpose and scope.

(a) This part contains the procedures for submission to and consideration by

the Presidio Trust of requests for records under the FOIA. As used in this part, the term ''FOIA'' means the Freedom of Information Act, 5 U.S.C. 552. The regulations in this part should be read in conjunction with the text of the FOIA. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with the Presidio Trust's Privacy Act regulations as well as under this subpart.

(b) Before invoking the formal procedures set out below, persons seeking records from the Presidio Trust may find it useful to consult with the Presidio Trust's FOIA Officer, who can be reached at The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052, Telephone: (415) 561–5300. As used in this part, the term ''FOIA Officer'' means the employee designated by the Executive Director to process FOIA requests and otherwise supervise the Presidio Trust's compliance with the FOIA, or the alternate employee so designated to perform these duties in the absence of the FOIA Officer.

(c) The procedures in this part do not apply to:

(1) Records published in the **Federal Register**, the Bylaws of the Presidio Trust, statements of policy and interpretations, and other materials that have been published by the Presidio Trust on its internet website (*http://www.presidiotrust.gov*) or are routinely made available for inspection and copying at the requester's expense.

(2) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 1007.2(c)(7) if:

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that:

(A) The subject of the investigation or proceeding is not aware of its pendency; and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(3) Informant records maintained by the United States Park Police under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

■ 3. Revise § 1007.2 to read as follows:

§ 1007.2 Records available.

(a) *Policy.* It is the policy of the Presidio Trust to make its records available to the public to the greatest extent possible consistent with the purposes of the Presidio Trust Act and the FOIA. The Presidio Trust administers the FOIA with a presumption of openness. As a matter of policy, the Presidio Trust may make discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. This policy does not create any right enforceable in court.

(b) *Statutory disclosure requirement.* The FOIA requires that the Presidio Trust, on a request from a member of the public submitted in accordance with the procedures in this part, make requested records available for inspection and copying.

(c) *Statutory exemptions.* Exempted from the FOIA's statutory disclosure requirement are matters that are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and

(ii) Are in fact properly classified pursuant to such Executive order.

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than the Privacy Act), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(d) *Decisions on requests.* It is the policy of the Presidio Trust to withhold information falling within an exemption only if:

(1) Disclosure is prohibited by statute or Executive order; or

(2) Sound grounds exist for invocation of the exemption.

(e) *Disclosure of reasonably segregable nonexempt material.* If a requested record contains material covered by an exemption and material that is not exempt, and it is determined under the procedures in this part to withhold the exempt material, any reasonably segregable nonexempt material shall be separated from the exempt material and released. In such circumstances, the records disclosed in part shall be marked or annotated to show both the amount and the location of the information deleted wherever practicable.

■ 4. Revise § 1007.3 to read as follows:

§ 1007.3 Requests for records.

(a) *Submission of requests.* A request to inspect or copy records shall be submitted to the Presidio Trust's FOIA Officer at P.O. Box 29052, San Francisco, CA 94129–0052.

(b) *Form of perfected requests.* (1) Requests under this part shall be in writing and should specifically invoke the FOIA.

(2) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Presidio Trust familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available,

the request should identify the subject matter of the record, the date when it was made, the place where it was made, the person or office that made it, the present custodian of the record, and any other information that will assist in locating the requested record. If the request involves a matter known by the requester to be in litigation, the request should also state the case name and court hearing the case. If after receiving a request the FOIA Officer determines that the request does not reasonably describe the records sought, the FOIA Officer will inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the FOIA Officer. If a request does not reasonably describe the records sought, the Presidio Trust's response to the request may be delayed or an adverse determination under § 1007.5(e).

(3)(i) A perfected request shall:

(A) Specify the fee category (commercial use, educational institution, noncommercial scientific institution, news media, or other, as defined in § 1007.9) in which the requester claims the request falls and the basis of this claim;

(B) State the maximum amount of fees that the requester is willing to pay or include a request for a fee waiver; and

(C) Provide contact information for the requester, such as phone number, email address and/or mailing address, to assist the Presidio Trust in communicating with them and providing released records.

(ii) Requesters who make requests for records about themselves must verify their identity.

(iii) Where a request for records pertains to another individual, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (*e.g.,* a copy of a death certificate or an obituary). As an exercise of administrative discretion, the Presidio Trust may require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(iv) Requesters are advised that, under § 1007.9 (f), (g) and (h), the time for responding to requests may be delayed:

(A) If a requester has not sufficiently identified the fee category applicable to the request;

(B) If a requester has not stated a willingness to pay fees as high as anticipated by the Presidio Trust; or

(C) If a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by the Presidio Trust.

(4) A request seeking a fee waiver shall, to the extent possible, address why the requester believes that the criteria for fee waivers set out in § 1007.10 are met.

(5) To facilitate handling, both the envelope containing a request and the face of the request should bear the legend ''FREEDOM OF INFORMATION REQUEST.''

(c) *Creation of records.* A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and may not require that new records be created in response to the request by, for example, combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends or comparisons. In those instances where the Presidio Trust determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the Presidio Trust may, in its discretion, agree to creation of a new record as an alternative to disclosing existing records.

■ 5. Revise § 1007.4 to read as follows:

§ 1007.4 Preliminary processing of requests.

(a) *Scope of requests.* Unless a request clearly specifies otherwise, requests to the Presidio Trust may be presumed to seek only records of the Presidio Trust in possession of the Presidio Trust at the time the Presidio Trust begins its search. If any other date is used, the Presidio Trust will inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c) is not considered responsive to a request.

(b) *Records of other departments and agencies.* (1) When reviewing records in response to a request, the Presidio Trust will determine whether another Federal department or agency is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the Presidio Trust will proceed in one of the following ways:

(i) *Consultation.* When records originating with the Presidio Trust, but contain within them information of interest to another Federal department or agency, the Presidio Trust will consult with that other entity prior to making a release determination; or

(ii) *Referral.* (A) When the Presidio Trust believes that another department or agency is best able to determine whether to disclose the record, the Presidio Trust will refer the responsibility for responding to the request regarding the record to that department or agency. Ordinarily, the department or agency that originated the record is presumed to be the best entity to make the disclosure determination. However, if the Presidio Trust and the originating department or agency jointly agree that the Presidio Trust is in the best position to respond to the request, then the record may be handled as a consultation.

(B) If the Presidio Trust refers any part of the responsibility for responding to a request to another department or agency, the Presidio Trust will document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the department or agency to which the record was referred, including that entity's FOIA contact information.

(2) Timing of responses to consultations and referrals. All consultations and referrals received by the Presidio Trust will be handled according to the date that the Presidio Trust received the perfected FOIA request.

(3) A request for documents that were classified by another agency shall be referred to that agency.

(c) *Consultation with submitters of commercial and financial information.* (1) If a request seeks a record containing trade secrets or commercial or financial information submitted by any person or entity, including a corporation, State, Native American tribe or nation, or foreign government, but not including another Federal Government entity, the Presidio Trust shall provide the submitter with notice of the request whenever:

(i) The submitter has made a good faith designation of the information as commercially or financially sensitive; or

(ii) The Presidio Trust has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter.

(2) Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(3) The notice to the submitter shall afford the submitter a reasonable period within which to provide a detailed statement of any objection to disclosure.

The submitter's statement shall explain the basis on which the information is claimed to be exempt under the FOIA, including a specification of any claim of competitive or other business harm that would result from disclosure. The statement shall also include a certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(4) A submitter who fails to respond within the time period specified in the notice will be deemed to have no objection to disclosure of the information. The Presidio Trust shall not be required to consider any information received from the submitter after the date of any disclosure decision. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(5) The Presidio Trust will notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

(6) If a submitter's statement cannot be obtained within the time limit for processing the request under § 1007.6, the requester shall be notified of the delay as provided in § 1007.6(f).

(7) Notification to a submitter is not required if:

(i) The Presidio Trust determines, prior to giving notice, that the request for the record should be denied;

(ii) The information has previously been lawfully published or officially made available to the public;

(iii) Disclosure is required by a statute (other than the FOIA) or regulation (other than this part);

(iv) Disclosure is clearly prohibited by a statute, as described in § 1007.2(c)(3);

(v) The information was not designated by the submitter as confidential when it was submitted, or a reasonable time thereafter, if the submitter was specifically afforded an opportunity to make such a designation; however, a submitter will be notified of a request for information that was not designated as confidential at the time of submission, or a reasonable time thereafter, if there is substantial reason to believe that disclosure of the information would result in competitive harm;

(vi) The designation of confidentiality made by the submitter is obviously frivolous; or

(vii) The information was submitted to the Presidio Trust more than ten years prior to the date of the request, unless the Presidio Trust has reason to believe that it continues to be confidential.

(8) If a requester brings suit to compel disclosure of information, the submitter of the information will be promptly notified.

■ 6. Revise § 1007.5 to read as follows:

§ 1007.5 Action on initial requests.

(a) *Authority.* (1) Requests shall be decided by the FOIA Officer.

(2) A decision to withhold a requested record, to release a record that is exempt from disclosure, or to deny a fee waiver shall be made only after consultation with the General Counsel.

(b) *Acknowledgement of requests.* (1) The Presidio Trust shall send the requester a written acknowledgement of the receipt of the request, provide the requester with an individualized tracking number, and provide the requester with contact information for the FOIA Officer.

(2) Requesters must include the individualized tracking number in all communications with the Presidio Trust regarding the request.

(c) *Estimated dates of completion and interim responses.* Upon request, the Presidio Trust will provide an estimated date by which the Presidio Trust expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the Presidio Trust may provide interim responses, releasing records on a rolling basis.

(d) *Form of grant.* (1) When a requested record has been determined to be available, the FOIA Officer shall notify the requester as to when and where the record is available for inspection or, as the case may be, when and how copies will be provided. If fees are due, the FOIA Officer shall state the amount of fees due and the procedures for payment, as described in § 1007.9.

(2) The FOIA Officer shall honor a requester's specified preference of form or format of disclosure (*e.g.,* paper, microform, audiovisual materials, or electronic records) if the record is readily available to the Presidio Trust in the requested form or format or if the record is reproducible by the Presidio Trust with reasonable efforts in the requested form or format.

(3) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 1007.4(c), both the requester and the submitter shall be notified of the decision. The notice to the submitter (a copy of which shall be made available to the requester) shall be forwarded a reasonable number of days prior to the date on which disclosure is to be made and shall include:

(i) A statement of the reasons why the submitter's objections were not sustained;

(ii) A specification of the portions of the record to be disclosed, if the submitter's objections were sustained in part; and

(iii) A specified disclosure date.

(4) If a claim of confidentiality has been found frivolous in accordance with § 1007.4(c)(7)(vi) and a determination is made to release the information without consultation with the submitter, the submitter of the information shall be notified of the decision and the reasons therefor a reasonable number of days prior to the date on which disclosure is to be made.

(e) *Adverse determinations of requests.* Adverse determinations, or denials of requests, include decisions that:

(1) The requester has not submitted a perfected request;

(2) The requested record is exempt, in whole or in part;

(3) The request does not reasonably describe the records sought;

(4) The information is not a record subject to the FOIA;

(5) The requested record does not exist, cannot be located, or has been destroyed; or

(6) The requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waivers or denials of requests for expedited processing.

(f) *Form of denial.* (1) A decision withholding a requested record shall be in writing and shall include:

(i) A list of the names and titles or positions of each person responsible for the denial;

(ii) A reference to the specific exemption or exemptions authorizing the withholding;

(iii) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption;

(iv) A statement that the denial may be appealed and a reference to the procedures in § 1007.7 for appeal; and

(v) A statement notifying the requester of the dispute resolution services offered by the Office of Government Information Services.

(2) A decision denying a request for failure to reasonably describe requested

records or for other procedural deficiency or because requested records cannot be located shall be in writing and shall include:

(i) A description of the basis of the decision;

(ii) A list of the names and titles or positions of each person responsible;

(iii) A statement that the matter may be appealed and a reference to the procedures in § 1007.7 for appeal; and

(iv) A statement notifying the requester of the dispute resolution services offered by the Office of Government Information Services.

(g) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined by the FOIA Officer that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(4) Within ten calendar days of receiving of a request for expedited processing, the FOIA Officer shall decide whether to grant the request for expedited processing and shall notify the requester of the decision. If a request for expedited processing is granted, the underlying FOIA request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

■ 7. Revise § 1007.6 to read as follows:

§ 1007.6 Time limits for processing initial requests.

(a) *Basic limit.* Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within 20 working days after receipt of a request. This determination shall be communicated immediately to the requester.

(b) *Running of basic time limit.* (1) The 20 working day time limit begins to run when a perfected request meeting the requirements of § 1007.3(b) is received at the Presidio Trust.

(2) The running of the basic time limit may be delayed or tolled as explained in § 1007.9(f), (g) and (h) if a requester:

(i) Has not stated a willingness to pay fees as high as are anticipated and has not sought and been granted a full fee waiver; or

(ii) Has not made a required advance payment.

(c) *Extensions of time.* In the following unusual circumstances, the time limit for acting on an initial request may be extended to the extent reasonably necessary to the proper processing of the request, but in no case may the time limit be extended by more than 20 working days:

(1) The need to search for and collect the requested records from facilities or other establishments that are separate from the main office of the Presidio Trust;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another department or agency having a substantial interest in the determination of the request.

(d) *Notice of extension.* A requester shall be notified in writing of an extension under paragraph (c) of this section. The notice shall state the reason for the extension and the date on which a determination on the request is expected to be made. When the extension exceeds ten working days, the requester shall be provided with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. The requester shall also be notified of the dispute resolution services offered by the Office of Government Information Services.

(e) *Treatment of delay as denial.* If no determination has been reached at the end of the 20 working day period for deciding an initial request, or an extension thereof under paragraph (c) of this section, the requester may deem the request denied and may exercise a right of appeal in accordance with § 1007.7.

(f) *Notice of delay.* When a determination cannot be reached within the time limit, or extension thereof, the requester shall be notified of the reason for the delay, of the date on which a determination may be expected, and of the right to treat the delay as a denial for purposes of appeal, including a reference to the procedures for filing an appeal in § 1007.7.

■ 8. Revise § 1007.7 to read as follows:

§ 1007.7 Appeals.

(a) *Right of appeal.* A requester may appeal to the Executive Director when:

(1) Records have been withheld;

(2) A request has been denied for failure to describe requested records or for other procedural deficiency or because requested records cannot be located;

(3) A fee waiver has been denied;

(4) A request has not been decided within the time limits provided in § 1007.6; or

(5) A request for expedited processing under § 1007.5(g) has been denied.

(b) *Time for appeal.* An appeal must be received at the office of the Presidio Trust no later than 90 calendar days after the date of the initial denial, in the case of a denial of an entire request, or 90 calendar days after records have been made available, in the case of a partial denial.

(c) *Form of appeal.* (1) An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial and should, in order to expedite the appellate process and give the requester an opportunity to present his or her arguments, contain a brief statement of the reasons why the requester believes the initial denial to have been in error.

(2) The appeal shall be addressed to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(3) To facilitate handling, both the envelope containing a notice of appeal and the face of the notice should bear the legend ''FREEDOM OF INFORMATION APPEAL.''

(d) *Appeal required.* Before seeking review by a court of an adverse determination by the Presidio Trust, a requester must first submit a timely administrative appeal.

■ 9. Revise § 1007.8 to read as follows:

§ 1007.8 Action on appeals.

(a) *Authority.* Appeals shall be decided by the Executive Director after consultation with the FOIA Officer and the General Counsel.

(b) *Time limit.* A final determination shall be made within 20 working days after receipt of an appeal meeting the requirements of § 1007.7(c).

(c) *Extensions of time.* (1) If the time limit for responding to the initial request for a record was not extended under the provisions of § 1007.6(c) or was extended for fewer than ten

working days, the time for processing of the appeal may be extended to the extent reasonably necessary to the proper processing of the appeal, but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than ten working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in § 1007.6(c) requires an extension.

(2) The appellant shall be advised in writing of the reasons for the extension and the date on which a final determination on the appeal is expected to be dispatched.

(3) If no determination on the appeal has been reached at the end of the 20 working day period, or the extension thereof, the requester is deemed to have exhausted administrative remedies, giving rise to a right of review in the United States District Court for the Northern District of California, as specified in 5 U.S.C. 552(a)(4).

(4) When no determination can be reached within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be reached to be dispatched, of the dispute resolution services offered by the Office of Government Information Services, and of the right to seek judicial review.

(5) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(d) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested records or portions thereof, the FOIA Officer shall immediately make the records available. If the determination upholds in whole or part the initial denial of a request for records, the determination shall advise the requester of the right to obtain judicial review in the U.S. District Court for the Northern District of California and shall set forth the names and titles or positions of each person responsible for the denial. The determination shall also inform the requester of the dispute resolution services offered by the Office of Government Information Services. Dispute resolution is a voluntary process. If the Presidio Trust agrees to participate in the dispute resolution services offered by the Office of Government Information Services, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 1007.4(c), the submitter shall be provided notice as described in § 1007.5(b)(3).

■ 10. Revise § 1007.9 to read as follows:

§ 1007.9 Fees.

(a) *Policy.* (1) Unless waived pursuant to the provisions of § 1007.10, fees for responding to FOIA requests shall be charged in accordance with the provisions of this section and the current schedule of charges determined by the Executive Director and published on the Presidio Trust's website. Such charges shall be set at the level necessary to recoup the full allowable direct costs to the Presidio Trust.

(2) Fees shall not be charged if the total amount chargeable does not exceed the costs of routine collection and processing of the fee. The Presidio Trust shall periodically determine the cost of routine collection and processing of a fee and publish such amount on its website.

(3) Where there is a reasonable basis to conclude that a requester or group of requesters acting in concert has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly.

(4) Fees shall be charged to recover the full costs of providing such services as certifying that records are true copies or sending records by a method other than regular mail, when the Presidio Trust elects to provide such services.

(5) The following definitions shall apply to this part:

(i) A *commercial use request* is a request from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interest through litigation. The intended use of records may be determined on the basis of information submitted by a requester and from reasonable inferences based on the identity of the requester and any other available information.

(ii) The term *direct costs* refers to those expenses the Presidio Trust incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.,* the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(iii) The term *duplication* refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (*e.g.,* magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(iv) An *educational institution* is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(v) A *noncommercial scientific institution* is an institution that is not operated for commerce, trade or profit and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(vi) A *representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Non-exhaustive examples of news media entities include television or radio stations that broadcast ''news'' to the public at large and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, the Presidio Trust can also consider a requester's past publication record in making this determination. The Presidio Trust will

advise requesters of their placement in this category.

(vii) The term *review* refers to the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure under § 1007.4(c) made by a submitter of confidential commercial information, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(viii) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents, databases and information in other electronic records. Searches shall be undertaken in the most efficient and least expensive manner possible, consistent with the Presidio Trust's obligations under the FOIA and other applicable laws.

(b) *Commercial use requests.* (1) A requester seeking records for commercial use shall be charged fees for direct costs incurred in document search and review (even if the search and review fails to locate records that are not exempt from disclosure) and duplication.

(2) A commercial use requester may not be charged fees for time spent resolving legal and policy issues affecting access to requested records.

(c) *Educational and noncommercial scientific institution requests.* (1) A requester seeking records under the auspices of an educational institution in furtherance of scholarly research or a noncommercial scientific institution in furtherance of scientific research shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged fees for costs incurred in:

(i) Searching for requested records;

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure;

(iii) Deleting reasonably segregable exempt matter;

(iv) Monitoring the requester's inspection of agency records; or

(v) Resolving legal and policy issues affecting access to requested records.

(d) *News media requests.* (1) A representative of the news media shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Representatives of the news media may not be charged fees for costs incurred in:

(i) Searching for requested records;

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure;

(iii) Deleting reasonably segregable exempt matter;

(iv) Monitoring the requester's inspection of agency records; or

(v) Resolving legal and policy issues affecting access to requested records.

(e) *Other requests.* (1) A requester not covered by paragraphs (b), (c), or (d) of this section shall be charged fees for the direct costs for document search (even if the search fails to locate records that are not exempt from disclosure) and duplication, except that the first two hours of search time and the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged for costs incurred in:

(i) Examining requested records to determine whether they are exempt from disclosure;

(ii) Deleting reasonably segregable exempt matter;

(iii) Monitoring the requester's inspection of agency records; or

(iv) Resolving legal and policy issues affecting access to requested records.

(f) *Requests for clarification.* Where a request does not provide sufficient information to determine whether it is covered by paragraph (b), (c), (d), or (e) of this section, the requester should be asked to provide additional clarification. If it is necessary to seek such clarification, the request may be deemed to have not been received for purposes of the time limits established in § 1007.6 until the clarification is received. Requests to requesters for clarification shall be made promptly.

(g) *Notice of anticipated fees.* Where a request does not state a willingness to pay fees as high as anticipated by the Presidio Trust, and the requester has not sought and been granted a full waiver of fees under § 1007.10, the request may be deemed to have not been received for purposes of the time limits established in § 1007.6 until the requester has been notified of and agrees to pay the anticipated fee. Advice to requesters with respect to anticipated fees shall be provided promptly.

(h) *Advance payment.* (1) Where it is anticipated that allowable fees are likely to exceed $250.00, the requester may be required to make an advance payment of the entire fee before processing of his or her request.

(2) Where a requester has previously failed to pay a fee within 30 days of the date of billing, processing of any request from that requester shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees anticipated in connection with the request.

(3) Advance payment of fees may not be required except as described in paragraphs (h) (1) and (2) of this section.

(4) Issuance of a notice requiring payment of overdue fees or advance payment shall toll the time limit in § 1007.6 until receipt of payment.

(i) *Form of payment.* Payment of fees should be made by check or money order payable to the Presidio Trust. Where appropriate, the official responsible for handling a request may require that payment by check be made in the form of a certified check.

(j) *Billing procedures.* A bill for collection shall be prepared for each request that requires collection of fees.

(k) *Collection of fees.* The bill for collection or an accompanying letter to the requester shall include a statement that interest will be charged in accordance with the Debt Collection Act of 1982, 31 U.S.C. 3717, and implementing regulations, 4 CFR 102.13, if the fees are not paid within 30 days of the date of the bill for collection is mailed or hand-delivered to the requester. This requirement does not apply if the requester is a unit of State or local government. Other authorities of the Debt Collection Act of 1982 shall be used, as appropriate, to collect the fees.

PART 1008—REQUESTS UNDER THE PRIVACY ACT

■ 11. The authority citation for part 1008 continues to read as follows:

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note); 5 U.S.C. 552a.

■ 12. Amend § 1008.2 to revise the definition of *individual* to read as follows:

§ 1008.2 Definitions.

* * * * *

Individual means a citizen of the United States or an alien who is currently lawfully admitted for permanent residence.

* * * * *

■ 13. Revise § 1008.9 to read as follows:

§ 1008.9 Disclosure of records.

(a) *Prohibition of disclosure.* No record contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) *General exceptions.* The prohibition contained in paragraph (a) of this section does not apply where disclosure of the record would be:

(1) To those officers or employees of the Presidio Trust who have a need for the record in the performance of their duties; or

(2) Required by the Freedom of Information Act, 5 U.S.C. 552.

(c) *Specific exceptions.* The prohibition contained in paragraph (a) of this section does not apply where disclosure of the record would be:

(1) For a routine use which has been described in a system notice published in the **Federal Register**;

(2) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, U.S. Code;

(3) To a recipient who has provided the system manager responsible for the system in which the record is maintained with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(4) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(5) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Presidio Trust specifying the particular portion desired and the law enforcement activity for which the record is sought;

(6) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(7) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(8) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(9) Pursuant to the order of a court of competent jurisdiction; or

(10) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(e)).

(d) *Reviewing records prior to disclosure.* (1) Prior to any disclosure of a record about an individual, unless disclosure is required by the Freedom of Information Act, reasonable efforts shall be made to ensure that the records are accurate, complete, timely and relevant for agency purposes.

(2) When a record is disclosed in connection with a Freedom of Information Act request made under this part and it is appropriate and administratively feasible to do so, the requester shall be informed of any information known to the Presidio Trust indicating that the record may not be fully accurate, complete, or timely.

(e) *Notice of court-ordered and emergency disclosures.* (1) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the Presidio Trust will make reasonable efforts to provide notice of this to the individual. Notice will be given within a reasonable time after the Presidio Trust's receipt of the order—except that in a case in which the order is not a matter of public record, the notice will be given only after the order becomes public. This notice will be mailed to the individual's last known address and will contain a copy of the order and a description of the information disclosed. Notice will not be given if disclosure is made from a criminal law enforcement system of records that has been exempted from the notice requirement.

(2) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting health or safety, the Presidio Trust will notify that individual of the disclosure. This notice will be mailed to the individual's last known address and will state the nature of the information disclosed, the person, organization or agency to which it was disclosed, the date of the disclosure, and the compelling circumstances justifying the disclosure.

■ 14. Revise § 1008.10 to read as follows:

§ 1008.10 Accounting for disclosures.

(a) *Maintenance of an accounting.* (1) Where a record is disclosed to any person, or to another agency, under any of the specific exceptions provided by § 1008.9(c), an accounting shall be made.

(2) The accounting shall record:

(i) The date, nature, and purpose of each disclosure of a record to any person or to another agency; and

(ii) The name and address of the person or agency to whom the disclosure was made.

(3) Accountings prepared under this section shall be maintained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(b) *Access to accountings.* (1) Except for accountings of disclosures made under § 1008.9(b) or 1008.9(c)(5), accountings of all disclosures of a record shall be made available to the individual to whom the record relates at the individual's request.

(2) An individual desiring access to an accounting of disclosures of a record pertaining to the individual shall submit a request by following the procedures of § 1008.13.

(c) *Notification of disclosure.* When a record is disclosed pursuant to § 1008.9(c)(9) as the result of the order of a court of competent jurisdiction, reasonable efforts shall be made to notify the individual to whom the record pertains as soon as the order becomes a matter of public record.

■ 15. Revise § 1008.11 to read as follows:

§ 1008.11 Request for notification of existence of records: Submission.

(a) *Submission of requests.* (1) Individuals desiring to determine under the Privacy Act whether a system of records contains records pertaining to them shall address inquiries to the Privacy Act Officer, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052, unless the system notice describing the system prescribes or permits submission to some other official or officials.

(2) Individuals desiring to determine whether records pertaining to them are maintained in two or more systems shall make a separate inquiry concerning each system.

(b) *Form of request.* (1) An inquiry to determine whether a system of records contains records pertaining to an individual shall be in writing.

(2) To expedite processing, both the envelope containing a request and the

face of the request should bear the legend ''PRIVACY ACT INQUIRY.''

(3) The request shall state that the individual is seeking information concerning records pertaining to him or herself and shall supply such additional identifying information, if any, as is called for in the system notice describing the system.

(4) The request must include verification of the requester's identity, including the requester's full name, current address, and date and place of birth. The request must be signed by the requester, and the signature must be notarized or submitted under 28 U.S.C. 1746, which permits statements to be made under penalty of perjury as a substitute for notarization.

(5) If the request is made on behalf of a minor or someone determined by a court to be incompetent, for access to records about that individual, the requester must establish:

(i) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at the requester's option, the Social Security number of the individual;

(ii) The requester's identity, as required in paragraph 4 above of this section;

(iii) That the requester is the parent or guardian of that individual, which the requester may prove by providing a copy of the individual's birth certificate showing the requester's parentage or by providing a court order establishing the requester's guardianship; and

(iv) That the requester is acting on behalf of that individual in making the request.

(6) Individuals who have reason to believe that information pertaining to them may be filed under a name other than the name they are currently using (*e.g.,* maiden name), shall include such information in the request.

■ 16. Revise § 1008.14 to read as follows:

§ 1008.14 Requests for access to records: Submission.

(a) *Submission of requests.* (1) Requests for access to records shall be submitted to the Privacy Act Officer unless the system notice describing the system prescribes or permits submission to some other official or officials.

(2) Individuals desiring access to records maintained in two or more separate systems shall submit a separate request for access to the records in each system.

(b) *Form of request.* (1) A request for access to records subject to the Privacy Act shall be in writing and addressed to Privacy Act Officer, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(2) To expedite processing, both the envelope containing a request and the face of the request should bear the legend ''PRIVACY ACT REQUEST FOR ACCESS.''

(3) Requesters shall specify whether they seek all of the records contained in the system which relate to them or only some portion thereof. If only a portion of the records which relate to the individual are sought, the request shall reasonably describe the specific record or records sought.

(4) If the requester seeks to have copies of the requested records made, the request shall state the maximum amount of copying fees which the requester is willing to pay. A request which does not state the amount of fees the requester is willing to pay will be treated as a request to inspect the requested records. Requesters are further notified that under § 1008.15(d) the failure to state willingness to pay fees as high as are anticipated by the Presidio Trust will delay processing of a request.

(5) The request shall supply such identifying information, if any, as is called for in the system notice describing the system.

(6) The request must include verification of the requester's identity, including the requester's full name, current address, and date and place of birth. The request must be signed by the requester, and the signature must be notarized or submitted under 28 U.S.C. 1746, which permits statements to be made under penalty of perjury as a substitute for notarization.

(7) If the request is made on behalf of a minor or someone determined by a court to be incompetent, for access to records about that individual, the requester must establish:

(i) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at the requester's option, the Social Security number of the individual;

(ii) The requester's identity, as required in paragraph 6 above of this section;

(iii) That the requester is the parent or guardian of that individual, which the requester may prove by providing a copy of the individual's birth certificate showing the requester's parentage or by providing a court order establishing the requester's guardianship; and

(iv) That the requester is acting on behalf of that individual in making the request.

(8) Requests failing to meet the requirements of this paragraph shall be returned to the requester with a written notice advising the requester of the deficiency in the request.

■ 17. Revise § 1008.15 to read as follows:

§ 1008.15 Requests for access to records: Initial decision.

(a) *Acknowledgements of requests.* Upon receipt of a request, the Presidio Trust ordinarily will send an acknowledgement letter to the requester which will confirm the requester's agreement to pay fees and will provide an assigned request number for further reference.

(b) *Decisions on requests.* A request made under this part for access to a record shall be granted promptly unless the record:

(1) Was compiled in reasonable anticipation of a civil action or proceeding; or

(2) Is contained in a system of records which has been excepted from the access provisions of the Privacy Act by rulemaking.

(c) *Authority to deny requests.* A decision to deny a request for access under this part shall be made by the Privacy Act Officer in consultation with the General Counsel.

(d) *Form of decision.* (1) No particular form is required for a decision granting access to a record. The decision shall, however, advise the individual requesting the record as to where and when the record is available for inspection or, as the case may be, where and when copies will be available. If fees are due under § 1008.15(e), the individual requesting the record shall also be notified of the amount of fees due or, if the exact amount has not been determined, the approximate amount of fees due.

(2) A decision denying a request for access, in whole or part, shall be in writing and shall:

(i) State the basis for denial of the request;

(ii) Contain a statement that the denial may be appealed to the Executive Director pursuant to § 1008.16 by writing to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052; and

(iii) State that the appeal must be received by the foregoing official within 20 working days of the date of the decision.

(3) If the decision denying a request for access involves records which fall under the jurisdiction of another agency, the individual shall be informed in a written response which shall:

(i) State the reasons for the denial;

(ii) Include the name, position title, and address of the official responsible for the denial; and

(iii) Advise the individual that an appeal of the declination may be made only to the appropriate official of the relevant agency, and include that official's name, position title, and address.

(4) Copies of decisions denying requests for access made pursuant to paragraphs (d)(2) and (d)(3) of this section will be provided to the Privacy Act Officer.

(e) *Fees.* (1) No fees may be charged for the cost of searching for or reviewing a record in response to a request made under § 1008.14.

(2) Unless the Privacy Act Officer determines that reduction or waiver of fees is appropriate, fees for copying a record in response to a request made under § 1008.14 shall be charged in accordance with the provisions of this section and the current schedule of charges determined by the Executive Director and published on the Trust's website. Such charges shall be set at the level necessary to recoup the full allowable direct costs to the Trust.

(3) Where it is anticipated that fees chargeable in connection with a request will exceed the amount the person submitting the request has indicated a willingness to pay, the Privacy Act Officer shall notify the requester and shall not complete processing of the request until the requester has agreed, in writing, to pay fees as high as are anticipated.

■ 18. Revise § 1008.18 to read as follows:

§ 1008.18 Amendment of records.

The Privacy Act permits individuals to request amendment of records pertaining to them contained in a system of records if they believe the records are not accurate, relevant, timely or complete. 5 U.S.C. 552a(d)(2). A request for amendment of a record shall be submitted in accordance with the procedures in this part.

■ 19. Revise § 1008.19 to read as follows:

§ 1008.19 Petitions for amendment: Submission and form.

(a) *Submission of petitions for amendment.* (1) A request for amendment of a record shall be submitted to the Privacy Act Officer unless the system notice describing the system prescribes or permits submission to a different official or officials. If an individual wishes to request amendment of records located in more than one system, a separate petition must be submitted with respect to each system.

(2) A petition for amendment of a record may be submitted only if the individual submitting the petition has previously requested and been granted access to the record and has inspected or been given a copy of the record.

(b) *Form of petition.* (1) A petition for amendment shall be in writing, shall specifically identify the record for which amendment is sought, and shall be addressed to the Privacy Act Officer, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(2) To expedite processing, both the envelope containing a petition and the face of the petition should bear the legend ''PRIVACY ACT PETITION FOR AMENDMENT.''

(3) The petition shall state, in detail, the reasons why the petitioner believes the record, or the objectionable portion thereof, is not accurate, relevant, timely or complete. Copies of documents or evidence relied upon in support of these reasons shall be submitted with the petition.

(4) The petition shall state, specifically and in detail, the changes sought in the record. If the changes involve rewriting the record or portions thereof or involve adding new language to the record, the petition shall propose specific language to implement the changes.

(5) The petition must include verification of the petitioner's identity, including the petitioner's full name, current address, and date and place of birth. The petition must be signed by the petitioner, and the signature must be notarized or submitted under 28 U.S.C. 1746, which permits statements to be made under penalty of perjury as a substitute for notarization.

(6) If the petition is made on behalf of a minor or someone determined by a court to be incompetent, for access to records about that individual, the petitioner must establish:

(i) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at the petitioner's option, the Social Security number of the individual;

(ii) The petitioner's identity, as required in paragraph 5 above of this section;

(iii) That the petitioner is the parent or guardian of that individual, which the petitioner may prove by providing a copy of the individual's birth certificate showing the petitioner's parentage or by providing a court order establishing the petitioner's guardianship; and

(iv) That the petitioner is acting on behalf of that individual in making the request.

(7) Petitions failing to meet the requirements of this paragraph shall be returned to the petitioner with a written notice advising the petitioner of the deficiency in the petition.

PART 1009—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT

■ 20. The authority citation for part 1009 continues to read as follows:

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note); 28 U.S.C. 2672.

■ 21. Revise § 1009.1 to read as follows:

§ 1009.1 Purpose.

The purpose of this part is to establish procedures for the filing and settlement of claims under the Federal Tort Claims Act (in part, 28 U.S.C. secs. 2401(b), 2671–2680, as amended). The officers to whom authority is delegated to settle tort claims shall follow and be guided by the regulations issued by the Attorney General prescribing standards and procedures for settlement of tort claims (28 CFR part 14).

■ 22. Revise § 1009.4 to read as follows:

§ 1009.4 Payment of claims.

(a) In making an award from proceeds or revenues of the Presidio Trust, the Presidio Trust will process payment using an agreement signed by the claimant and the Executive Director, or his or her designee. In making an award from proceeds or revenues not provided for by the Presidio Trust, the Presidio Trust will process payment as prescribed by 28 CFR 14.10.

(b) Prior to payment, appropriate releases shall be obtained as provided in 28 CFR 14.10.

(c) Any award, compromise, or settlement in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his or her designee.

PART 1011—DEBT COLLECTION

■ 23. The authority citation for part 1011 continues to read as follows:

Authority: 16 U.S.C. 460bb appendix, as amended.

■ 24. Revise § 1011.4(a)(7) to read as follows:

§ 1011.4 What notice will the Presidio Trust send to a debtor when collecting a debt?

(a) * * *

(7) The following timelines for the referral of a delinquent debt to the FMS:

(i) That debts over 120 days delinquent and eligible for the centralized administrative offset collection actions described in paragraph (a)(6)(i) of this section must be referred to the FMS for collection (see §§ 1011.10 through 1011.12);

(ii) That debts over 180 days delinquent not previously referred to the FMS under paragraph (a)(7)(i) of this section must be referred to the FMS for cross servicing debt collection (see § 1011.9).

* * * * *

■ 25. Revise § 1011.9(a) to read as follows:

§ 1011.9 When will the Presidio Trust transfer a debt to the Financial Management Service for collection?

(a) *Cross-servicing.* Unless a delinquent debt has previously been transferred to the FMS for administrative offset in accordance with § 1011.10, the Presidio Trust will transfer any eligible debt that is more than 180 days delinquent to the FMS for debt collection services, a process known as ''cross-servicing.'' The Presidio Trust may transfer debts delinquent 180 days or less to the FMS in accordance with the procedures described in 31 CFR 285.12. The FMS takes appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and the collection action to be taken. Appropriate action includes, without limitation, contact with the debtor, referral of the debt to the Treasury Offset Program, private collection agencies or the Department of Justice, reporting of the debt to credit bureaus, and administrative wage garnishment.

* * * * *

■ 26. Revise § 1011.10(a)(1) to read as follows:

§ 1011.10 How will the Presidio Trust use administrative offset (offset of non-tax federal payments) to collect a debt?

(a) *Centralized administrative offset through the Treasury Offset Program.* (1) The Presidio Trust will refer any eligible debt over 120 days delinquent to the Treasury Offset Program for collection by centralized administrative offset. The Presidio Trust may refer any eligible debt less than 120 days delinquent to the Treasury Offset Program for offset.

* * * * *

Dated: October 3, 2018.

Nancy J. Koch,

General Counsel.

[FR Doc. 2018–21969 Filed 10–9–18; 8:45 am]

BILLING CODE 4310–4R–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2018–0649; FRL–9984–65]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 28 chemical substances which were the subject of premanufacture notices (PMNs). The chemical substances are subject to Orders issued by EPA pursuant to section 5(e) of TSCA. This action requires persons who intend to manufacture (defined by statute to include import) or process any of these 28 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the intended use within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

DATES: This rule is effective on December 10, 2018. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on October 24, 2018.

Written adverse comments on one or more of these SNURs must be received on or before November 9, 2018 (see Unit VI. of the **SUPPLEMENTARY INFORMATION**). If EPA receives written adverse comments, on one or more of these SNURs before November 9, 2018, EPA will withdraw the relevant sections of this direct final rule before its effective date.

For additional information on related reporting requirement dates, see Units I.A., VI., and VII. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0649, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA—Hotline, ABVI-Goodwill, 422 South Clinton Ave. Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA—Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification

requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule on or after November 9, 2018 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through **REGULATIONS.GOV** or email. Clearly mark part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

A. What action is the agency taking?

1. *Direct Final Rule.* EPA is promulgating these SNURs using direct final rule procedures. These SNURs will require persons to notify EPA at least 90 days before commencing the manufacture or processing of a chemical substance for any activity designated by these SNURs as a significant new use. Receipt of such notices obligates EPA to assess risks that may be associated with the significant new uses under the conditions of use and, if appropriate, to regulate the proposed uses before they occur.

2. Proposed Rule. In addition to this Direct Final Rule, elsewhere in this issue of the **Federal Register**, EPA is issuing a Notice of Proposed Rulemaking for this rule. If EPA receives no adverse comment, the Agency will not take further action on the proposed rule and the direct final rule will become effective as provided in this action. If EPA receives adverse comment on one or more of SNURs in this action by October 25, 2018 (see Unit VI. of the **SUPPLEMENTARY INFORMATION**), the Agency will publish in the **Federal Register** a timely withdrawal of the specific SNURs that the adverse comments pertain to, informing the public that the actions will not take effect. EPA would then address all adverse public comments in a response to comments document in a subsequent final rule, based on the proposed rule.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)(i)). TSCA furthermore prohibits such manufacturing or processing from commencing until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination (15 U.S.C. 2604(a)(1)(B)(ii)). As described in Unit V., the general SNUR provisions are found at 40 CFR part 721, subpart A.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the 28 chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for 28 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) Order.
- Information identified by EPA that would help characterize the potential

health and/or environmental effects of the chemical substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use designated by the SNUR.

This information may include testing required in a TSCA section 5(e) Order to be conducted by the PMN submitter, as well as testing not required to be conducted but which would also help characterize the potential health and/or environmental effects of the PMN substance. Any recommendation for information identified by EPA was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the chemical substance. Further, any such testing identified by EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models. EPA also recognizes that whether testing/further information is needed will depend on the specific exposure and use scenario in the SNUN. EPA encourages all SNUN submitters to contact EPA to discuss any potential future testing. See Unit VIII. for more information.

• CFR citation assigned in the regulatory text section of this rule.

The regulatory text section of these rules specifies the activities designated as significant new uses. Certain new uses, including exceedance of production volume limits (*i.e.,* limits on manufacture volume) and other uses designated in this rule, may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

These rules include 28 PMN substances that are subject to Orders under TSCA section 5(e)(1)(A). Each Order is based on one or more of the findings in TSCA section 5(a)(3)(B): there is insufficient information to permit a reasoned evaluation; in the absence of sufficient information to permit a reasoned evaluation, the activities associated with the PMN substances may present unreasonable risk to human health or the environment; the substance is or will be produced in substantial quantities, and enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant (substantial) human exposure to the substance. Those Orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The SNURs identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying Orders, consistent with TSCA section 5(f)(4).

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via inhalation exposure, the underlying TSCA section 5(e) Order required, among other things, that potentially exposed employees wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below a New Chemical Exposure Limit (NCEL) that is established by EPA to provide adequate protection to human health. In addition to the actual NCEL concentration, the comprehensive NCELs provisions in TSCA section 5(e) Orders, which are modeled after Occupational Safety and Health Administration (OSHA) Permissible Exposure Limits (PELs) provisions, include requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. However, no comparable NCEL provisions currently exist in 40 CFR part 721, subpart B, for SNURs. Therefore, for these cases, the individual SNURs in 40 CFR part 721, subpart E, will state that persons subject to the SNUR who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. EPA expects that persons whose § 721.30 requests to use the NCELs approach for SNURs that are approved by EPA will be required to comply with NCELs provisions that are comparable to those contained in the corresponding TSCA section 5(e) Order for the same chemical substance.

PMN Numbers: P–15–442, P–15–443, P–15–444, P–15–445, P–15–446, P–15–447, P–15–525, P–15–526, P–15–527, and P–15–528.

Chemical names: Rare earth doped zirconium oxide (generic).

CAS numbers: Not available.

Effective date of TSCA section 5(e) Order: January 25, 2018.

Basis for TSCA section 5(e) Order: The PMNs state that the generic (non-confidential) use of the substances will be as catalysts. EPA identified concern for lung toxicity and oncogenicity based on analogy to respirable poorly soluble particulates and the crystalline structure of the substances. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health and the environment. The order was also issued under TSCA sections 5(a)(3)(B)(ii)(II) and 5(e)(1)(A)(ii)(II), based on a finding that the substances will be produced in substantial quantities and that the substances either enter or may reasonably be anticipated to enter the environment in substantial quantities, or there is or may be significant (or substantial) human exposure to the substances. To protect against these risks, the Order requires:

1. Submit to EPA certain toxicity testing for both P–15–443 and P–15–445 within the 18 and 60-month time limits specified on the Order.

2. Use of a National Institute of Occupational Safety and Health (NIOSH)-certified respirator with an assigned protection factor (APF) of at least 1,000 where there is a potential for inhalation exposure or compliance with a NCEL of 0.07 mg/m^3 as an 8-hour time-weighted average to prevent inhalation exposure;

3. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the safety data sheet (SDS).

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the health effects of the PMN substances may be potentially useful to characterize the effects of the PMN substances in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. The submitter has agreed not to exceed the time limits in the Order without performing specific pulmonary toxicity testing and carcinogenicity testing on PMN substances P–15–443 and P–15–445.

CFR citation: 40 CFR 721.11173.

PMN Numbers: P–16–194, P–16–195, P–16–196, P–16–197, P–16–198, P–16–199, P–16–460, P–16–461, P–16–462, P–16–463, and P–16–464.

Chemical names: Silane-treated aluminosilicate (generic).

CAS numbers: Not available.

Effective date of TSCA section 5(e) Order: January 22, 2018.

Basis for TSCA section 5(e) Order: The PMNs state that the generic (non-confidential) use of the substances will be as process aids. Based on analysis of test data on the PMN substances, EPA identified human health concerns for cancer and non-cancer chronic toxicity effects associated with the metal

impurities found in the PMN substances. Environmental effects were identified for the metal constituents in the PMN substances. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

1. Submit to EPA metals content analysis of the material used to manufacture the PMN substances.
2. Provide personal protective equipment to its workers to prevent dermal exposure where there is potential for dermal exposure.
3. Use of a NIOSH-certified respirator with an APF of at least 50 where there is a potential for inhalation exposures.
4. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.
5. Not manufacture or process the PMN substances other than at facilities equipped with pollution controls, such as a bag house, that remove particulates from the air at 99% or greater efficiency.
6. Not use the PMN substances other than as described in the PMN.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the health effects of the PMN substances may be potentially useful to characterize the effects of the PMN substances in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. The submitter has agreed not to exceed the time limits in the Order without sampling and analyzing the immediate precursor used to manufacture the PMN substances via EPA Method 6010B for the following elements: arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, manganese, mercury, nickel, selenium, silver, vanadium, and zinc.

CFR citations: 40 CFR 721.11174.

PMN Number: P–16–307

Chemical Name: Heteropolycycliccarboxylic acid, 1,3-dihydro-disubstituted-, polymer with 1,1'-methylenebis, reaction products with silica (generic).

CAS Number: Not available.

Effective date of TSCA section 5(e) Order: January 5, 2018.

Basis for TSCA section 5(e) Order: The PMN states that the generic (non-confidential) use of the substance will be an open, non-dispersive use. Based on physical/chemical properties of the PMN substance and structure activity relationship (SAR) analysis of test data on analogous poorly, soluble respirable particles and isocyanates, EPA identified concerns for lung effects and dermal and respiratory sensitization. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(l)(A)(ii)(I) of TSCA, based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health. To protect against these risks, the Order requires:

1. Manufacture of the PMN substance to contain no more than 0.1% residual of free isocyanate by weight;
2. Use of personal protective equipment where there is a potential for dermal exposure;
3. No manufacturing, processing, or use of the PMN substance in any manner that generates a vapor, dust, mist, or aerosol;
4. Refraining from manufacture, processing or use for consumer use or in commercial use where there is use in a consumer setting;
5. Manufacture, process, or use the PMN substance only in liquid formulation; and
6. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about health effects of the PMN substance may be potentially useful to characterize the effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. EPA has also determined that the results of acute toxicity testing and specific target organ toxicity testing would help characterize the potential human effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or relevant information.

CFR citation: 40 CFR 721.11175.

PMN Number: P–17–176

Chemical name: Carbonic acid, alkyl carbomonocyclic ester (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: February 21, 2018.

Basis for TSCA section 5(e) Order: The PMNs state that the generic (non-confidential) use of the substance will be as a battery ingredient. Based on toxicology data from an analogue, EPA has identified possible human health concerns for developmental toxicity and effects on the ovaries, adrenals and liver. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health. To protect against these risk, the Order requires:

1. Submit to EPA certain toxicity testing within 3 years of the notice of commencement of manufacturing (including import) of the PMN substance;
2. Use of personal protective equipment to its workers to prevent dermal exposure where there is a potential for dermal exposure;
3. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.
4. Refraining from domestic manufacture in the United States (*i.e.,* import only); and
5. No release of the PMN substance into waters of the United States exceeding 45 parts per billion.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the environmental and health effects of the PMN substance may be potentially useful to characterize the effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. The submitter has agreed not to manufacture the PMN substance without performing specific reproductive/developmental toxicity testing 3 years from the notice of commencement. EPA has also determined that the results of specific chronic aquatic toxicity testing would help characterize the potential environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or relevant information.

CFR citation: 40 CFR 721.11176.

PMN Number: P–17–183.

Chemical name: 1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with 2-(chloromethyl)oxirane, reaction products with polyethylene-polypropylene glycol 2-aminopropyl Me ether.

CAS number: 1627528–04–4.

Effective date of TSCA section 5(e) Order: February 28, 2018.

Basis for TSCA section 5(e) Order: The PMNs state that the generic (non-confidential) use of the substance will be as a pigment wetting and dispersing additive. Based on the surfactant potential of the PMN compound, EPA has identified concerns for lung effects to workers if respirable particulates or droplets are inhaled. The Order was issued under TSCA sections 5(a)(3)(B)(i) and 5(e)(1)(A)(i), based on a finding that the available information is insufficient to permit a reasoned evaluation of the human health effects of the PMN substance. To protect against these risks, the Order requires:

1. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS;
2. Refraining from domestic manufacture in the United States (*i.e.,* import only);
3. No manufacturing, processing, or using the PMN substance in any manner that results in inhalation exposure to vapors, mists, aerosols or dusts;
4. No use of the PMN substance other than the confidential uses allowed by the Order; and
5. No use of the PMN substance in consumer products.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the health effects of the PMN substance may be potentially useful to characterize the effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. EPA has determined that the results of specific physical-chemical properties and acute and chronic pulmonary toxicity testing would help characterize the potential health effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or relevant information.

CFR citation: 40 CFR 721.11177.

PMN Number: P–17–232.

Chemical name: Copolyamide of an aromatic dicarboxylic acid and a mixture of diamines (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: March 5, 2018.

Basis for TSCA section 5(e) Order: The PMN states that the generic (non-confidential) use of the substance is as an engineering thermoplastic. Based on SAR analysis on structurally similar poorly soluble particles, EPA identified concerns for lung effects to workers if respirable particles are present. The Order was issued under TSCA section 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health. To protect against these risk, the Order requires:

Manufacture the PMN substance with a particle size of greater than 10 microns.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the health effects of the PMN substance may be potentially useful to characterize the effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. EPA has also determined that the results of pulmonary toxicity testing would help characterize the potential human effects of the PMN substance. Although the Order does not require this testing, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or relevant information.

CFR citation: 40 CFR 721.11178.

PMN Number: P–17–257.

Chemical name: Single-walled carbon nanotubes.

CAS number: Not available.

Effective date of TSCA section 5(e) Order: January 17, 2018.

Basis for TSCA section 5(e) Order: The PMN states that the generic (non-confidential) use of the substance will be as an additive in composite materials for mechanical, thermal, and conductivity improvements. Based on analysis of analogous carbon nanotubes, EPA identified concerns for pulmonary toxicity. Based on analogous carbon nanotubes, EPA also identified potential toxicity to aquatic organisms if the PMN substance is released to water. The order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the PMN substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

1. Submit to EPA certain toxicity testing before manufacturing (including import) by the times specified in the Order.
2. Provide personal protective equipment to its workers to prevent dermal exposure where there is a potential for dermal exposure.
3. Provide NIOSH certified respirators with an APF of at least 50 to its workers to prevent inhalation exposure.
4. No use of the PMN substance in application methods that generate a dust, vapor, mist or aerosol.
5. Use the PMN substance for industrial uses only.
6. Use the PMN substance only for the confidential uses allowed in the Order.
7. No release of the PMN substance to water.
8. Disposal of the PMN substance only via landfill or incineration.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the environmental and health effects of the PMN substance may be potentially useful to characterize the effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. The submitter has agreed not to manufacture the PMN substance without performing specific physical property and pulmonary toxicity testing. EPA has also determined that the results of specific chronic aquatic toxicity testing would help characterize the potential environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or relevant information.

CFR citation: 40 CFR 721.11179.

PMN Number: P–17–283.

Chemical name: Arenesulfonic acid, alkyl derivatives, metal salts (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: February 6, 2018.

Basis for TSCA section 5(e) Order: The PMN states that the generic (non-confidential) use of the substance will be as a lubricating oil additive for automotive engine oils. Based on

analysis of test data on the PMN substance, EPA identified concern for corrosion to skin, eyes, mucous membranes, and lungs. There is also concern for surfactant effects on the lung based on surfactant properties of the compounds. There is also concern for acute toxicity, mutagenicity, irritation, and sensitization based on submitted analogue test data. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. The Order was also issued under TSCA sections 5(a)(3)(B)(ii)(II) and 5(e)(1)(A)(ii)(II), based on a finding that the substance is or will be produced in substantial quantities and that the substance wither enters or may reasonably be anticipated to enter the environment in substantial quantities, or there is or may be significant (or substantial) human exposure to the substance. To protect against these risks, the Order requires:

1. Submit to EPA certain toxicity testing within six months of filing a notice of commencement (NOC) to EPA;
2. Use of personal protective equipment where there is a potential for dermal exposure;
3. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS; and
4. Refrain from manufacturing, processing, or using the PMN substance in any manner that produces vapor, mist, spray or aerosol.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the health effects of the PMN substance may be potentially useful to characterize the effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. The submitter has agreed not to manufacture the PMN substance without performing sensitization testing. EPA has also determined that the results of specific physical-chemical properties and acute and chronic pulmonary toxicity testing would help characterize the potential health effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or relevant information.

CFR citation: 40 CFR 721.11180.

PMN Number: P–17–353.

Chemical name: Heteromonocycle, 2-[(bicarbomonocycle-2-substituted)alkyl]-(generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: February 26, 2018.

Basis for TSCA section 5(e) Order: The PMN states that the generic (non-confidential) use of the substance will be as an additive in resin manufacture. Based on information on analogous substances, EPA has identified concerns for irritation to the eye, lung, and mucous membranes, skin and lung sensitization, oncogenicity, developmental toxicity, male reproductive toxicity, liver toxicity, and kidney toxicity. Ecotoxicity hazard concerns were high based on EcoSAR analysis of analogous chemical. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the PMN substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

1. Refraining from domestic manufacture in the United States (*i.e.,* import only);
2. Use of the PMN substance only for the confidential use allowed in the Order;
3. No processing and use of the PMN substance using methods that may generate a spray, mist or aerosol.
4. Use of personal protective equipment where there is a potential for dermal exposure.
5. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.
6. No release of the PMN substance into the waters of the United States.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the environmental and health effects of the PMN substance may be potentially useful to characterize the effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. EPA has also determined that the results of specific acute and chronic aquatic toxicity testing, skin sensitization testing, carcinogenicity testing, and specific target organ testing would help characterize the potential human effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or relevant information.

CFR citation: 40 CFR 721.11181.

V. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for all 28 chemical substances, regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) Orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters.

The SNURs identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying Orders, consistent with TSCA section 5(f)(4).

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

- EPA will receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- EPA will be able to either determine that the prospective manufacture or processing is not likely to present an unreasonable risk, or to take necessary regulatory action associated with any other determination, before the described significant new use of the chemical substance occurs.
- EPA will identify as significant new uses any manufacturing, processing, use, distribution in commerce, use, or disposal that does not conform to the restrictions imposed by the underlying Orders, consistent with TSCA section 5(f)(4).

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VI. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule. The effective date of this rule is December 10, 2018without further notice, unless EPA receives written adverse comments before November 9, 2018.

If EPA receives written adverse comments on one or more of these SNURs before November 9, 2018, EPA will withdraw the relevant sections of this direct final rule before its effective date.

This rule establishes SNURs for a number of chemical substances. Any person who submits adverse comments must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in the comment.

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received an NOC and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA section 5(e) Orders have been issued for all of the chemical substances, and the PMN submitters are prohibited by the TSCA section 5(e) Orders from undertaking activities which will be designated as significant new uses. The identities of 26 of the 28 chemical substances subject to this rule have been claimed as confidential and EPA has received no post-PMN *bona fide* submissions (per §§ 720.25 and 721.11) for a chemical substance covered by this action. Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

Therefore, EPA designates October 10, 2018 as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach has been to ensure that a person could not defeat a SNUR by initiating a significant new use before the effective date of the direct final rule.

Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified as of that date will have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons will have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require developing any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: Development of test data is required where the chemical substance subject to the SNUR is also subject to a rule, order or consent agreement under TSCA section 4 (see TSCA section 5(b)(1)).

In the absence of a TSCA section 4 test rule covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. lists potentially useful information for all of the listed SNURs. Descriptions of the information are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

In certain of the TSCA section 5(e) Orders for the chemical substances regulated under this rule, EPA has established production volume or time limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. Listings of the information required in the TSCA section 5(e) Orders are included in Unit IV. The SNURs contain the same production volume limits as the TSCA section 5(e) Orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

Any request by EPA for the triggered and pended testing described in the Orders was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the PMN substances. Further, any such testing request on the part of EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models.

Potentially useful information identified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at § 721.1725(b)(1).

Under these procedures a manufacturer or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2018–0649.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866

This action establishes SNURs for several new chemical substances that were the subject of PMNs, or TSCA section 5(e) Orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act (PRA)

According to PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

On February 18, 2012, EPA certified pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
2. The SNUR submitted by any small entity would not cost significantly more than $8,300. A copy of that certification is available in the docket for this action.

This action is within the scope of the February 18, 2012 certification. Based on the Economic Analysis discussed in Unit XI. and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

- A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
- Submission of the SNUN would not cost any small entity significantly more than $8,300.

Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to

believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132

This action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

XIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 1, 2018.

Jeffery T. Morris,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add the following sections in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.11173	2070–0012
721.11174	2070–0012
721.11175	2070–0012
721.11176	2070–0012
721.11177	2070–0012
721.11178	2070–0012
721.11179	2070–0012
721.11180	2070–0012
721.11181	2070–0012
* * * * *	

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.11173 to subpart E to read as follows:

§ 721.11173 Rare earth doped zirconium oxide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as rare earth doped zirconium oxide (P–15–442, P–15–443, P–15–444, P–15–445, P–15–446, P–15–447, P–15–525, P–15–526, P–15–527, and P–15–528) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible), (a)(5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor of at least 1000), (a)(6) (particulate), (b) (concentration set at 1.0%), and (c).

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL is 0.07 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set at 1.0%), (f), (g)(1)(ii), (g)(2)(ii), (iii), (iv)(use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.07 mg/m^3), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (18 months).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d) and (f) through (i) are applicable to manufacturers and processors of the substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 5. Add § 721.11174 to subpart E to read as follows:

§ 721.11174 Silane-treated aluminosilicate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as silane-treated aluminosilicate (PMNs P–16–194, P–16–195, P–16–196, P–16–197, P–16–198, P–16–199, P–16–460, P–16–461, P–16–462, P–16–463, and P–16–464) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substances after they have been completely incorporated into a polymer matrix.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.* enclosure or confinement of operation, general and local ventilation) or administrative control measures (*e.g.* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible), (a)(5) (respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 50), (a)(6) (particulate), (b) (concentration set at 0.1%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 0.1%), (f), (g)(1)(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (g)(2)(i), (ii), (iii), (iv), (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. It is a significant new use to manufacture the substances without sampling and analyzing the immediate precursor used to manufacture the substances according to the terms specified in the 5(e) Order for the following elements: Arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, manganese, mercury, nickel, selenium, silver, vanadium, and zinc. It is a significant new use to manufacture the substances at facilities other than those equipped with pollution controls, such as a bag house, that remove particulates from the air at 99% or greater efficiency. It is a significant new use to process the substances other than in an enclosed system that does not allow for the release of particulates or at facilities equipped with pollution controls, such as a bag house, that remove particulates from the air at 99% or greater efficiency.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d), (f), (g), (h), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 6. Add § 721.11175 to subpart E to read as follows:

§ 721.11175 Heteropolycycliccarboxylic acid, 1,3-dihydro-disubstituted-, polymer with 1,1'-methylenebis, reaction products with silica (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as heteropolycycliccarboxylic acid, 1,3-dihydro-disubstituted-, polymer with 1,1'-methylenebis, reaction products with silica (P–16–307) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (ii), (iii), (a)(3), (a)(6) (particulate), (when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible), (b) (concentration set at 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (ii), (g)(2)(i), (ii), (iii), (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. It is a significant new use to manufacture, process, or use the substance for consumer use or for commercial uses that could introduce the substance into a consumer setting. It is a significant new use to manufacture, process, or use the substance other than in a liquid formulation. It is a significant new use to manufacture the PMN substance to contain more than 0.1% residual isocyanate by weight. It is a significant new use to manufacture, process, or use the substance in any manner that results in generation of a vapor, dust, mist or aerosol.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 7. Add § 721.11176 to subpart E to read as follows:

§ 721.11176 Carbonic acid, alkyl carbomonocyclic ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carbonic acid, alkyl carbomonocyclic ester (PMN P–17–176) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2), (a)(2)(i), (iv), (a)(3), (a)(6) (particulate), (a)(6)(v), (vi), (when determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible), (b)(concentration set at 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set at 1.0%), (f), (g)(1)(iv), (v), (vi), (ix), (g)(2)(i), (v), (g)(3)(i), (ii), (g)(4) (do not release to water above 45 parts per billion), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (p)(3 years).

(iv) *Release to water.* Release to water requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 45 ppb.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 8. Add § 721.11177 to subpart E to read as follows:

§ 721.11177 1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with 2-(chloromethyl)oxirane, reaction products with polyethylene-polypropylene glycol 2-aminopropyl Me ether.

(a) *Chemical substance and significant new used subject to reporting.* (1) The chemical substance identified as 1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with 2-(chloromethyl)oxirane, reaction products with polyethylene-polypropylene glycol 2-aminopropyl Me ether (PMN P–17–183, CAS No 1627528–04–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(ii), (g)(2)(ii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), (o). It is a significant new use to process or use the substance in any manner way that results in generation of a vapor, dust, mist or aerosol.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 9. Add § 721.11178 to subpart E to read as follows:

§ 721.11178 Copolyamide of an aromatic dicarboxylic acid and a mixture of diamines (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as copolyamide of an aromatic dicarboxylic acid and a mixture of diamines (PMN P–17–232) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. It is a significant new use to manufacture the substance with a particle size less than 10 microns.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 10. Add § 721.11179 to subpart E to read as follows:

§ 721.11179 Single-walled carbon nanotubes.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as single-walled carbon nanotubes (PMN P–17–257) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substances that have been:

(i) Embedded or incorporated into a polymer matrix that itself has been reacted (cured);

(ii) Embedded in a permanent solid polymer form that is not intended to undergo further processing, except mechanical processing; or

(iii) Incorporated into an article as defined at 40 CFR 720.3(c).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(4), (when determining which persons are reasonable likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measure (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible), (a)(5)(respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 50), (a)(6) (particulate), and (c).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), (p) (6 months), (y)(1), and (y)(2). (It is a significant new use to process or use the substance for non-industrial use except for the confidential non-industrial use described in the 5(e) Order).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), (c)(2).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e), (j), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 11. Add § 721.11180 to subpart E to read as follows:

§ 721.11180 Arenesulfonic acid, alkyl derivatives, metal salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as arenesulfonic acid, alkyl derivatives, metal salts (PMN P–17–283) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), (a)(3), (when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.* enclosure or confinement of operation, general and local ventilation) or administrative control measures (*e.g.* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible), (b) (concentration set at 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(skin sensitization), (eye irritation), (lung effects), (skin corrosion), (g)(2)(i), (iii), (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (6 months). It is a significant new use to manufacture, process or use the substance in any manner way that results in generation of a vapor, mist, spray, or aerosol.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provision of § 721.185 apply to this section.

■ 12. Add § 721.11181 to subpart E to read as follows:

§ 721.11181 Heteromonocycle, 2-[(bicarbomonocycle-2-substituted)alkyl]-(generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as heteromonocycle, 2-[(bicarbomonocycle-2-substituted)alkyl]-(PMN P–17–353) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (ii), (iii), (iv), (a)(3), (when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible), (b) (concentration set at 0.1%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 0.1%), (f), (g)(1), (g)(1)(iv), (vi), (vii), (ix), (mutagenicity), (eye, skin, lung, and mucous membrane irritation), (skin and lung sensitization), (g)(2)(i), (ii), (iii), (v), (avoid workplace airborne concentrations), (g)(3)(i), (ii), (g)(4)(iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities:* Requirements as specified in § 721.80(f) and (k). It is a significant new use to process or use the substance in any manner that generates a vapor, spray, mist, or aerosol.

(iv) *Release to water.* Requirements as specified in § 721.90(b)(1) and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

[FR Doc. 2018–21871 Filed 10–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0060; FRL–9985–12–Region 5]

Air Plan Approval; Minnesota; Infrastructure SIP Requirements for the 2012 $PM_{2.5}$ NAAQS; Multistate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of the State Implementation Plan (SIP) submission from Minnesota regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS or standard). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action pertains specifically to infrastructure requirements concerning interstate transport provisions.

DATES: This final rule is effective on November 9, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2017–0060. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta, Environmental Protection Specialist, at (312) 353–8777 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

I. What is being addressed by this document?
II. What comments did we receive on the proposed action?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is being addressed by this document?

On January 23, 2017, the Minnesota Pollution Control Agency (MPCA) submitted a request for EPA to approve its infrastructure SIP for the 2012 annual $PM_{2.5}$ NAAQS. On August 13, 2018, EPA proposed to approve the portion of the submission dealing with requirements one and two (otherwise known as ''prongs'' one and two) of the provision for interstate pollution transport under Clean Air Act Section 110(a)(2)(D)(i), also known as the ''good neighbor'' provision.[1]

The January 23, 2017 MPCA submittal included a demonstration that Minnesota's SIP contains sufficient major programs related to the interstate transport of pollution. Minnesota's submittal also included a technical analysis of its interstate transport of pollution relative to the 2012 $PM_{2.5}$ NAAQS that demonstrates that current controls are adequate for Minnesota to show that it meets prongs one and two of the ''good neighbor'' provision. After review, EPA proposed to approve Minnesota's request relating to prongs one and two of the ''good neighbor'' provision.

II. What comments did we receive on the proposed action?

Our August 13, 2018 proposed rule provided a 30-day review and comment period. The comment period closed on September 12, 2018. EPA did not receive any comments on the proposed action.

III. What action is EPA taking?

EPA is approving the portion of Minnesota's January 23, 2017 submission certifying that the current Minnesota SIP is sufficient to meet the required infrastructure requirements under CAA section 110(a)(2)(D)(i)(I), specifically prongs one and two, as set forth above.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

[1] There are four prongs to the Section 110(a)(2)(D)(i) ''good neighbor'' provision, which are: Prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong one); prohibit any source or other type of emissions activity in one state from interfering with maintenance of the NAAQS in another state (prong two); prohibit any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality in another state (prong three); and protect visibility in another state (prong four).

enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 25, 2018.

James Payne,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

■ 2. In § 52.1220, the table in paragraph (e) is amended by revising the entry for ''Section 110(a)(2) Infrastructure Requirements for the 2012 fine particulate matter ($PM_{2.5}$) NAAQS'' to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MINNESOTA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Comments
* *	*	*	*	* *
Section 110(a)(2) Infrastructure Requirements for the 2012 fine particulate matter ($PM_{2.5}$) NAAQS.	Statewide	6/12/2014, 5/26/2016 and 1/23/2017.	10/10/2018, [Insert **Federal Register** citation].	Fully approved for all CAA elements except the visibility protection requirements of (D)(i)(II).
* *	*	*	*	* *

* * * * *

[FR Doc. 2018–21875 Filed 10–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2018–0054; FRL–9984–99–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Interstate Transport Requirements for the 2012 Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to the infrastructure requirement for interstate transport of pollution with respect to the 2012 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 9, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2018–0054. 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, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Joseph Schulingkamp, (215) 814–2021, or by email at *schulingkamp.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 14, 2018 (83 FR 27732), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. In the NPR, EPA proposed approval of the Pennsylvania SIP revision addressing the interstate transport requirements for the 2012 $PM_{2.5}$ NAAQS in CAA section 110(a)(2)(D)(i)(I) submitted on October 11, 2017. For more information on particulate pollution, EPA's infrastructure requirements, and interstate transport requirements, see Section I of the NPR.

II. Summary of SIP Revision and EPA Analysis

Pennsylvania's October 11, 2017 SIP submittal includes a summary of statewide annual emissions of $PM_{2.5}$, coarse particulate matter (PM_{10}), and precursors of $PM_{2.5}$ including oxides of nitrogen (NO_X), sulfur dioxide (SO_2), ammonia, and volatile organic compounds (VOCs). Pennsylvania also included statewide SO_2 and NO_X emissions specifically from the electric generating units (EGU) sector as EGUs are the largest contributor to the point source emissions. The emissions summary shows that, for the years 2011 through 2015, emissions of all pollutants presented have been steadily decreasing or remained nearly steady for sources that potentially contribute to nonattainment in, or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state. The submittal also included currently available air quality monitoring data for $PM_{2.5}$.

Pennsylvania also discussed EPA's March 17, 2016 memorandum (2016 $PM_{2.5}$ Memorandum) and the fact that EPA's analysis showed that only one monitor in the eastern United States had projected $PM_{2.5}$ data above the 12.0 micrograms per cubic meter ($\mu g/m^3$) NAAQS value (Allegheny County, PA).[1] Pennsylvania also generally discussed prevailing wind directions and several

[1] ''Information on the Interstate Transport ''Good Neighbor'' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act section 110(a)(2)(D)(i)(I),'' memorandum from Stephan D. Page, Director, EPA Office of Air Quality Planning and Standards.

existing SIP-approved measures and other federally enforceable source-specific measures, pursuant to permitting requirements under the CAA, that apply to sources of $PM_{2.5}$ and its precursors within the Commonwealth. Pennsylvania alleges that with these measures, emissions reductions, ambient monitored $PM_{2.5}$ data, and meteorological data, the Commonwealth does not significantly contribute to, or interfere with the maintenance of, another state for the 2012 $PM_{2.5}$ NAAQS.

EPA used the information in the 2016 $PM_{2.5}$ Memorandum and additional information for the evaluation and came to the same conclusion as Pennsylvania. EPA identified the potential downwind nonattainment and maintenance receptors identified in the 2016 $PM_{2.5}$ Memorandum, and then determined that Pennsylvania's emissions will not contribute to these receptors, and thus will not contribute to nonattainment and maintenance problems, in 2021—the attainment year for moderate $PM_{2.5}$ nonattainment areas for the 2012 $PM_{2.5}$ NAAQS.

A detailed summary of Pennsylvania's submittal and the rationale for EPA's proposed action are explained in the NPR and accompanying technical support document (TSD) and will not be restated here.

III. Response to Comments

EPA received a total of four sets of comments on the June 14, 2018 NPR. Three of those did not concern any of the specific issues raised in the NPR, nor did they address EPA's rationale for the proposed approval of Pennsylvania's submittal. Therefore, EPA is not responding to those comments. EPA did receive one relevant set of comments; those comments, and EPA's response is discussed below. All of the comments received are included in the docket for this action.

Comment: The commenter first identifies that Pennsylvania submitted a SIP revision on July 15, 2014 and that all elements were approved except those under CAA sections 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). The commenter notes that EPA is required to act on a SIP revision within 12 months of finding the submittal complete and asks why EPA has not performed its statutory duty of acting on CAA section 110(a)(2)(D)(i)(II) within the prescribed time frame. The commenter continues, asking what was done between 2014 and the present to ensure that visibility protection was federally enforceable as required ''by this prong 4'' in terms of protecting human health and the environment.

Response: As stated in the NPR, Pennsylvania's July 15, 2014 SIP submittal did not include provisions addressing CAA section 110(a)(2)(D)(i)(I), and therefore that particular element of CAA section 110(a)(2)(D) (prohibiting emissions that contribute significantly to nonattainment, or interfere with maintenance of the NAAQS in any other state) was not before EPA for approval. *See* 83 FR 27733 (June 14, 2018). EPA's prior action on the July 15, 2014 SIP submittal approved the portion of the submittal which addressed the CAA section 110(a)(2)(D)(i)(II) element related to prevention of significant deterioration as it was addressed in the July 15, 2014 SIP submission, except EPA did not approve the portion of the July 15, 2014 submittal addressing CAA section 110(a)(2)(D)(i)(II) related to the visibility prong, that is, ''prong 4.'' *See* 80 FR 26461 (May 8, 2015). EPA did not take action on prong 4 because the U.S. Court of Appeals for the Third Circuit had vacated and remanded EPA's limited approval of Pennsylvania's regional haze SIP (as it related to certain best available retrofit technology (BART) requirements). *See Nat'l Parks Conservation Ass'n* v. *United States EPA,* 803 F.3d 151 (3rd Cir. 2015). EPA had also previously done a limited disapproval of the Pennsylvania regional haze SIP for relying on the Clean Air Interstate Rule (CAIR) [2] to satisfy the BART requirement for emissions of SO_2 and NO_X from Pennsylvania's BART-eligible electric generating units (EGUs). *See* 77 FR 33642 (June 7, 2012). In that same action, EPA imposed a federal implementation plan (FIP) that replaced Pennsylvania's reliance on CAIR with reliance on the Cross-State Air Pollution Rule (CSAPR) [3] for certain BART requirements for EGUs. Thus, due to the Third Circuit's remand of the limited approval on the Pennsylvania regional haze SIP for certain BARTs and due to the partial regional haze FIP applicable to certain EGU BARTs, EPA was not able to approve at that time that portion of Pennsylvania's July 15, 2014 SIP submittal addressing whether the Pennsylvania SIP had adequate provisions to prevent interference with other states' efforts to protect visibility (prong 4, CAA section 110(a)(2)(D)(i)(I)). As indicated in EPA's final action on the July 15, 2014 SIP submittal, EPA stated the Agency would take later separate action on the portion of the July 15, 2014 submittal addressing prong 4. *See* 80 FR 26461.

Regarding commenter's concern about what was done between July 2014 and the present to ensure that visibility was protected, EPA notes that the partial regional haze FIP has been in place since July 2012 providing visibility protection as the partial FIP addresses NO_X and SO_2 BART from EGUs in Pennsylvania which are some of the largest emitters of visibility impairing pollutants in the Commonwealth. Pennsylvania is currently preparing a revised regional haze SIP submission to respond to the September 2015 decision from the Third Circuit.

Furthermore, as EPA stated in the NPR, ''EPA's previous approval on that July 15, 2014 submittal is not at issue in this proposed rulemaking action and is mentioned herein for background; EPA is not at this time taking action on the remaining section of PADEP's July 15, 2014 submittal relating to visibility protection for the 2012 $PM_{2.5}$ NAAQS.'' The NPR noted that EPA will take later, separate action on the July 15, 2014 submittal as it relates to visibility protection under CAA section 110(a)(2)(D)(i)(II). This rulemaking action relates only to CAA section 110(a)(2)(D)(i)(I), which Pennsylvania addressed in its October 11, 2017 SIP submission. The October 11, 2017 submittal was determined complete on October 26, 2017, therefore the statutory deadline for EPA's final action is October 26, 2018. EPA's final rulemaking herein meets that statutory deadline.

Comment: The commenter asks why, if Pennsylvania had not submitted a SIP revision addressing CAA section 110(a)(2)(D)(i)(I) for the 2012 $PM_{2.5}$ NAAQS, EPA did not issue a finding of failure to submit as required by statute and then remedy the deficiency with a FIP.

Response: CAA section 110(a)(1) requires that states adopt and submit to EPA ''within 3 years (or such shorter period as the Administrator may provide) after the promulgation of'' a new or revised NAAQS a plan providing for the implementation, maintenance, and enforcement of the NAAQS. The revised 2012 $PM_{2.5}$ NAAQS was published on January 15, 2013 and became final on March 18, 2013. *See* 78 FR 3086. Thus, Pennsylvania was not required to submit a SIP to EPA until March 18, 2016. Therefore, a finding of failure to submit for CAA section

[2] CAIR required certain states, including Pennsylvania, to reduce emissions of SO_2 and NO_X that significantly contribute to downwind nonattainment of the 1997 NAAQS for ozone and fine particulate matter ($PM_{2.5}$). 70 FR 25162 (May 12, 2005).

[3] EPA promulgated CSAPR (76 FR 48208, August 8, 2011) as a replacement to CAIR in response to the United States Court of Appeals for the District of Columbia Circuit's decision in *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008).

110(a)(2)(D)(i)(I) or any FIP would have been premature when EPA acted on the July 15, 2014 SIP submittal addressing section 110(a)(2) requirements for the 2012 $PM_{2.5}$ NAAQS on May 8, 2015. In the May 8, 2015 rulemaking, EPA stated it would take action on the remaining elements of CAA section 110(a)(2)(D)(i)(II) for visibility protection at a later date. Our final action herein addresses the CAA section 110(a)(2)(D)(i)(I) requirements for Pennsylvania with our approval of Pennsylvania's October 11, 2017 submittal.

Comment: The commenter requests that EPA explain and quantify how delayed action on PADEP's SIP revisions with regard to CAA sections 110(a)(2)(D)(i)(I) and (II) for $PM_{2.5}$ affected any changes in respiratory ailments in Pennsylvania residents.

Response: First, EPA reiterates that the visibility protections under CAA section 110(a)(2)(D)(i)(II) are not at issue in this rulemaking as EPA has stated in the NPR and in our prior action on the July 15, 2014 SIP submittal that we will take later rulemaking action on Pennsylvania's obligations relating to visibility protection in CAA section 110(a)(2)(D)(i)(II). Second, EPA has not delayed action on PADEP's SIP revision addressing CAA section 110(a)(2)(D)(i)(I). Pennsylvania submitted the SIP revision on October 11, 2017 and EPA determined it complete on October 26, 2017; therefore, EPA's statutory deadline is October 26, 2018. Because EPA has not delayed action, the commenter's supposition that EPA's delay affected respiratory ailments in Pennsylvania residents is based on a faulty premise and thus is incorrect. In any event, consideration of respiratory ailments is not required by the statutory language in CAA section 110(a)(2)(D)(i)(I).

Comment: The commenter asks why the regulatory community is devoting so much time devising analyses and justification for ''elements that have no meaning in actual emission reductions or improvement in air quality.'' The commenter continues by asking EPA to explain what has been accomplished in terms of ensuring the well-being of human health and the environment through this requirement.

Response: CAA section 110(a)(1) requires all states to submit a SIP addressing the elements of CAA section 110(a)(2), including section 110(a)(2)(D)(i)(I), within three years of EPA promulgating a new or revised NAAQS. Therefore, the submission of a SIP addressing CAA section 110(a)(2)(D) is required by law and must be addressed by the states. In addition, the requirement for a new infrastructure SIP submission provides an opportunity for the air agency, the public, and EPA to review the basics of the air quality management program in light of each new or revised NAAQS. In the case of CAA section 110(a)(2)(D)(i)(I), this review is focused on whether a state's SIP prevents interference with attainment or maintenance of the NAAQS in a nearby state. For CAA section 110(a)(2)(D)(i)(II), this review focuses on whether the state's SIP addresses requirements for prevention of significant deterioration and visibility protection. Thus, SIP measures addressing CAA section 110(a)(2) are evaluated for a new or revised NAAQS and therefore do protect human health or the environment.

IV. Final Action

EPA is approving the October 11, 2017 SIP revision addressing the interstate transport requirements for the 2012 $PM_{2.5}$ NAAQS to the Pennsylvania SIP because the submittal adequately addresses CAA section 110(a)(2)(D)(i)(I).

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action addressing Pennsylvania's interstate transport requirements for the 2012 $PM_{2.5}$ NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: September 24, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding a second entry for ''Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS'' after the first entry entitled the same to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS.	Statewide	10/11/17	10/10/18, [insert **Federal Register** citation].	Docket No. 2018–0054. This action addresses the infrastructure element of CAA section 110(a)(2)(D)(i)(I).
*	*	*	*	*

* * * * *

[FR Doc. 2018–21665 Filed 10–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0276; FRL–9985–11–Region 5]

Air Plan Approval; Illinois; Permit-by-Rule Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Illinois State Implementation Plan (SIP) to establish a general framework for permits-by-rule (PBR) and specifically provide a PBR for small boilers. In addition, EPA is approving other state provisions that are affected by the addition of the PBR regulations, as well as minor changes in nomenclature. EPA proposed to approve these revisions on July 18, 2018.

DATES: This final rule is effective on November 9, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2017–0276. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Danny Marcus, Environmental Engineer, at (312) 353–8781 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Danny Marcus, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8781, *marcus.danny@epa.gov.*

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

I. Background
II. What comments did we receive on the proposed action?
III. What action is EPA taking?
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Background

On May 2, 2017, the Illinois Environmental Protection Agency (IEPA) submitted a SIP revision to establish a general framework for a PBR program. PBR programs establish a streamlined process that allows an individual applicant to notify the reviewing authority that it meets the eligibility criteria for the permit and the permit conditions rather than going through a reviewing authority review and approval process.

Specifically, the SIP revision consists of: (1) IEPA revisions to 35 IAC Part 201 to add a new Subpart M (35 IAC 201.500 through 201.540), which establishes general provisions for a PBR program; (2) IEPA revisions to Part 201 to add Subpart N to 35 IAC Part 201 (35 IAC 201.600 through 201.635), which establishes PBR requirements for boilers burning certain types of fuel and with heat input capacities of less than or equal to 100 Million British Thermal Units per Hour (MMBtu/hr); (3) IEPA revisions to 35 IAC 201.103 and 35 IAC 211.4720 to change and add certain abbreviations and definitions related to the new PBR rules; (4) IEPA revisions to 35 IAC 201.104, incorporation by reference, to reference regulations contained in the PBR program; and (5) IEPA revisions to 35 IAC 201.146 to change the abbreviation of ''mmbtu/hr'' to ''MMBtu/hr.''

II. What comments did we receive on the proposed action?

Our July 18, 2018 proposed rule (83 FR 33894) provided a 30-day review and comment period. The comment period closed on August 17, 2018. EPA received one unrelated comment. This comment is outside the scope of this rulemaking and does not provide

information that would alter EPA's evaluation of the proposed rule, which is based on applicable statutory criteria.

III. What action is EPA taking?

EPA is approving Illinois' general PBR program contained in Subpart M, the PBR for boilers less than or equal to 100 MMBtu/hr contained in Subpart N, changes to other SIP rules affected by the PBR regulations, and minor changes in nomenclature because they meet all applicable requirements under the CAA. Specifically, EPA is approving into the Illinois SIP IAC Sections 201.103(a) and (b); 201.104(a), (c), (d), and (e); 201.146(c), (d), (h), (i), and (fff); 201.500; 201.505; 201.510; 201.515; 201.520; 201.525; 201.530; 201.535; 201.540; 201.600; 201.605; 201.610; 201.615; 201.620; 201.625; 201.630; 201.635; and 211.4720. EPA is not acting on the revisions to IAC Section 201.146(mmm) for the reasons discussed in the proposal (at 83 FR 33897).

IV. Incorporation by Reference

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

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 25, 2018.

James Payne,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

■ 2. In § 52.720, the table in paragraph (c) is amended by:

■ a. Under ''201: Permits and General Provisions'':

■ i. Revising the entries for 201.103 and 201.104 under ''Subpart A: Definitions''.

■ ii. Revising the entry for 201.146 under ''Subpart C: Prohibitions''.

■ iii. Adding headings after the entry for 201.408 titled ''Subpart M: Permit By Rule (PBR)—General Provisions'' with entries for 201.500 through 201.540 and ''Subpart N: Permit By Rule (PBR)—Boilers Less Than Or Equal To 100

[1] 62 FR 27968 (May 22, 1997).

MMBtu/hr'' with entries for 201.600 through 201.635.

■ b. Revising the entry for 211.4720 under ''Part 211: Definitions and General Provisions'', ''Subpart B: Definitions''.

The revisions and additions read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
	Part 201: Permits and General Provisions			
	Subpart A: Definitions			
*	*	*	*	*
201.103	Abbreviations and Units	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
201.104	Incorporations by Reference	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	Except (b).
*	*	*	*	*
	Subpart C: Prohibitions			
*	*	*	*	*
201.146	Exemptions From State Permit Requirements.	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	Except (mmm).
*	*	*	*	*
	Subpart M: Permit By Rule (PBR)—General Provisions			
201.500	Purpose	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
201.505	Applicability	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
201.510	Notice of Intent to Be Covered By a PBR (Notification).	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
201.515	Commencing Construction or Modification	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
201.520	Modification or Change in Status of an Emission Unit Covered by a PBR.	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
201.525	Standard Conditions for PBR	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
201.530	Recordkeeping and Reporting	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
201.535	Authority to Operate	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
201.540	Enforcement Authority	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
	Subpart N: Permit By Rule (PBR)—Boilers Less Than Or Equal To 100 MMBtu/hr			
201.600	Applicability	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
201.605	Boiler Notice of Intent to Be Covered by a PBR (Notification) 201.610.	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
201.615	Opacity Requirements	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
201.620	Requirements for Use of Diesel Fuel and Refinery Fuel Gas 201.625.	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
201.625	Carbon Monoxide (CO) Requirements	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
201.630	Nitrogen Oxide (NO_X) Requirements	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
201.635	PBR Boiler Reporting Requirements	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
*	*	*	*	*
	Part 211: Definitions and General Provisions			

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES—Continued

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
		Subpart B: Definitions		
*	*	*	*	*
211.4720	Pipeline Natural Gas	3/24/2017	10/10/2018, [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2018–21876 Filed 10–9–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150121066–5717–02]

RIN 0648–XG534

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; General category October–November fishery for 2018; inseason bluefin tuna quota transfer and closure.

SUMMARY: NMFS transfers 55 metric tons (mt) of Atlantic bluefin tuna (BFT) quota to the General category October through November 2018 subquota period (40 mt from the Harpoon category and 15 mt from the Reserve category) and closes the General category fishery for large medium and giant BFT until the General category reopens on December 1, 2018. The quota transfer is intended to provide additional fishing opportunities based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Atlantic Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT. Given that the adjusted quota is projected to be caught quickly, the closure is to prevent overharvest of the adjusted General category October through November 2018 BFT subquota.

DATES: The quota transfer is effective October 4, 2018, through November 30, 2018. The closure is effective 11:30 p.m., local time, October 5, 2018, through November 30, 2018.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

NMFS is required, under regulations at § 635.28(a)(1), to file a closure notice for publication with the Office of the Federal Register when a BFT quota is reached or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year or for a specified period as indicated in the notification, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

The current baseline General and Reserve category quotas are 466.7 mt and 24.8 mt, respectively. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a ''subquota'' or portion of the annual General category quota. Although it is called the ''January'' subquota, the regulations allow the General category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first. The subquotas for each time period are as follows: 24.7 mt for January; 233.3 mt for June through August; 123.7 mt for September; 60.7 mt for October through November; and 24.3 mt for December. Any unused General category quota rolls forward within the fishing year, which coincides with the calendar year, from one time period to the next, and is available for use in subsequent time periods. To date for 2018, NMFS has published four actions that have adjusted the available 2018 Reserve category quota, leaving 18.5 mt currently available (83 FR 9232, March 5, 2018; 83 FR 17110, April 18, 2018; 83 FR 38664, August 7, 2018; and 83 FR 47843, September 21, 2018). In the Harpoon category, the base annual subquota was 38.6 mt but was adjusted to 68.6 mt with a transfer of 30 mt from the Reserve category in August 2018 (83 FR 38664, August 7, 2018). The category has had no landings since the August transfer.

Although NMFS has published a proposed rule (83 FR 31517, July 6, 2018) that would increase the baseline U.S. bluefin tuna quota from 1,058.79 mt to 1,247.86 mt and accordingly increase the subquotas for 2018 (including an expected increase in the General category October through November time period subquota from 60.7 mt to 72.2 mt, consistent with the annual bluefin tuna quota calculation process established in § 635.27(a)), the final rule (the ''quota rule'') has not yet filed for public inspection with the Office of the Federal Register and is not yet effective.

Transfer of 55 mt to the General Category

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by bluefin tuna dealers continue to provide valuable data for ongoing scientific studies of bluefin tuna age and growth, migration, and reproductive status. Additional opportunity to land bluefin tuna in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). NMFS anticipates that the current October through November subquota of 60.7 mt (72.2 mt if the ICCAT quota rule is finalized as proposed) could be reached in a few days given the high daily landings rates during the end of the September fishery and that commercial-sized bluefin tuna remain available in the areas where General category permitted vessels operate at this time of year. Without a quota transfer, NMFS would have to close the General category fishery for the remainder of the October through November subquota period even earlier, while unused quota remains in the Harpoon and Reserve categories. Given the lag time between initiation of an inseason action and its implementation, however, this notification also closes the fishery, as NMFS anticipates the transferred quota will be caught quickly. Transferring 55 mt of quota (40 mt from the Harpoon category and 15 mt from the Reserve category) would result in 115.7 mt being available for the October through November 2018 subquota period (127.2 mt if the ICCAT quota rule is finalized as proposed), thus effectively providing limited additional opportunities to harvest the U.S. bluefin tuna quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS anticipates that all of the additional 55 mt of quota will be used by October 5, based on landings rates in the September 2018 fishery (as well as in the October through November fisheries in recent years), but this is also subject to weather conditions and bluefin tuna availability. In the unlikely event that any of this quota is unused by November 30, such quota will roll forward to the next subperiod within the calendar year (*i.e.,* the October through November period), and NMFS anticipates that it would be used before the end of the fishing year.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2018 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. There have been no landings in the Harpoon category since July 31, 2018, and in 2017, only 2.8 mt were landed in the Harpoon category after August 31 until the Harpoon category season ended November 15. Transferring 40 mt at this time to the Reserve category, leaves 2.5 mt (9.9 mt if the quota rule is finalized as proposed) a reasonable amount of quota for the small amount of activity we anticipate continuing for the remainder of the Harpoon category season, based on historic Harpoon category landings.

NMFS will need to account for 2018 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that, even with this transfer from the Harpoon and Reserve categories. Given the upcoming expected increases in available 2018 quota from the carryover of 2017 underharvest, the ICCAT quota rule increase, and the resulting recalculation of 2018 available Purse Seine category quota and transfer to the Reserve category, NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2018, including the December time period.

This transfer would be consistent with the current quotas, which were established and analyzed in the 2015 BFT quota final rule (80 FR 52198, August 28, 2015), and with objectives of the 2006 Consolidated HMS FMP and amendments. (§ 635.27(a)(8)(v) and (vi)). Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and Amendment 7, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunity equitably across all time periods.

Based on the considerations above, NMFS is transferring 40 mt of Harpoon category quota and 15 mt of Reserve category quota to the General category for the October through November subquota period, resulting in a subquota of 115.7 mt for the General category October through November 2018 subquota period, 28.6 mt for the 2018 Harpoon category, and 3.5 mt for the Reserve category. (These amounts would be 127.2 mt for the General category October through November 2018 subquota period, 36 mt for the Harpoon category, and 142.9 mt for the Reserve category if the ICCAT quota rule is finalized as proposed.)

Closure of the October Through November 2018 General Category Fishery

Based on landings rates in the September 2018 fishery and the October through November fisheries in recent years and anticipated fishing conditions, NMFS projects that the General category October through November subquota of 115.7 mt, as adjusted in this action, will be reached by October 5, 2018, and that the fishery should be closed to avoid exceedance of the adjusted quota. Through this action, NMFS is closing the General category bluefin tuna fishery effective 11:30 p.m., October 5, 2018, through November 30, 2018. Therefore, retaining, possessing, or landing large medium or giant BFT by persons aboard vessels permitted in the General and HMS Charter/Headboat categories must cease at 11:30 p.m. local time on October 5, 2018. This action applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. For information regarding the HMS Charter/Headboat commercial sale endorsement, see the final rule that created a separate permit endorsement provision for the commercial sale of Atlantic HMS by HMS Charter/Headboat permit holders (82 FR 57543, December 6, 2017). The

intent of this closure is to prevent overharvest of the available General category October through November BFT subquota.

The General category will reopen automatically on December 1, 2018, for the December 2018 subquota period at the default retention limit level of one fish. Currently, the adjusted General category subquota for the December 2018 period is 10 mt (see 82 FR 60680, December 22, 2017), and this amount would be 14.6 mt if the quota rule is finalized as proposed.

Fishermen may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *www.nmfs.noaa.gov/sfa/hms/.*

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason quota transfers and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. These fisheries are currently underway and the adjusted subquota for the General category is projected to be reached shortly. Affording prior notice and opportunity for public comment to implement the quota transfer is impracticable and contrary to the public interest as such a delay would likely result in exceedance of the General category October through November fishery subquota or earlier closure of the fishery while fish are available on the fishing grounds. Subquota exceedance may result in the need to reduce quota for the General category later in the year and thus could affect later fishing opportunities. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.27(a)(9) and 635.28(a)(1), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 4, 2018.

Margo Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–21991 Filed 10–4–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 83, No. 196

Wednesday, October 10, 2018

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0624; Product Identifier 2013–NE–24–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2017–11–06, which applies to all Pratt & Whitney (PW) PW2037, PW2037D, PW2037M, PW2040, PW2040D, PW2043, PW2143, PW2643, and F117–PW–100 turbofan engine models. AD 2017–11–06 requires initial and repetitive on-wing eddy current inspections (ECIs) of affected engines with certain diffuser and high-pressure turbine (HPT) cases installed. AD 2017–11–06 also requires a fluorescent-penetrant inspection (FPI) of the diffuser case rear flange and the HPT case front flange. Since we issued AD 2017–11–06, we learned of designated engineering representative (DER)-approved diffuser case M-flange replacement repairs. This proposed AD would require an on-wing ECI of all diffuser case M-flange replacement repairs. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 26, 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 Pratt & Whitney, 400 Main St., East Hartford, CT 06118; phone: 860–565–0140; fax: 860–565–5442; email: *help24@pw.utc.com;* internet: *http://fleetcare.pw.utc.com.* You may view this service information at the FAA, Engine & 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–2018–0624; 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: Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@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–2018–0624; Product Identifier 2013–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 2017–11–06, Amendment 39–18905 (82 FR 26979, June 13, 2017), (''AD 2017–11–06''), for all PW PW2037, PW2037D, PW2037M, PW2040, PW2040D, PW2043, PW2143, PW2643, and F117–PW–100 turbofan engine models. AD 2017–11–06 requires initial and repetitive on-wing ECIs of affected engines with certain diffuser and HPT cases installed. AD 2017–11–06 also requires an FPI of the diffuser case rear flange and the HPT case front flange. AD 2017–11–06 resulted from the manufacturer determining through analysis that the inspections required by AD 2014–05–32, which was prompted by a rupture of the diffuser case M-flange, were not adequate to maintain safety for diffuser cases that incorporate a wrought diffuser case M-flange. Also, repaired wrought flanges cannot be distinguished from other wrought flanges or from non-repaired flanges on diffuser cases installed on the affected engines. We issued AD 2017–11–06 to add additional repetitive, on-wing ECIs.

Actions Since AD 2017–11–06 Was Issued

Since we issued AD 2017–11–06, we learned of DER-approved diffuser case M-flange replacement repairs. The language in AD 2017–11–06 requires additional on-wing ECIs for PW repairs; however, it does not address DER-approved diffuser case M-flange replacement repairs. The DER-approved diffuser case M-flange replacement repairs use the same wrought material as PWs and therefore require the same additional on-wing ECIs.

Related Service Information Under 1 CFR Part 51

We reviewed PW Service Bulletin (SB) No. PW2000 72–763, Revision No. 1, dated August 30, 2013. The SB describes procedures for a one-time ECI inspection of the engine diffuser case. We also reviewed PW Alert Service Bulletin (ASB) No. PW2000 A72–765, Revision No. 4, dated January 25, 2018. The ASB describes procedures for repetitive on-wing ECIs of the engine diffuser case assembly. 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 all of the requirements of AD 2017–11–06. This proposed AD would also require an on-wing ECI of all diffuser case M-flange replacement repairs.

Costs of Compliance

We estimate that this proposed AD affects 910 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
On-wing/module ECI Inspection.	8 work-hours × $85 per hour = $680.	$0	$680	$230,520 per inspection cycle.
FPI Inspection	3 work-hours × $85 per hour = $255.	20	$275 per inspection cycle	$250,250 per inspection cycle.

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) 2017–11–06, Amendment 39–18905 (82 FR 26979, June 13, 2017), and adding the following new AD:

Pratt & Whitney Division: Docket No. FAA–2018–0624; Product Identifier 2013–NE–24–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by November 26, 2018.

(b) Affected ADs

This AD replaces AD 2017–11–06, Amendment 39–18905 (82 FR 26979, June 13, 2017).

(c) Applicability

This AD applies to all Pratt & Whitney (PW) PW2037, PW2037D, PW2037M, PW2040, PW2040D, PW2043, PW2143, PW2643, and F117–PW–100 turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7200, Turbine/Turboprop Engine.

(e) Unsafe Condition

This AD was prompted by a rupture of the diffuser-to-high-pressure turbine (HPT) case flange. We are issuing this AD to prevent failure of the diffuser-to-HPT case flange. The unsafe condition, if not addressed, could result in uncontained diffuser-to-HPT case flange 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

(1) For diffuser case, part number (P/N) 1B7461, serial numbers (S/Ns) DGGUAK1306 and DGGUAK1308, and HPT case, P/N 1B2440, S/N DKLBCS1032:

(i) Within 100 flight cycles after the effective date of this AD, perform an eddy current inspection (ECI) of the diffuser case and the HPT case M-flange in accordance with PW Service Bulletin (SB) No. PW2000 72–763, Revision No. 1, dated August 30, 2013.

(ii) Reserved.

(2) For all diffuser and HPT cases, at the next piece-part opportunity after the effective date of this AD and every piece-part opportunity thereafter, perform a high sensitivity fluorescent-penetrant inspection (FPI) of the entire diffuser case rear flange (M-flange) and boltholes, and the entire HPT case forward flange (M-flange) and boltholes.

(3) For all diffuser cases installed on any affected engine model except for F117–PW–100 turbofan engines, that have not

incorporated PW SB PW2000–72–364, have incorporated PW SB PW2000–72–700, or have had an M-flange replacement, perform initial and repetitive ECIs of the diffuser case M-flange as follows:

(i) Perform an initial ECI in accordance with the ''Last Shop Visit Activity'' column and before exceeding the maximum cycles since the last shop visit activity in the ''Initial Inspection'' column of Table 1 of PW Alert Service Bulletin (ASB) No. PW2000 A72–765, Revision No. 4, dated January 25, 2018, or within 1,000 cycles from the effective date of this AD, whichever occurs later.

(ii) Evaluate the inspection results and perform re-inspections as necessary in accordance with Accomplishment Instructions, ''For Engines Installed on the Aircraft,'' paragraph 5, or the Accomplishment Instructions, ''For Engines Removed from the Aircraft,'' paragraph 4, of PW ASB No. PW2000 A72–765, Revision No. 4, dated January 25, 2018, as applicable. If given a cycle range, perform the subsequent inspections before exceeding the maximum number of cycles.

(iii) Inspect the diffuser case M-flange using, as applicable, either the Accomplishment Instructions, ''For Engines Installed on the Aircraft,'' paragraphs 3.I. through 3.J., or the Accomplishment Instructions, ''For Engines Removed from the Aircraft,'' paragraphs 3.D. through 3.E., of PW ASB No. PW2000 A72–765, Revision No. 4, dated January 25, 2018.

(h) Definition

For the purpose of this AD, a ''piece-part opportunity'' is defined as when the part is completely disassembled.

(i) Credit for Previous Actions

(1) You may take credit for the diffuser case and HPT case inspections required by paragraphs (g)(1) and (3) of this AD if you performed:

(i) an ECI of the diffuser case and the HPT case M-flange using the Accomplishment Instructions of PW SB No. PW2000 72–763, Original Issue, dated March 22, 2013, or

(ii) a high sensitivity FPI of the diffuser case and the HPT case at a piece-part opportunity after January 1, 2010.

(2) You may take credit for only the diffuser case inspections required by paragraphs (g)(1) and (3) of this AD if you performed an ECI of the diffuser case M-flange using the Accomplishment Instructions of PW ASB No. PW2000 A72–765, Revision No. 3, dated December 19, 2017, or an earlier version.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, 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. You may email your request to: *ANE-AD-AMOC@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) AMOCs approved for AD 2017–11–06 (82 FR 26979, June 13, 2017) are approved as AMOCs for the corresponding provisions of this AD.

(k) Related Information

(1) For more information about this AD, contact Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

(2) For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT, 06118; phone: 860–565–0140; fax: 860–565–5442; email: *help24@pw.utc.com;* internet: *http://fleetcare.pw.utc.com.* You may view this referenced service information at the FAA, Engine & 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 28, 2018.

Robert J. Ganley,

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

[FR Doc. 2018–21693 Filed 10–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0826; Product Identifier 2018–NE–27–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division (PW) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Pratt & Whitney Division (PW) PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 turbofan engines. This proposed AD was prompted by an in-flight failure of a 1st stage low-pressure compressor (LPC) blade. This proposed AD would require initial and repetitive thermal acoustic imaging (TAI) inspections for cracks in certain 1st stage LPC blades and removal of those blades that fail inspection. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 26, 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 Pratt & Whitney Division, 400 Main St., East Hartford, CT 06118; phone: 800–565–0140; fax: 860–565–5442. 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–2018–0826; 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: Jo-Ann Theriault, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7105; fax: 781–238–7199; email: *jo-ann.theriault@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–2018–0826; Product Identifier 2018–NE–27–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

We learned of an uncontained 1st stage LPC blade failure and inlet separation on a PW4000–112 series turbofan engine that occurred during a revenue flight. The fracture in the blade initiated from a low cycle fatigue crack in the airfoil. This blade failure was contained by the engine case, but there was subsequent uncontained forward release of the inlet cowl, causing damage to the aircraft and prompting an emergency descent. This condition, if not addressed, could result in an uncontained failure of a 1st stage LPC blade, damage to the engine, and damage to the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed PW Alert Service Bulletin (ASB) PW4G–112–A72–268, Revision No. 7, dated September 6, 2018. This PW ASB describes procedures for performing 1st stage LPC blade TAI inspections. 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 require initial and repetitive TAI inspections of 1st stage LPC blades and removal of blades that fail inspection.

Costs of Compliance

We estimate that this proposed AD affects 120 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
Inspection	22 work-hours × $85 per hour = $1,870	$0	$1,870	$224,400

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace 1st stage LPC blade	0 work-hours × $85 per hour = $0	$125,000	$125,000

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):

Pratt & Whitney Division: Docket No. FAA–2018–0826; Product Identifier 2018–NE–27–AD.

(a) Comments Due Date

We must receive comments by November 26, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Pratt & Whitney Division (PW) PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 turbofan engines, with 1st stage low-pressure compressor (LPC) blade, part numbers 52A241, 55A801, 55A801–001, 55A901, 55A901–001, 56A201, 56A201–001, or 56A221, installed.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an uncontained 1st stage LPC blade failure. We are issuing this AD to prevent failure of the 1st stage LPC blade. The unsafe condition, if not addressed, could result in uncontained blade 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

(1) After the effective date of this AD, perform an initial Thermal Acoustic Imaging (TAI) inspection of the 1st stage LPC blades as follows:

(i) For 1st stage LPC blades that have accumulated fewer than 6,500 cycles since new (CSN), perform a TAI inspection the next time the engine is separated at the M-flange, or prior to the 1st stage LPC blade accumulating 7,000 CSN, whichever occurs first.

(ii) For 1st stage LPC blades that have accumulated 6,500 or more CSN, or if the cycles since the blade was new cannot be determined, or if the cycles since the blade was last TAI inspected cannot be determined, perform a TAI inspection within 500 flight cycles or 180 days from the effective date of this AD, whichever occurs first.

(2) Thereafter, perform a TAI inspection of 1st stage LPC blades every time the engine is separated at the M-flange and the blades have accumulated 1,000 or more flight cycles since the last TAI inspection, not to exceed 6,500 flight cycles since the last TAI inspection.

(3) If any 1st stage LPC blade fails the inspection required by paragraph (g)(1) or (2) of this AD, remove the blade from service and replace with a part eligible for installation before further flight.

(4) The TAI inspection and disposition required for compliance with this AD must be accomplished by a method approved by the FAA. You can find a vendor that has an FAA-approved TAI inspection listed in the Vendor Services Section of PW Alert Service Bulletin (ASB) PW4G–112–A72–268, Revision No. 7, dated September 6, 2018.

(h) Credit for Previous Actions

You may take credit for the initial TAI inspection required by paragraph (g)(1) of this AD if you performed the TAI inspection before the effective date of this AD using PW ASB PW4G–112–A72–268, Revision No. 6, dated August 5, 2014.

(i) Installation Prohibition

Do not install any 1st stage LPC blade that has accumulated 1,000 or more flight cycles into any engine unless it has passed the inspection required by paragraph (g)(1) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, 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) of this AD. You may email your request to: *ANE-AD-AMOC@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.

(k) Related Information

(1) For more information about this AD, contact Jo-Ann Theriault, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7105; fax: 781–238–7199; email: *jo-ann.theriault@faa.gov.*

(2) For service information identified in this AD, contact Pratt & Whitney Division, 400 Main St., East Hartford, CT 06118; phone: 800–565–0140; fax: 860–565–5442. You may view this referenced service information at the FAA, Engine & 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 28, 2018.

Robert J. Ganley,

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

[FR Doc. 2018–21694 Filed 10–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104226–18]

RIN 1545–BO51

Availability of Additional Guidance Under Section 965

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Proposed Rulemaking; notice of availability.

SUMMARY: This document announces the availability of additional guidance regarding the transition tax under section 965 issued as Notice 2018–78.

DATES: Notice 2018–78 was made available on the Internal Revenue Service (IRS) website on October 1, 2018, and will be published in the Internal Revenue Bulletin on October 15, 2018.

ADDRESSES: Notice 2018–78 is available on the IRS website at *https://www.irs.gov/pub/irs-drop/n-18-78.pdf* and at the Federal eRulemaking Portal at *http://www.regulations.gov* (under REG–104226–18).

FOR FURTHER INFORMATION CONTACT: Leni C. Perkins at (202) 317–6934.

SUPPLEMENTARY INFORMATION: On August 9, 2018, the Department of the Treasury (''Treasury Department'') and the IRS published in the **Federal Register** (83 FR 39514) a notice of proposed rulemaking (REG–104226–18), which contained proposed §§ 1.962–1 and 1.962–2, 1.965–1 through 1.965–9, and 1.986(c)–1 (the ''proposed regulations''). The proposed regulations relate to section 965 of the Internal Revenue Code. On October 1, 2018, the Treasury Department and the IRS issued Notice 2018–78, which contained additional guidance relating to section 965 and the proposed regulations. The notice was issued in advance of final regulations under section 965 due to the imminent filing deadlines that could otherwise apply to the forms and elections described therein.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2018–22022 Filed 10–9–18; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2018–0616; FRL–9984–79–Region 8]

Approval and Promulgation of State Implementation Plans; North Dakota; Revisions to Infrastructure Requirements for All National Ambient Air Quality Standards; Carbon Monoxide (CO); Lead (Pb); Nitrogen Dioxide (NO_2); Ozone (O_3); Particle Pollution ($PM_{2.5}$, PM_{10}); Sulfur Dioxide (SO_2); Recodification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the North Dakota State Implementation Plan (SIP) for all National Ambient Air Quality Standards (NAAQS) for the purposes of transferring authority from the North Dakota Department of Health (NDDH) to the North Dakota Department of Environmental Quality (NDDEQ). We are also proposing to approve the related recodification of the portions of North Dakota's Air Pollution Rules that have been previously approved into the SIP. The EPA is taking this action pursuant to section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 9, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2018–0616, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kate Gregory, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6175, *gregory.kate@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

The North Dakota state legislature created a new NDDEQ in 2017.[1] The NDDEQ will assume all the duties and responsibilities of the NDDH's Environmental Health Section. To accommodate the new NDDEQ, the North Dakota Air Pollution Control Law was recodified in the North Dakota Century Code (NDCC) as NDCC 23.1–06 and the Air Pollution Rules were recodified in the North Dakota Administrative Code (NDAC) as NDAC 33.1–15.

Among the duties of the new NDDEQ is the implementation and enforcement of North Dakota's SIP. The basic requirements for a state agency with respect to its authority and ability to implement and enforce a SIP are provided in the ''infrastructure'' elements of CAA section 110(a)(2). After the promulgation of a new or revised NAAQS, states must submit an ''infrastructure'' SIP to address the relevant elements of section 110(a)(2). The EPA has issued guidance to states on how to meet these elements in their infrastructure SIP submissions, and the guidance specifically identifies elements for which states should show they have the proper authority.[2]

Prior to the creation of NDDEQ, the NDDH submitted several infrastructure SIP revisions to address the promulgation and revision of various NAAQS. The EPA approved these in several actions and by approving these actions, we determined that NDDH met, among other things, the relevant requirements in section 110(a)(2) with respect to NDDH's authority and ability to implement and enforce North Dakota's SIP.[3]

On August 6, 2018, the state submitted a revision to their prior infrastructure SIPs to address the transfer of authority from the NDDH Environmental Health Section to the NDDEQ. The state also submitted the recodified Air Pollution Rules that had been previously adopted into the SIP. The state held a public hearing regarding the transfer of authority on June 5, 2018.[4] No comments were received during both the public hearing and the public comment period regarding the proposed changes.

II. The EPA's Evaluation

North Dakota's SIP submittal addresses the transfer of authority as follows. First, the submittal identifies the citations to the NDCC and NDAC contained in previous infrastructure SIP submittals that the EPA has approved. The submittal provides a crosswalk with references to the recodified NDCC and NDAC to show the new location of these authorities.[5] The submittal also quotes a specific provision of Senate Bill 2327 that provides, among other things, that all ''orders, determinations, and permits'' made by NDDH before the transfer of authority remain in effect. Finally, the submittal notes that NDDEQ will be funded and staffed at the same level as the Environmental Health Division in NDDH previously was.

For purposes of the transfer of authority, we note the following elements of section 110(a)(2) as particularly relevant:

- *110(a)(2)(B):* Authority to operate an ambient air quality monitoring network;

[1] North Dakota Senate Bill 2327.

[2] Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2), September 2013. For additional details on the EPA's general interpretation of the requirements under sections 110(a)(1) and 110(a)(2) and approach to review of infrastructure SIPs, please see 82 FR 29457, 29458–59 (June 29, 2017).

[3] See, for example, 82 FR 46681 (October 6, 2017), 80 FR 60540 (October 7, 2015), 78 FR 45866 (July 30, 2013).

[4] ND iSIP Revision Submission, p.17.

[5] A version of this crosswalk created by the EPA is also provided in the docket for this rulemaking.

- *110(a)(2)(C):* Authority to enforce the SIP;
- *110(a)(2)(C):* Authority to regulate the modification and construction of stationary sources to assure the NAAQS are achieved (known as minor new source review);
- *110(a)(2)(C):* Authority to implement a permit program as required in part C of title I of the Act (known as prevention of significant deterioration);
- *110(a)(2)(E)(i):* Adequate personnel, funding, and authority to carry out the implementation plan;
- *110(a)(2)(F):* Authority to require installation, maintenance, and replacement of monitoring equipment by stationary sources; to require periodic reporting on emissions from such sources; and to correlate such reports with emission limitations;
- *110(a)(2)(G):* Authority comparable to that in CAA section 303 (emergency authority to restrain pollution presenting an imminent and substantial endangerment);
- *110(a)(2)(H):* Authority to revise the SIP as necessary;
- *110(a)(2)(J):* Authority to provide public notification as required under CAA section 127;
- *110(a)(2)(K):* Authority to require such air quality modeling as prescribed by the Administrator and to submit modeling data on request to the Administrator; and
- *110(a)(2)(L):* Authority to require permitting fees.

These elements are described in detail in the 2013 guidance cited above. As the recodification of the NDCC and NDAC leave the substance of the relevant provisions cited in the submittal unmodified, the reasons that we have previously approved NDDH as having sufficient legal authority to address each of these and other infrastructure elements continue to apply. Please see the previous approval notices for details of those reasons, which we propose to adopt in this action.

With respect to enforcement and implementation of permits and enforcement orders that were previously issued under the SIP by NDDH, we propose that the language in Senate Bill 3727 quoted in the SIP submittal adequately addresses the authority of NDDEQ to continue to enforce and implement those permits and enforcement orders. Finally, as we have previously approved the state's infrastructure SIP as containing the necessary assurances that NDDH had adequate personnel and funding, and NDDEQ will continue at the same levels of personnel and funding, we propose that the requirements in 110(a)(2)(E)(i) regarding personnel and funding are met.

As part of the SIP submittal, in Section VI, the state provided an opinion from the North Dakota Attorney General. The opinion addresses the fundamental SIP legal authorities enumerated in 40 CFR 51.230, which consists of authority to:

- Adopt emission standards, limitations, and other control measures as necessary for attainment and maintenance of the NAAQS;
- Enforce SIP provisions, including seeking injunctive relief;
- Abate emission on an emergency basis to prevent substantial endangerment;
- Prevent construction, modification, or operation of a facility that may result in emissions that prevent attainment and maintenance of the NAAQS;
- Obtain information necessary to determine compliance with the SIP, including authority to require recordkeeping, make inspections, and conduct tests; and
- Require owners or operators of stationary sources to install, maintain, and operate monitoring devices and make periodic reports to the state on emissions from the sources.

The Attorney General's opinion cites the specific provisions of state law that provide these fundamental authorities. Based on this opinion, and the revisions to the state's infrastructure SIP discussed above, the EPA proposes to approve the transfer of authority embodied in the state's submittal.

Finally, Section IV of the submittal contains the recodified Air Pollution Rules that have been previously approved into North Dakota's SIP.[6] North Dakota's submittal indicates that the state is not resubmitting the entire SIP. Instead, the state is only updating the numbering of the provisions that have previously been approved into the SIP, as well as replacing the obsolete references to the NDDH with references to the NDDEQ. In this case, our review is limited to the renumbering and name change, and not the substance of the rules.[7] We therefore propose to approve the recodification and change in name as appropriate and consistent with the transfer of authority. Our proposed approval is limited to the recodification and change in name and does not re-approve the substantive rules in North Dakota's SIP.

All revisions to the North Dakota SIP would be federally enforceable as of the effective date of the EPA's approval of this submission. The state plans to rely on the date when the EPA signs the final notice for purposes of notifying the state legislature that the EPA has approved these revisions, which will provide for the transfer authority from NDDH to NDDEQ to be effective under state law. Prior to the effective date of this approval, the state intends to take the necessary additional steps as specified in S.L. 2017, ch. 199, Section 1, to ensure that NDDEQ rules and the NDDEQ would become federally enforceable on the effective date of the EPA's approval. Unless and until the NDDEQ rules and agency become fully effective under federal law, for purposes of federal law the EPA recognizes the state's program as currently approved under the NDDH.

III. Proposed Action

We are proposing to approve the August 18, 2018 revisions to the North Dakota infrastructure SIP, for all NAAQS, for the purposes of the transfer of authority from NDDH to the NDDEQ. We are also proposing to approve the corresponding recodification of the entire SIP.

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the NDDEQ rules discussed in section II of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

[6] For purposes of cross-referencing a recodified provision with its previous version, we note that the recodification followed a consistent scheme: All rules previously codified as 33–15–xx–xx are now codified as 33.1–15–xx–xx.

[7] See ''Review of State Regulation Recodification,'' Memorandum from Johnnie L. Pearson to Air Branch Chiefs, Regions I–X, Feb. 12, 1990.

beyond those imposed by state law. For that reason, this action:

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: October 3, 2018.

Douglas Benevento,

Regional Administrator, EPA Region 8.

[FR Doc. 2018–21948 Filed 10–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2018–0022; FRL–9985–25–Region 10]

Air Plan Approval; Oregon; Removal of Obsolete Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing removal of the outdated rules in the Code of Federal Regulations (CFR) for the State of Oregon because they are duplicative or obsolete. Removal of such material from the air program subparts is designed to improve cost effectiveness and usability of the CFR. The EPA is also proposing to make non-substantive revisions to reflect updated citations and correct a typographical error. This proposed action makes no substantive changes to the Oregon State Implementation Plan and imposes no new requirements.

DATES: Written comments must be received on or before November 9, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2018–0022 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Christi Duboiski, EPA Region 10, at (360) 753–9081, or *duboiski.christi@epa.gov.*

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

I. Introduction

This action is being taken pursuant to Executive Order 13563—*Improving Regulation and Regulatory Review.* It is intended to reduce the number of pages in the Code of Federal Regulations (CFR) by identifying those rules in 40 CFR part 52, subpart MM, for the State of Oregon that are duplicative or obsolete. One aspect of the EPA's proposed action removes historical information found in the ''Approval of plans'' section in 40 CFR 52.1973, ''Original Identification of plan'' section in 40 CFR 52.1974, ''Content of approved State submitted implementation plan'' section in 40 CFR 52.1977, and ''Control Strategy: Ozone'' section in 40 CFR 52.1982. These rules no longer have any use or legal effect because they have been superseded by subsequently approved state implementation plan (SIP) revisions or they are no longer necessary because the EPA previously promulgated administrative rule actions to replace these sections with summary tables in 40 CFR 52.1970 (78 FR 74012, December 10, 2013). These summary tables describe the regulations, source-specific actions, and non-regulatory requirements that comprise the SIP.

II. Removal of Duplicative or Obsolete Rules and Non-Substantive Changes to Certain Rules

The EPA reviewed the following regulations and found that they should be removed or revised for the reasons set forth as follows:

A. Section 52.1973 Approval of Plans

As discussed above, this section is no longer necessary because the EPA replaced the historical information contained in this section with summary tables in § 52.1970 (78 FR 74012, December 10, 2013). The EPA reviewed § 52.1973 to verify that all relevant historical information in this section is contained in § 52.1970. The EPA is therefore proposing to remove § 52.1973.

B. Section 52.1974 Original Identification of Plan Section

Sections 52.1974(b) and (c) of this section, originally designated as 40 CFR 52.1970(b) and (c), contain historical information about the EPA's approval actions for the Oregon SIP which occurred from January 25, 1972, until September 1, 2013. On December 10, 2013 (78 FR 74012), the EPA reorganized the Identification of plan section (§ 52.1970) for subpart MM by listing and summarizing Oregon's currently approved SIP requirements in § 52.1970(a) through (e). EPA is proposing to remove § 52.1974(b) and (c) because the EPA has determined it is no longer necessary to codify the information found in these paragraphs. Section 52.1974(a) is being amended to state that this historical information will continue to be made available in the CFR annual editions, Title 40 part 52 (years 1996 through 2013). These annual editions are available on line at the following url address: *https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.*

C. Section 52.1977 Content of Approved State Submitted Implementation Plan

As previously discussed, the EPA reorganized the Identification of Plan section (§ 52.1970) for subpart MM by listing and summarizing Oregon's currently approved SIP requirements in § 52.1970(a) through (e) (78 FR 74012, December 10, 2013). Section 52.1977, last revised January 22, 2003 (68 FR 2904), is out of date and no longer correct. Therefore, EPA is proposing to remove this section.

D. Section 52.1982 Control Strategy: Ozone

This section, last updated on January 22, 2003 (68 FR 2909), is out of date. Current attainment and maintenance plan status for the Salem/Portland and Medford/Ashland areas can be found in the summary tables in § 52.1970. The EPA reviewed § 52.1982 to verify that all relevant historical information in this section is contained in § 52.1970. The outdated text of § 52.1982(a) contains two clarifications regarding implementation of the attainment plans. The EPA and Oregon subsequently resolved both issues. The EPA recently approved a revised version of Oregon Administrative Rule 340–232–0160(6) (82 FR 47122, October 11, 2017), which incorporates the requirement of § 52.1982(a)(i). In the same October 11, 2017 action, the EPA also approved a revised version of Oregon Administrative Rule 340–232–0060(1), which no longer contains the language, ''in most cases.'' The EPA is therefore proposing to remove § 52.1982.

E. Section 52.1988 Air Contaminant Discharge Permits

This paragraph contains an incorrect rule citation cross reference. The EPA is proposing to correct a typographical error and correct the two citations from OAR 340–226–0040 to the correct citation, OAR 340–226–0400.

III. Proposed Action

This proposed action is a ''housekeeping'' exercise that merely recommends removal of duplicative or obsolete CFR provisions and corrects a non-substantive typographical error. This proposed action makes no substantive changes to the SIP. The EPA is proposing that the above referenced rules should be removed and the typographical error corrected, and that these changes be accurately reflected in 40 CFR part 52, subpart MM for the State of Oregon. The EPA proposes removing the duplicative or obsolete rules because they have been revised or superseded by subsequently approved SIP revisions.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely removes duplicative or obsolete rules and corrects non-substantive typographical errors and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 27, 2018.

Chris Hladick,

Regional Administrator, Region 10.

[FR Doc. 2018–22010 Filed 10–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R05–RCRA–2017–0381; FRL–9985–15–Region 5]

Michigan: Proposed Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Michigan has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Michigan's application, and we have determined that these changes satisfy all requirements needed to quality for final authorization, and we are proposing to authorize the State's changes. The EPA seeks public comment prior to taking final action.

DATES: Comments on this proposed rule must be received by November 9, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R5–RCRA–2017–0381 at *www.regulations.gov.* Follow the on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit comments electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Judith Greenberg, Region 5, RCRA/TSCA Programs Section, RCRA Branch, Land and Chemicals Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, LR–8J, Chicago, Illinois 60604, phone number: (312) 886–4179, email: *greenberg.judith@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States that have received final authorization from EPA under RCRA Section 3006(b) of RCRA, 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and request EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What decisions have we made in this rule?

We have made a tentative decision that Michigan's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Michigan's final authorization to operate its hazardous waste program with the changes described in the authorization application. Michigan will have responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its program revision application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Michigan, including issuing permits, until the State is granted authorization to do so.

C. What will be the effect if Michigan is authorized for these changes?

If Michigan is authorized for these changes as described in Michigan's authorization revision application, these changes will become a part of the authorized state hazardous waste program, and therefore will be federally enforceable. Michigan will continue to have primary enforcement authority and responsibility for its state hazardous waste program. EPA would retain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections which may include but are not limited to requiring monitoring, tests, analyses and/or reports;
- Enforce RCRA requirements which may include, but are not limited to, suspending, terminating, modifying and/or revoking permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action, if approved, will not impose additional requirements on the regulated community because the regulations for which Michigan is requesting authorization are already effective under state law, and will not be changed by the act of authorization.

D. What happens if EPA receives adverse comments on this action?

If EPA receives adverse comments on this authorization, we will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What has Michigan previously been authorized for?

Michigan initially received final authorization on October 16, 1986, effective October 30, 1986 (51 FR 36804–36805), to implement the RCRA hazardous waste management program. We granted authorization for changes to Michigan's program on November 24, 1989, effective January 23, 1990 (54 FR 48608); on January 24, 1991, effective June 24, 1991 (56 FR 18517); on October 1, 1993, effective November 30, 1993 (58 FR 51244); on January 13, 1995, effective January 13, 1995 (60 FR 3095); on February 8, 1996, effective April 8, 1996 (61 FR 4742); on November 14, 1997, effective November 14, 1997 (62 FR 61775); on March 2, 1999, effective June 1, 1999 (64 FR 10111); on July 31, 2002, effective July 31, 2002 (67 FR 49617); on March 9, 2006, effective March 9, 2006 (71 FR 12141); on January 7, 2008 (73 FR 1077), effective January 7, 2008; on March 2, 2010, effective March 2, 2010 (75 FR 9345); and on August 28, 2015 (80 FR 52194).

F. What changes are we proposing with today's action?

On March 2, 2018, Michigan submitted a final program revision application, seeking authorization of changes in accordance with 40 CFR 271.21. EPA proposes to make a final determination that Michigan's hazardous waste program revisions are equivalent to, consistent with, and no

less stringent than the federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, we are proposing to authorize, subject to receipt of written comments that oppose this action, the following program changes:

MICHIGAN'S ANALOGS TO THE FEDERAL REQUIREMENTS

Description of federal requirement	**Federal Register** date and page	Analogous state authority (MAC R 299.* * *, effective April 5, 2017, unless otherwise specified)
Conditional Exclusions for Solvent Contaminated Wipes, Checklist 229.	July 13, 2013, 78 FR 46448	9105(bb), 9107(y), 9109(pp), and 9204(1)(z) and (2)(q).
Conditional Exclusion for Carbon Dioxide (CO_2) Streams in Geologic Sequestration Activities, Checklist 230.	January 3, 2014, 79 FR 350	9201(b), effective September 22, 1998, and 9204(13).
Hazardous Waste Electronic Manifest Rule, Checklist 231.	February 7, 2014, 79 FR 7518	9103(a), (b), (o), and (ff), 9304(1)(c), (2), and (6), 9409(1) and (5); 9601(2)(c), effective December 16, 2004, 9608, 9608(1), (6), (7), and (9), and (12), and 11003(1)(l), (m) and (o).
Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule, Checklist 232.	June 26, 2014, 79 FR 26220	9102(y), 9231(1)(f) and (7), and 11003(1)(i) and (j).
Revisions to the Definition of Solid Waste Checklist 233A.	January 13, 2015, 80 FR 1694	9202(7), (8), and (9), and 11003(1)(i).
Revisions to the Definition of Solid Waste Checklist 233B.	January 13, 2015, 80 FR 1694	9102(r), 9104(d), 9232, 9232(1), and 9202.
Revisions to the Definition of Solid Waste Checklist 233C.	January 13, 2015, 80 FR 1694	9107(bb).
Revisions to the Definition of Solid Waste Checklist 233D2.	January 13, 2015, 80 FR 1694	9103(e), (s), and (aa), 9104, 9105(b), 9107(b), 9108(h), 9202(1)(b) and (aa), 9204, 9204(1)(aa) and (bb), 9202(6), (7), and (9), 9234(1) and (2), 9519((5)(a)(ix) and (x), and 11003(1)(i) and (j).
Revisions to the Definition of Solid Waste Checklist 233E.	January 13, 2015, 80 FR 1694	9107(i), 9202(1)(b)(iii) and (1)(cc), 9233(1), (2), (3), and (4), and 11003(1)(j).
Response to Vacaturs of the Comparable Fuels Rule and the Gasification Rule, Checklist 234.	April 8, 2015, 80 FR 18777	9104(a), 9204(1)(l) and (w), and 9230.
Disposal of Coal Combustion Residuals from Electric Utilities, Checklist 235.	April 17, 2015, 80 FR 21302	9204(2)(c), (d), and (e).

TABLE 2—EQUIVALENT STATE-INITIATED CHANGES

State citation MAC R 299.* * *	Effective date(s) of state-initiated modification	Description of modification
9204(2)(h)(vii) and (x)	April 5, 2017	A. The phrase "including waste scrap leather from automotive seat design activities" has been added to paragraph (vii) to clarify that such materials are included in the waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries category. A. Paragraph (x) has been added to include boiler chemical cleaning waste from electric utility boiler maintenance using water and tetra ammonium ethylene diamine tetra acetic aced (a.k.a. ammoniated EDTA) among the specific wastes that, if they meet the standards in subdivision (h), are not hazardous wastes for the purposes for Part 111, Hazardous Waste Management, of Michigan's Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and its rules.
9206(3)(q)	4/5/2017	The items considered textiles have been modified to reflect the new federal term "wipes" that the U.S. Environmental Protection Agency defined as part of the *Solvent-Contaminated Wipes Rule.*
9225	4/5/2017	Table 205b has been modified to remove duplicate entry for nitrobenzene and add back in 1,3-Pentadiene, which is part of the Part 111 rules, but was inadvertently deleted from the printed copies of the rules.
9226	4/5/2017	Certain state "U" wastes have been deleted from Table 205c.
9506, 9621, and 11001	4/5/2017	These rules have been revised to reflect updates to the ASTM standards.
9608(1)	4/5/2017	This subrule has been revised to clarify that if a facility receives a hazardous waste shipment from a conditionally exempt small quantity generator that is accompanied by a manifest, the facility is not required to submit a copy of that manifest to the director or his or her designee.

G. Which revised state rules are different from the federal rules?

Michigan has excluded the non-delegable federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3. EPA will continue to implement those requirements.

Michigan has proposed additions to its Universal Wastes that will add Antifreeze, Aerosol cans and Paint Wastes that are not already regulated as hazardous waste. As such they are not regulated under the RCRA subtitle C program by U.S. EPA, though Michigan

plans to regulate them under State law if those State additions go into effect.

Michigan's program is broader in scope than the federal program in its adoption of 40 CFR 260.43 (2015) and 40 CFR 261.4(a)(24) (2015) at MAC R 299.9232 and R 299.9204(1)(bb). Both of these regulations include provisions from the 2015 Definition of Solid Waste (DSW) Rule that have been vacated and replaced with the less stringent requirements of 40 CFR 260.43 (2008) and 40 CFR 261.4(a)(24) and (25) (2008) from the 2008 DSW Rule.''

H. Who handles permits after the final authorization takes effect?

Michigan will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which EPA issues prior to the effective date of the proposed authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of the authorization. EPA will continue to implement and issue permits for HSWA requirements for which Michigan is not yet authorized.

I. How does today's action affect Indian Country (18 U.S.C. 1151) in Michigan?

Michigan is not authorized to carry out its hazardous waste program in Indian Country within the State, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian reservations within the State of Michigan;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country.

Therefore, authorizing Michigan for these revisions would not affect Indian Country in Michigan. EPA would continue to implement and administer the RCRA program in Indian Country. It is EPA's long-standing position that the term ''Indian lands'' used in past Michigan hazardous waste approvals is synonymous with the term ''Indian Country.'' *Washington Dep't of Ecology* v. *U.S. EPA,* 752 F.2d 1465, 1467, n.1 (9th Cir. 1985). *See* 40 CFR 144.3 and 258.2.

J. What is codification and is EPA codifying Michigan's hazardous waste program as authorized in this rule?

Codification is the process of placing a state's statutes and regulations that comprise a state's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized state rules in 40 CFR part 272. Michigan's rules, up to and including those revised October 19, 1991, have previously been codified through incorporation-by-reference effective April 24, 1989 (54 FR 7421, February 21, 1989); as amended effective March 31, 1992 (57 FR 3724, January 31, 1992). We reserve the amendment of 40 CFR part 272, subpart X, for the codification of Michigan's program changes until a later date.

K. Statutory and Executive Order Reviews

This proposed rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by state law (*see* **SUPPLEMENTARY INFORMATION**, Section A. Why are Revisions to State Programs Necessary?). Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

The Office of Management and Budget has exempted this rule from its review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011).

2. Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

3. Regulatory Flexibility Act

This proposed rule authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those required by state law. Accordingly, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

4. Unfunded Mandates Reform Act

Because this proposed rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538).

5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this proposed rule because it will not have federalism implications (*i.e.,* substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government).

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this proposed rule because it will not have tribal implications (*i.e.,* substantial direct effects on one or more Indian tribes, or 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).

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This proposed rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves state programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a state program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this proposed rule.

10. Executive Order 12988

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to

eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of this action in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

12. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Because this rulemaking proposes authorization of pre-existing state rules and imposes no additional requirements beyond those imposed by state law and there are no anticipated significant adverse human health or environmental effects, the proposed rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

13. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today's final authorization of Michigan's revised hazardous waste management program under RCRA are exempted under Executive Order 12866.

List of Subjects in 40 CFR Part 271

Environmental Protection; Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 6905, 6912(a), 6926, and 6939g.

Dated: September 18, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2018–21883 Filed 10–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2018–0649; FRL–9984–67]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 28 chemical substances which were the subject of premanufacture notices (PMNs). The chemical substances are subject to Orders issued by EPA pursuant to section 5(e) of TSCA. This action would require persons who intend to manufacture (defined by statute to include import) or process any of these 28 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the intended use within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination. In addition to this Notice of Proposed Rulemaking, EPA is issuing the action as a direct final rule elsewhere in this issue of the **Federal Register**.

DATES: Comments must be received on or before November 9, 2018.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0649, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave. Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: In addition to this Notice of Proposed Rulemaking, EPA is issuing the action as a direct final rule elsewhere in this issue of the **Federal Register**. For further information about the proposed significant new use rules, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this issue of the **Federal Register**.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 1, 2018.

Jeffery T. Morris,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 2018–21870 Filed 10–9–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 555, 571 and 591

[Docket No. NHTSA–2018–0092]

RIN 2127–AL99

Pilot Program for Collaborative Research on Motor Vehicles With High or Full Driving Automation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: NHTSA is seeking public comment on matters related to the near-term and long-term challenges of

Automated Driving Systems (ADS) testing, development and eventual deployment. ADS testing and development are already underway in several areas of the United States. As technology evolves and in anticipation of requests to test and further develop high and full ADS, including those in vehicles without traditional controls necessary for a human driver, NHTSA is issuing this ANPRM to obtain public comments on the factors and structure that are appropriate for the Agency to consider in designing a national pilot program that will enable it to facilitate, monitor and learn from the testing and development of the emerging advanced vehicle safety technologies and to assure the safety of those activities.

The Agency seeks these comments from interested stakeholders, including State and local authorities, companies, researchers, safety advocates and other experts interested in, engaged in or planning to become engaged in the design, development, testing, and deployment of motor vehicles with high and full driving automation. The Agency also seeks comments from road users, including vehicle drivers and passengers, cyclists and pedestrians.

More specifically, NHTSA requests comments on the following topics related to ADS safety research. First, NHTSA seeks comments on potential factors that should be considered in designing a pilot program for the safe on-road testing and deployment of vehicles with high and full driving automation and associated equipment. Second, the Agency seeks comments on the use of existing statutory provisions and regulations to allow for the implementation of such a pilot program. Third, the Agency seeks comment on any additional elements of regulatory relief (*e.g.,* exceptions, exemptions, or other potential measures) that might be needed to facilitate the efforts to participate in the pilot program and conduct on-road research and testing involving these vehicles, especially those that lack controls for human drivers and thus may not comply with all existing safety standards. Fourth, with respect to the granting of exemptions to enable companies to participate in such a program, the Agency seeks comments on the nature of the safety and any other analyses that it should perform in assessing the merits of individual exemption petitions and on the types of terms and conditions it should consider attaching to exemptions to protect public safety and facilitate the Agency's monitoring and learning from the testing and deployment, while preserving the freedom to innovate.

By developing a robust record of the answers to these important questions, NHTSA expects to learn more about the progress of ADS and the ways in which the Agency can facilitate safe and efficient ADS testing and deployment for the benefit of individual consumers and the traveling public as a whole.

DATES: Comments on this document are due no later than November 26, 2018.

ADDRESSES: Comments must be identified by Docket Number NHTSA–2018–0092 and may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Regardless of how you submit your comments, you must include the docket number identified in the heading of this document. Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the ''Privacy Act'' heading below.

You may call the Docket Management Facility at 202–366–9826.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. We will continue to file relevant information in the Docket as it becomes available.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/*privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

FOR FURTHER INFORMATION CONTACT:

For research and pilot program issues: Dee Williams, Office of Vehicle Safety Research, (202) 366–8537, *Dee.Williams@dot.gov,* National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

For legal issues: Stephen Wood, Assistant Chief Counsel, Vehicle Rulemaking and Harmonization, Office of Chief Counsel, 202–366–2992, email *steve.wood@dot.gov,* National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Overview
II. NHTSA's Safety Mission, Authority and Programmatic Needs With Respect to ADS
A. NHTSA Has Authority Over All Aspects of ADS
B. NHTSA's Flexibility To Develop and Implement Non-Traditional Standards for ADS
C. Research Is Needed To Generate Data on ADS
D. Regulatory Relief May Be Needed To Facilitate Research Involving Vehicles With High and Full Driving Automation
E. A Pilot Program Could Provide Relief and Promote Research on Ads
III. Pilot Program for the Safe Testing and Deploying of Vehicles With High and Full Driving Automation
A. Considerations in Designing a Pilot Program
1. Vehicle Design for Safe Operation
2. Vehicle Design for Risk Mitigation
3. Vehicle Design Safety Elements
4. Data and Reporting
5. Additional Considerations in Pilot Program Design
6. Issues Relating To Establishing a Pilot Program
i. Applications for Participation and Potential Terms of Participation
ii. Potential Categories of Data To Be Provided by Program Participants
B. Use of Exemptions To Provide Regulatory Relief for Pilot Program Participants
1. Exemptions From Prohibitions Concerning Noncompliant Vehicles Under Section 30113
2. Exemptions From Prohibitions Concerning Noncompliant Vehicles Under Section 30114
3. Exemption From Rendering Inoperative Prohibition
4. Other Potential Obstacles
IV. Confidentiality of Information Provided by Program Participants
V. Next Steps
VI. Regulatory Notices
VII. Public Comment

I. Background and Overview

As the Federal agency charged with improving motor vehicle safety through reducing crashes, and preventing deaths

and injuries from crashes, NHTSA is encouraged by the new ADS vehicle technologies being developed and implemented by automobile manufacturers and other innovators. NHTSA anticipates that automation can serve a vital safety role on our Nation's roads, particularly since human error and choice are currently the critical factors behind the occurrence of a large number of crashes. ADS vehicle technologies possess the potential to save thousands of lives, as well as reduce congestion, enhance mobility, and improve productivity.

To aid in determining how best to foster the safe development and implementation of ADS vehicle technologies on our Nation's roadways, NHTSA believes it is prudent to facilitate the conducting of research and gathering of data about these new and developing technologies in their various iterations and configurations. Thus, NHTSA is seeking comment on creating a national ADS vehicle pilot program for the testing of vehicles and associated equipment and to gather data from such testing, including data generated in real-world scenarios. NHTSA anticipates that this data will provide information needed to help realize the promises and meet the challenges of ADS vehicle development and deployment.

The purpose of this ANPRM is to obtain public views and suggestions for steps that NHTSA can take to facilitate, monitor and learn from on-road research through the safe testing and eventual deployment of high and full automated vehicles, *i.e.,* Level 4 and 5 [1] ADS vehicles, primarily through a pilot program.

To explain these levels of automation and put them in context with the other levels defined by SAE (Society of Automotive Engineers) International in Table 1 of SAE J3016,[2] the Agency provides the following simplified description of the full array of levels:

Level of automation	What does the vehicle do, what does the human driver/occupant do, and when and where do they do it?
Level 0	*No Automation of driving task:* While the vehicle may provide warnings (*e.g.,* forward collision warning and blind-spot warning), the human driver must in all conditions and at all times perform all aspects of the driving task like monitoring the driving environment, steering, braking and accelerating.
Level 1	*Driver Assistance:* The vehicle may have some features that can automatically *assist* the human driver with either steering (*e.g.,* lane keeping assist) or braking/accelerating (*e.g.,* adaptive cruise control), but not with both simultaneously. The human driver performs all other aspects of the driving task like monitoring the driving environment, steering, braking and accelerating.
Level 2	*Partial Driving Automation:* The vehicle has combined automated functions, like speed control and steering simultaneously, but the driver must remain engaged with the driving task by controlling the other elements of driving, monitoring the driving environment at all times, and being ready to take over immediately if conditions exceed the capabilities of the vehicle's automated functions.
Level 3	*Conditional Driving Automation:* The vehicle can perform most aspects of the driving task, including monitoring the driving environment and making decisions, under some conditions (*e.g.,* speeds under a set threshold). The presence of a human driver is still a necessity, but is not required to monitor the driving environment when the ADS is engaged and operating in those conditions. The driver must always be ready to intervene and take control of the vehicle when the ADS gives the driver notice to do so or the vehicle experiences a driving-task-related failure.
Level 4	*High Driving Automation:* The vehicle can perform most aspects of the driving task under certain conditions without the involvement of or oversight by a human driver. Outside of those conditions, the vehicle will enter a safe fallback mode if a human occupant does not resume control. The vehicle may or may not be designed to allow a human occupant to assume control.
Level 5	*Full Driving Automation:* The vehicle can perform all aspects of the driving task at all times and under all conditions. While the human occupants need to set the trip destination and start the ADS, they need never be involved in any aspects of the driving task. The vehicle may or may not be designed to allow a human occupant to assume control.

This ANPRM is the latest effort by DOT and NHTSA to address issues relating to the testing and deployment of vehicles with high and full driving automation. *Automated Driving Systems 2.0: A Vision for Safety (''A Vision for Safety''),* issued by DOT in September 2017, included guidance to manufacturers and other entities seeking to document for themselves how they are addressing safety. It further outlined a summary document that they could use to disclose their voluntary safety self-assessments to the public in order to describe to the public, to stakeholders, and to Federal, State and local governments the manufacturers' approach to assuring safe testing and development.

In a separate notice published in January 2018,[3] the Agency took the next step by publishing a request for public comments to identify any regulatory barriers in the existing Federal motor vehicle safety standards (FMVSS) to the testing, compliance certification and compliance verification of automated motor vehicles. In that notice, NHTSA focused primarily, but not exclusively, on vehicles with certain unconventional interior designs, such as those that lack controls for a human driver; *e.g.,* steering wheel, brake pedal or accelerator pedal. The absence of manual driving controls, and thus of a human driver, poses potential barriers to testing, compliance certification and compliance verification. Further, the compliance test procedures of some FMVSS depend on the presence of such things as a human test driver who can follow test instructions or a steering wheel that can be used by an automated steering mechanism. In addressing all of these issues, the Agency's focus will be on ensuring the maintenance of currently required levels of safety performance.

This ANPRM focuses on the related question of how the Agency can best encourage and facilitate the necessary research to allow for the development and establishment, as needed, of standards for ADS vehicles, including vehicles that have unconventional designs, can operate in ''dual modes'' (one of which may involve unconventional designs), and can comply with the existing FMVSS.

[1] See table below for explanations of these terms.

[2] SAE J3016_201806 Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles.

[3] 83 FR 2607, January 18, 2018.

NHTSA believes that in order to anticipate, identify and address potential safety concerns and realize the full promise of ADS, it is vital that the developers of vehicles with high and full driving automation have broad opportunities to gain practical, real world experience, in locations of their choosing, with different approaches to, and combinations of, hardware and software in order to learn which approaches and combinations offer the greatest levels of safety and reliability. Simulated testing, or testing in laboratory or other controlled settings is very beneficial, but NHTSA also recognizes the importance of preparing for a world in which ADS vehicles operate on a broad scale on our Nation's roads under a vast array of complex and changing road, traffic and weather conditions. ADS must be able to operate in and adapt to such conditions, just as human drivers must when driving their vehicles today. On-the-road testing and evaluation of ADS vehicles will be critical to the successful development and integration of these vehicles into the roads and highways throughout the country.

Based on the foregoing, NHTSA is considering the establishment of a national pilot research program. The Agency emphasizes that it has not made any decisions whether to establish a pilot program or how to structure one. For this reason, it cannot currently estimate the timing, cost or duration of a pilot program. After analyzing the public comments on this ANPRM and other available information, NHTSA will further assess the prospects for implementing a viable and effective program and identify the best approach to structuring one.

I. NHTSA's Safety Mission, Authority, and Programmatic Needs With Respect to ADS

NHTSA, an operating administration within DOT, was established, as a successor to the National Highway Safety Bureau, by the Highway Safety Act of 1970 to carry out safety programs under the National Traffic and Motor Vehicle Safety Act of 1966 (''the Act'') and the Highway Safety Act of 1966. The Act directs the Department of Transportation ''(1) to prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce; and (2) to carry out needed safety research and development.'' [4]

Its vehicle safety mission is to save lives and prevent injuries due to road traffic crashes through a variety of means. More specifically, the Agency carries out its vehicle safety mission by:

- Collecting real world data on the safety of motor vehicles and items of motor vehicle equipment;
- Conducting safety research;
- Setting FMVSS for new motor vehicles and motor vehicle equipment (to which manufacturers must certify compliance before sale or introduction into interstate commerce).
- Enforcing compliance with the standards;
- Investigating and overseeing the recall and remedy of noncompliant products and products containing safety-related defects;
- Communicating with and educating the public about motor vehicle safety issues through comparative performance ratings and other means; and
- Issuing guidance for vehicle and equipment manufacturers to follow on important issues affecting safety.

In addition, NHTSA works with State highway safety agencies and other partners under the Highway Safety Act to encourage the safe behavior of drivers, occupants, cyclists, and pedestrians across the country.

A. NHTSA Has Authority Over All Aspects of ADS Design

NHTSA's authority over ADS is broad and clear. The Act obligates NHTSA to regulate the safety of motor vehicles and motor vehicle equipment.[5] ''Motor vehicle equipment'' is defined broadly enough to include both tangible components, *e.g.,* hardware, and intangible components, *e.g.,* software, of modern electronic motor vehicle systems.[6] Both types of components, working in combination, are indispensable to the functioning of modern vehicle electronic systems and critical to the future safety of the motor vehicle occupants, cyclists and pedestrians.[7] Indeed, without their software components, these electronic systems would not be systems; instead, they would be nonfunctional assemblages of hardware components. Hardware and software components are also at the heart of each building block technology for vehicle automation and are indispensable to the combining of the technologies in ADS vehicles.

As technology has evolved, NHTSA has responded to Congressional mandates to use its authority to specify how and when the hardware components of electronic systems such as air bags, anti-lock braking systems and electronic stability control systems must activate and perform. This approach gives manufacturers freedom to develop the software components needed to control the performance of each system's hardware components. NHTSA has also repeatedly exercised its authority under the Act when the software and/or hardware components of computerized electronics have been the subject of safety defect recall and remedy campaigns. Software updates have been the remedy for software found to contain a safety defect.[8]

NHTSA is also authorized to regulate certain other software, specifically, software that has functionality similar to that of the software in either a vehicle manufacturer's key fob/smart key or even some of the systems integrated into some current vehicles.[9] Some of this software, *e.g.,* that for remotely starting a vehicle's engine, affects motor vehicle systems only when the vehicles are parked, *i.e.,* in circumstances called ''nonoperational'' safety. Other software, *e.g.,* forward crash warning and remote automated parking systems, affects motor vehicles when they are moving, *i.e.,* ''operational'' safety. The Act's definition of ''motor vehicle safety'' encompasses both aspects of safety.[10]

B. NHTSA's Flexibility To Develop and Implement Non-Traditional Standards for ADS

NHTSA's primary exercise of its regulatory authority involves the development and establishment of the FMVSS.[11] Under the Act, NHTSA's

[4] 49 U.S.C. 30101.

[5] 49 U.S.C. 30111(a).

[6] 49 U.S.C. 30102(a)(6) and (7).

[7] Transportation Research Board Special Report 308, The Safety Promise and Challenge of Automotive Electronics: Insights from Unintended Acceleration, 2012. The Board is part of the National Research Council which is, in turn, part of the National Academies. This report describes the challenges presented by electronic systems and what the report terms their ''hardware components'' and ''software components.'' (P. 87). It is available on a number of online sites, including *http://onlinepubs.trb.org/onlinepubs/sr/sr308.pdf* and *https://www.nap.edu/catalog/13342/trb-special-report-308-the-safety-challenge-and-promise-of-automotive-electronics* and *http://www.omg.org/hot-topics/documents/Safety-Promise-and-Challenge-of-Automotive-Electronics-TRB-2012.pdf.*

[8] To find vehicle safety recalls involving software, search for ''software'' in the monthly NHTSA recalls reports on the following web page, Monthly Reports: Recalls and Investigations, available at *https://www-odi.nhtsa.dot.gov/recalls/monthlyreports.cfm.* See also May 2016 report by J.D. Power that it had conducted an analysis of recalls under the Act showing that ''(t)o date, 189 separate software recalls have been issued in the past 5 years, affecting more than 13 million vehicles. According to manufacturer analyses, 141 presented a risk of crashing; 44 could have resulted in injury.'' The results of this analysis may be found at *http://www.jdpower.com/cars/articles/safety-and-mpg/record-numbers-software-complaints-and-recalls-threaten-trust.*

[9] 49 U.S.C. 30102(a)(8).

[10] 49 U.S.C. 30102(a)(9).

[11] It is important to note that, even in the absence of standards, ADS-equipped vehicles must still be

Continued

FMVSS must meet a variety of requirements.[12] They must be performance-oriented. They must be practicable, both technologically and economically. They must be objective, meaning that they must be capable of producing identical results when tests are conducted in identical conditions and compliance must be based on scientific measurements, not subjective opinion. Finally, they must meet the need for safety.

The FMVSS can address all aspects and phases of ensuring that new motor vehicles are designed and perform safely. NHTSA can establish crash avoidance standards to reduce the chance that a vehicle will become involved in a crash or cause another vehicle to become involved in crash or reduce the severity of crashes that cannot be avoided. Likewise, NHTSA can issue crashworthiness standards requiring that a vehicle be designed so that its occupants are less likely to be seriously injured in a crash and so that it is less likely to cause injury to the occupants of other vehicles or other roadway users such as pedestrians and cyclists. In addition, NHTSA can issue standards for post-crash safety, such as minimizing the risk of electrical fires.

NHTSA believes that the FMVSS structure has the necessary flexibility to regulate the design and performance of ADS appropriately. Although the existing FMVSS rely on physical tests and measurements to evaluate safety performance, there is no requirement in the Act that they rely exclusively or even at all on such tests and measurements so long as they are objective and meet the other statutory requirements. In the future, other approaches such as simulation and requirements expressed in terms of mathematical functions might be considered.[13]

In addition, because the software environment is likely to evolve and change at a rapid rate, NHTSA recognizes that it will need a new approach to the development and drafting of FMVSS, especially any FMVSS that might be established for ADS. The accelerating pace of technological change is incompatible with lengthy rulemaking proceedings that last at least 6–8 years from initiating rulemaking to conducting research to translating the research results into regulatory text to conducting and completing a notice and comment rulemaking. Further, the FMVSS of the future will need to be reconceptualized, developed and drafted so that they are nimbler, more performance-oriented and thus more accommodating of anticipated and continued rapid technological change than has generally been the case for the FMVSS to date.

Similarly, although existing FMVSS generally address specific predictable events (*e.g.,* stopping and turning safely on low friction surfaces, specific types of crashes), it may be desirable, even necessary, to meet the need for safety, for future FMVSS focused on ADS technologies to also address the common, yet unpredictable, events that occur in real-world driving, *e.g.,* the one person among crowds of people standing on two or more corners of an intersection who suddenly decides to cross the street, the approaching vehicle that suddenly turns left, the parked vehicle that suddenly leaves its parking place, and the vehicle that suddenly emerges from a blind alley or other obscured location. Test procedures could replicate those events, including their unpredictability. A degree of unpredictability might be accomplished by varying the location of standardized surrogate vehicles, cyclists and pedestrians on a test course and the sequence in which they are encountered during testing. A sufficient degree of randomization could help avoid the risks that using a completely predictable test procedure might create, *i.e.,* that a test vehicle could be programmed to anticipate the predictable encounters with surrogate objects and avoid a collision with them by being pre-programmed to do so, not by relying on its sensors and decision-making algorithms.

Further, future FMVSS could test the ability of ADS vehicles to monitor not only simple scenarios involving a single surrogate pedestrian or vehicle, but also more complex and realistic scenarios involving multiple surrogate pedestrians and vehicles and their ability to identify and respond appropriately to all surrogate pedestrians and vehicles without the ADS vehicles' knowing in advance precisely which pedestrian or vehicle would move and when into their path.

Finally, future FMVSS could be drafted in more technology-neutral performance terms than many of the existing technology-specific FMVSS. This approach may allow for the development and deployment of cutting-edge technology, as long as FMVSS performance mandates are satisfied. This approach could allow for testing and deployment of critical safety equipment without requiring time-consuming regulatory amendments to respond to changes in technology.

C. Research Is Needed To Generate Data on ADS

In order to establish standards that ensure safety without jeopardizing innovation, NHTSA must conduct significant research, as well as leverage research conducted by outside entities, including industry and universities. When the Act was enacted, Congress recognized the importance of research, development, testing, and evaluation, and provided ''broad authority to initiate and conduct'' those activities.[14] Additionally, Congress recognized that safety standards ''cannot be set in a vacuum. They must be based on reliable information and research.'' [15]

In the Moving Ahead for Progress in the 21st Century Act,[16] Congress reiterated and strengthened NHTSA's role in conducting research, particularly in areas of innovative technology, and directed that ''[t]he Secretary of Transportation shall conduct research, development, and testing on any area or aspect of motor vehicle safety necessary to carry out this chapter.'' [17] In carrying out this directive, Congress instructed the Secretary to ''[c]onduct motor vehicle safety research, development, and testing programs and activities, including activities related to new and emerging technologies that impact or may impact motor vehicle safety'' and to ''[c]ollect and analyze *all types of motor vehicle and highway safety data*'' relating to motor vehicle performance and crashes.[18] Further, the Secretary was given broad authority to ''enter into cooperative agreements, collaborative research, or contracts with Federal agencies, interstate authorities, State and local governments, other public entities, private organizations and persons,'' and other appropriate institutions.[19]

To aid in determining how best to foster the safe introduction of vehicles with high and full driving automation onto our Nation's roadways, NHTSA seeks to facilitate research and data gathering involving these new and developing technologies in their various iterations and configurations. The

free from unreasonable risks to safety; if such risks do exist, the vehicle, component, or accessory would be subject to NHTSA's defect authority. *See* NHTSA Enforcement Guidance Bulletin 2016–02: Safety-Related Defects and Automated Safety Technologies, 81 FR 65705, September 23, 2016.

[12] 49 U.S.C. 30102(a)(10), 30111(a).

[13] NHTSA notes that its Corporate Average Fuel Economy Standards are required to be stated in terms of a mathematical function. 49 U.S.C. 32902(b)(3)(A).

[14] S. Rep. No. 89–1301, at 9 (June 23, 1966).

[15] H.R. Rep. No. 89–1776, at 11 (July 28, 1966); see also S. Rep. No. 89–1301, at 9.

[16] Public Law 112–141.

[17] 49 U.S.C. 30181.

[18] 49 U.S.C. 30182(a) (emphasis added).

[19] Id. at § 30182(b)(5).

Agency wants the entities involved in this research to gain practical, real world experience to determine the best approaches to enhancing safety. This research is expected to generate the data needed to assist in developing methods of validating the safety performance of vehicles with high and full driving automation. NHTSA recognizes both the safety potential of ADS and the need to ensure that all testing and operation of vehicles with high and full driving automation are conducted in a manner that ensures the appropriate levels of safety for everyone involved—and most importantly, all roadway users.

D. Regulatory Relief May Be Needed To Facilitate Research Involving Vehicles With High and Full Driving Automation

In the separate notice on barriers mentioned above, NHTSA stated that it believes that vehicles with traditional interior designs, *e.g.,* ones including steering wheels and foot pedals, that meet the existing FMVSS would still comply with the FMVSS even if those vehicles were designed to be operated as vehicles with high and full driving automation. However, vehicles with high and full driving automation that do not have traditional designs might not meet the existing FMVSS and would, therefore, require an exemption. NHTSA's statutes provide two separate avenues under sections 30113 and 30114 [20] for an exemption of vehicles that do not comply with the standards and another process designed for vehicles that would initially comply with the standard, but also may need exemptions if they operate in ''dual modes,'' one of which could run afoul of NHTSA's ''make inoperative'' prohibition.[21] Under both types of exemptions, NHTSA may set terms by which the exempted entity must abide.

In this document, NHTSA announces that it is contemplating creating an ADS vehicle pilot research program for the testing of vehicles and associated equipment and gathering of data from such testing, including in real-world scenarios, which the Agency would consider as setting the terms of the exemptions. NHTSA anticipates that these data will provide needed information that will better enable the public and private sectors to realize the promises and overcome the challenges of vehicles with high and full driving automation.

E. A Pilot Program Can Provide Relief and Promote Research on ADS

To summarize, NHTSA's authority covers all relevant aspects of ADS design, including vehicles with high and full driving automation. NHTSA, therefore, has an affirmative duty to establish the measures necessary to ensure the safe design and operation of these types of vehicles. However, to do so in a way that actually achieves those safety goals and does not unnecessarily impede innovation requires significant research on these cutting-edge issues. Due to the complexity of real-world driving, this research cannot simply be done in laboratories or other highly controlled testing environments and, instead, part of it must be done on public roads with real driving conditions. To help ensure that this testing is being done safely and with an eye towards developing the data necessary to support such future standards as may be needed, NHTSA is considering establishing a pilot program for vehicles with high and full driving automation for entities wishing to engage in the testing or, in some cases, deployment of vehicles with high and full driving automation that would require some type of an exemption from NHTSA's existing standards. The Agency believes that such a program could aid developers of vehicles with high and full driving automation in testing and deploying their vehicles across the country in a wide variety of scenarios, *e.g.,* different climates, weather patterns, topographical features, road systems, population and traffic densities, etc.

III. Pilot Program for the Safe Testing and Deployment of Vehicles With High and Full Driving Automation

Technological innovations in automotive transportation are diverse and evolving quickly in the United States and abroad. The potential safety benefits that could result from deploying vehicles with high and full driving automation justify a considered approach at the Federal, State and local levels to the design and implementation of pilot programs for the safe testing, learning and eventual deploying of these vehicles, including on public roadways.

Safety is a primary concern and is the primary mission of NHTSA. The issuance of this ANPRM on pilot program design is intended to stimulate public discussion of both safety aspects of new technology testing and development, as well as approaches to learning from pilot programs for technological improvement and eventual deployment. NHTSA acknowledges that there are also mobility, efficiency and accessibility opportunities associated with ADS and that infrastructure could play a key role in the broader operational availability of these technologies. Numerous companies, researchers, safety advocates, State and local governments, and other stakeholders are engaged in, planning to become engaged in or otherwise interested in the design, development, testing, and deployment of vehicles with high and full driving automation. NHTSA recognizes that it is restricted in its ability to apply requirements to certain manufacturers testing vehicles on public highways if the manufacturers agree not to offer for sale or sell those vehicles.[22] Discussion of pilot program design and implementation does not assume that such regulatory and statutory limits are either appropriate or necessary, but rather that pilot programs might require NHTSA to address certain barriers.

Further, pilot programs should anticipate the need to coordinate Federal, State and local governments' responsibilities and efforts and should recognize other Federal agencies, and State and local governments are effective sources of information needed for risk management as ADS technology approaches deployment. State and local governments have traditionally played important roles in motor vehicle and road safety, through enforcement, traffic management and planning, research, and much more. It is critical to NHTSA to partner effectively with State and local governments to permit them to continue these important functions while the Agency works collaboratively to facilitate the safe and efficient deployment of ADS technology.

Finally, at this stage, NHTSA is only considering a pilot program for light-duty vehicles; to the extent the Agency will consider establishing future pilot projects for other motor vehicles, such as truck tractors or buses, it will do so in coordination with the other relevant operating administrations within the Department.

Questions.

[20] 49 U.S.C. 30113 and 30114. These two sections, including relevant statutory text, are discussed below in parts III.B.1 and III.B.2 of this ANPRM.

[21] Certain ADS vehicles that do not comply with existing standards are currently allowed to be introduced into interstate commerce if they meet the requirements in section 30112(b)(10). The section excepts motor vehicles from the prohibition in section 30112(a)(1) against introducing a noncompliant motor vehicle into commerce, but, among other constraints, only if the vehicle is introduced by a manufacturer solely for the purpose of its being tested and evaluated on public roads, only for vehicle manufacturers that manufactured and distributed compliant vehicles in the United States before December 4, 2015, and only if those vehicles are not sold after the conclusion of testing. Importantly, then, this exception is limited in both which manufacturers can take advantage of it and what can be done while using it.

[22] 49 U.S.C. 30112(b)(10).

In furtherance of the goals of this ANPRM, NHTSA requests interested persons to answer a variety of questions about the structure of a national pilot program and about the types of regulatory relief that may be needed to make such a program successful. The views and information provided in response to those that will aid the Agency in deciding whether to create a national program and, if so, how to do so.

Guidance on answering questions.

In responding to each question, please provide data, analyses, research reports or other justification to support your response. In addition, please respond to the questions and requests in the same sequence in which they appear below and include the number of each question and request.

Question 1. What potential factors should be considered in designing the structure of a pilot program that would enable the Agency to facilitate, monitor and learn from on-road research through the safe testing and eventual deployment of vehicles with high and full driving automation and associated equipment?

Question 2. If NHTSA were to create a pilot program, how long would there be a need for such a program? What number of vehicles should be involved? Should NHTSA encourage the conducting of research projects in multiple locations with different weather conditions, topographical features, traffic densities, etc.?

Question 3. What specific difficulties should be addressed in designing a national vehicle pilot program for vehicles with high and full driving automation either through the exemption request process relevant for FMVSS or more broadly related to other areas of NHTSA and/or other authorities.

Question 4. How can existing statutory provisions and regulations be more effectively used in implementing such a pilot program?

Question 5. Are there any additional elements of regulatory relief (*e.g.,* exceptions, exemptions, or other potential measures) that might be needed to facilitate the efforts to participate in the pilot program and conduct on-road research and testing involving these vehicles, especially those that lack controls for human drivers and thus may not comply with all existing FMVSS?

A. Considerations in Designing the Pilot Program

NHTSA believes that a safe and effective pilot program for vehicles with high and full driving automation would necessarily address each of the following critical areas: (1) Vehicle design for safe operation; (2) vehicle design for risk mitigation in the event of an unplanned event; (3) vehicle design for intended operating conditions; and (4) data reporting and information sharing to identify and mitigate risks identified during the pilot program.

1. Vehicle Design for Safe Operation

As described above, NHTSA has long assessed vehicle attributes for safe operation under reasonably anticipated conditions. Such an assessment has historically included detailed elements of structural integrity and design, as well as hardware, software and telecommunications elements that contribute to either operational or nonoperational vehicle safety.

NHTSA believes that vehicles with high and full driving automation participating in pilot programs for testing and evaluation and eventual deployment should continue to meet most FMVSS for the protection of vehicle occupants, pedestrians, and other vulnerable road users. However, in the case of certain elements, safety might be enhanced through approaches different than those contained in the current FMVSS, given that they were developed for vehicles designed only for human operation.

As noted above, NHTSA has issued a Request for Comment regarding those provisions in the FMVSS that may pose barriers for the design, testing and deployment of some safe vehicles with high and full driving automation.

Question 6. What vehicle design elements might replace existing required safety equipment and/or otherwise enhance vehicle safety under reasonably anticipated operating conditions?

2. Vehicle Design for Risk Mitigation

As described in section I (overview) above, the primary difference between lower level driving automation systems and high and full driving automation systems is the reliance in the latter systems on the vehicle to perform all driving functions in at least certain circumstances. It is anticipated that vehicles with high and full driving automation will accomplish this through the combination of highly sophisticated detection systems, systems for digital interpretation of detected objects, data retention and processing, communication protocols, and highly sophisticated decision-making software. Together, this combination of functions is intended to replace and improve upon the ability of human drivers to detect, interpret, communicate and react to vehicle operational needs and conditions.

Some vehicles with high driving automation will require an additional design consideration to address human-machine interface when operating outside of their Operational Design Domain.[23] Specifically, given the reliance of those vehicles on vehicle, and not human, systems, the design of those vehicles should account for both the vehicle and human elements of any transition from one type of driver (human or vehicle) to another type of driver (vehicle or human).

In *A Vision for Safety,* the Department of Transportation described a voluntary safety self-disclosure approach recommended to innovators seeking to test and deploy vehicles with high and full driving automation on public roadways.

NHTSA's existing authorities under the Act, *e.g.,* provisions concerning research, standard setting and consumer information, are adequate for NHTSA to evaluate and recommend protocols to ensure the safety of vehicle design for risk mitigation. In fact, NHTSA has already developed and adopted protocols for a wide variety of technologies for use in either the FMVSS or the New Car Assessment Program. Examples include anti-lock braking systems, electronic stability control, automatic emergency braking, and lane departure warning.

Furthermore, NHTSA's authorities supporting the current FMVSS program are adequate and appropriate for developing very broadly drafted safety performance standards that might be necessary for the eventual safe widespread deployment on public roadways of vehicles with high and full driving automation. Such performance standards should allow for unencumbered innovation where such innovation provides equivalent or improved safety for future transportation designs when compared to the safety of human drivers. For example, future performance-based standards might include standards and testing for safe lane change performance on highways, hazard detection and avoidance in urban environments, or collision avoidance on rural highways.

Question 7. What types of performance measures should be considered to ensure safety while allowing for innovation of emerging

[23] The Operational Design Domain describes the specific conditions under which a given ADS or feature is intended to function. More specifically, it defines where (such as what roadway types and speeds) and when (under what conditions, such as day/night, weather limits, etc.) an ADS is designed to operate.

technology in vehicles with high and full driving automation participating in a pilot program?

3. Vehicle Design Safety Elements

A Vision for Safety seeks to help designers of ADS to analyze, identify, and resolve safety considerations prior to deployment by using their own, industry, and other best practices. It outlines 12 safety elements, which the Agency believes represent the consensus across the industry, that are generally considered to be the most salient design aspects to consider and address when developing, testing, and deploying ADS on public roadways. Within each safety design element, entities are encouraged to consider and document for themselves their use of industry standards, best practices, company policies, or other methods they have employed to provide for increased system safety in real-world conditions.

For example, vehicles with high and full driving automation are currently tested and deployed in carefully risk-managed phases to allow for safe operation during development of increasingly complex systems. As described in *A Vision for Safety,* the circumstances in which the automated operation of a vehicle is enabled are set forth in the vehicle's Operational Design Domain.

NHTSA believes that any pilot program for the testing of vehicles with high and full driving automation should include defined Operational Design Domains as a component of safe automated vehicle operation. Examples of an Operational Design Domain include, but are not limited to, geographic, environmental or other conditions in which the vehicle is designed to operate, detect and respond safely to a variety of normal and unexpected objects and events, and to fall back to a minimal risk condition in the event that the ADS fails or that the ADS encounters conditions outside the Operational Design Domain.

NHTSA has historically regulated the enabling conditions for safety systems, such as air bags, anti-lock brakes and electronic stability control, that are designed to intervene when certain conditions, and only those conditions, exist. NHTSA believes that the critical relationship between the safety of a vehicle's design and the vehicle's decision-making system similarly makes it necessary to evaluate the safety of automated vehicle performance in light of appropriate and well-defined Operational Design Domains. For example, if a vehicle is capable of safely operating automatically only at speeds below 30 mph, NHTSA might consider whether it would be appropriate to require that the vehicle be designed so that it cannot operate automatically at speeds of 30 mph or more unless and until it acquires the capability (*e.g.,* through software updates) of safely operating automatically above that speed. Similarly, if a vehicle would become incapable of operating safely if one or more of its sensors became non-functional, NHTSA might consider whether it would be appropriate to require that the vehicle be designed so that it cannot operate automatically in those circumstances.

State and local authorities also have a role to play. Through establishing and enforcing their rules of the road, these authorities have traditionally controlled such operational matters as the speed at which vehicles may be driven and the condition of certain types of safety equipment such as head and tail lights. In the future, it is reasonable to expect that these authorities may establish new rules of the road to address ADS vehicles specifically. While NHTSA might require the manufacturers of these vehicles to design them so that their vehicles know the State and locality in which they are operating and what the rules of the road are for that location and so that they observe those rules, the States and localities would enforce those rules if broken.

Question 8. How should the Operational Design Domains of individual vehicle models be defined and reinforced and how should Federal, State and local authorities work together to ensure that they are observed?

4. Data and Reporting

The purpose of a pilot program is to allow for safe on-road testing and on-road learning in order to provide feedback for further safe development. An important element of any pilot program is the creation, sharing and appropriate use of performance data to allow constant improvement to the test technology and improved risk management.

NHTSA believes that the novel challenge of assessing the safety of the emerging technologies in vehicles with high and full driving automation requires a commitment to timely and accurate data reporting and analysis.

Question 9. What type and amount of data should participants be expected to share with NHTSA and/or with the public for the safe testing of vehicles with high and full driving automation and how frequently should the sharing occur?

Question 10. In the design of a pilot program, how should NHTSA address the following issues—

a. confidential business information?
b. privacy?
c. data storage and transmission?
d. data retention and reporting?
e. other elements necessary for testing and deployment?

5. Additional Considerations in Pilot Program Design

NHTSA seeks comments on whether there are additional critical areas to consider in the design of a safe pilot program for the testing and deployment of vehicles with high and full driving automation.

Question 11. In the design of a pilot program, what role should be played by—

a. The 12 safety elements listed in A Vision for Safety?
b. The elements listed below,
i. Failure risk analysis and reduction during design process (functional safety)?
ii. Objective performance criteria, testable scenarios and test procedures for evaluating crash avoidance performance of vehicles with high and full driving automation?
iii. Third party evaluation?
A. Failure risk reduction?
B. Crash avoidance performance of vehicles with high and full driving automation?
iv. Occupant/non-occupant protection from injury in the event of a crash (crashworthiness)?
v. Assuring safety of software updates?
vi. Consumer education?
vii. Post deployment Agency monitoring?
viii. Post-deployment ADS updating, maintenance and recalibration?
c. Are there any other elements that should be considered?

Question 12. Are there any additional critical areas to consider in the design of a safe pilot program for the testing and deployment of vehicles with high and full driving automation?

6. Issues Relating To Establishing a Pilot Program

In addition to the general issues identified above, NHTSA requests comment on the following questions related to the development of the potential pilot program.

i. Applications for Participation and Potential Terms of Participation

Question 13. Which of the following matters should NHTSA consider requiring parties that wish to participate in the pilot program to address in their applications?

a. ''Safety case'' for vehicles to be used in the pilot program (*e.g.,* system safety analysis (including functional safety analysis), demonstration of safety capability based on objective performance criteria, testable scenarios and test procedures, adherence to NHTSA's existing voluntary guidance, including the submission of a voluntary safety self-assessment, and third party review of those materials).

i. What methodology should the Agency use in assessing whether an exempted ADS vehicle would offer a level of safety equivalent to that of a nonexempted vehicle? For example, what methodology should the Agency use in assessing whether an ADS vehicle steers and brakes at least as effectively, appropriately and timely as an average human driver?

b. Description of research goals, methods, objectives, and expected results.

c. Test design (*e.g.,* route complexity, weather and related road surface conditions, illumination and institutional review board assessment).

d. Considerations for other road users (*e.g.,* impacts on vulnerable road users and proximity of such persons to the vehicle).

e. Reporting of data, *e.g.,* reporting of crashes/incidents to NHTSA within 24 hours of their occurrence.

f. Recognition that participation does not negate the Agency's investigative or enforcement authority, *e.g.,* independent of any exemptions that the Agency might issue to program participants and independent of any terms that the Agency might establish on those exemptions, the Agency could conduct defect investigations and order recalls of any defective vehicles involved in the pilot program. Further, the Agency could investigate the causes of crashes of vehicles involved in the program.

g. Adherence to recognized practices for standardizing the gathering and reporting of certain types of data in order to make possible the combining of data from different sources and the making of statistically stronger findings.

h. For which types of data would standardization be necessary in order to make such findings and why?

i. To what extent would standardization be necessary for those types?

j. Occupant/non-occupant protection from injury in the event of a crash (crashworthiness).

k. Assuring safety of software updates.

l. Consumer education.

m. Post-deployment monitoring.

n. Post-deployment maintenance and calibration considerations.

Question 14. What types of terms and conditions should NHTSA consider attaching to exemptions to enhance public safety and facilitate the Agency's monitoring and learning from the testing and deployment, while preserving the freedom to innovate, including terms and conditions for each of the subjects listed in question 13? What other subjects should be considered, and why?

ii. Potential Categories of Data To Be Provided by Program Participants

Question 15. What value would there be in NHTSA's obtaining one or more of the following potential categories of data from the participants in the pilot program? Are there other categories of data that should be considered? How should these categories of data be defined?

a. Statistics on use (*e.g.,* for each functional class of roads, the number of miles, speed, hours of operation, climate/weather and related road surface conditions).

b. Statistics and other information on outcome (*e.g.,* type, number and cause of crashes or near misses, injuries, fatalities, disengagements, and transitions to fallback mechanisms, if appropriate).

c. Vehicle/scene/injury/roadway/traffic data and description for each crash or near miss (*e.g.,* system status, pre-crash information, injury outcomes).

d. Sensor data from each crash or near miss (*e.g.,* raw sensor data, perception system output, and control action).

e. Mobility performance impacts of vehicles with high and full driving automation, including string stability of multiple consecutive ADS vehicles and the effects of ADS on vehicle spacing, which could ultimately impact flow safety, and public acceptance.

f. Difficult scenarios (*e.g.,* scenarios in which the system gave control back to an operator or transitioned to its safe state by, for example, disabling itself to a slow speed or stopped position).

g. Software updates (*e.g.,* reasons for updates, extent to which updates are made to each vehicle for which the updates are intended, effects of updates).

h. Metrics that the manufacturer is tracking to identify and respond to progress (*e.g.,* miles without a crash and software updates that increase the operating domain).

i. Information related to community, driver and pedestrian awareness, behavior, concerns and acceptance related to vehicles with high and full driving automation operation. For example, if vehicles with high and full driving automation operated only in limited defined geographic areas, might that affect the routing choices of vehicles without high and full driving automation? For another example, if vehicles with high and full driving automation are programmed to cede right of way to avoid collision with other vehicles and with pedestrians and cyclists, might some drivers of vehicles without such automation, pedestrians and cyclists take advantage of this fact and force vehicles with high and full driving automation to yield to them?

j. Metrics or information concerning the durability of the ADS equipment and calibration, and need for maintenance of the ADS.

k. Data from ''control groups'' that could serve as a useful baseline against which to compare the outcomes of the vehicle participating in the pilot program.

l. If there are other categories of data that should be considered, please identify them and the purposes for which they would be useful to the Agency in carrying out its responsibilities under the Act.

m. Given estimates that vehicles with high and full driving automation would generate terabytes of data per vehicle per day, how should the need for data be appropriately balanced with the burden on manufacturers of providing it and the ability of the Agency to absorb and use it effectively?

n. How would submission of a safety assurance letter help to promote public safety and build public confidence and acceptance?

o. For all of the above categories of information, how should the Agency handle any concerns about confidential business information and privacy?

B. Use of Exemptions To Provide Regulatory Relief for Pilot Program Participants

As discussed above, NHTSA has several means to provide regulatory relief for vehicles with high and full driving automation whose innovative designs make compliance with existing regulations impracticable or impossible. In this document, the Agency has outlined and requested comment on a potential pilot program for these vehicles, to encourage and facilitate the necessary research and data to ensure their safe deployment and allow NHTSA to determine how to appropriately evaluate and regulate these vehicles.

As part of this pilot program, NHTSA is considering what effect participation in the pilot program could have on the exemption process and vice versa.

Question 16. How should the Agency analyze safety in deciding whether to

grant such exemptions under each of the separate bases for exemptions in section 30113? Can the exemption process be used to facilitate safe and effective ADS development in an appropriate manner?

Question 17. Could a single pilot program make use of multiple statutory sources of exemptions or would different pilot programs be needed, one program for each source of exemption?

Question 18. To what extent would NHTSA need to implement the program via new regulation or changes to existing regulation? Conversely, could NHTSA implement the program through a non-regulatory process? Would the answer to that question change based upon which statutory exemption provision the agency based the program on?

1. Exemptions From Prohibitions Concerning Noncompliant Vehicles Under Section 30113

Section 30112, except as otherwise provided, *e.g.,* under sections 30113 and 30114, prohibits any person from manufacturing for sale, selling, offering for sale, introducing or delivering for introduction in interstate commerce, or importing into the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable FMVSS takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of the Act.[24] Under section 30113, upon application by a vehicle manufacturer, NHTSA may exempt, on a temporary basis, motor vehicles from a FMVSS, on terms the Agency considers appropriate, if it finds that—

(a) an exemption is consistent with the public interest and this chapter or chapter 325 of this title (as applicable); and either

(b)

(i) compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith;

(ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard;

(iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or

(iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.[25]

A manufacturer is eligible for an economic hardship exemption only if the manufacturer's total motor vehicle production in the most recent year of production is not more than 10,000. An economic hardship exemption can be granted for not more than 3 years, although it can be renewed. Any manufacturer, regardless of its total production, is eligible for an exemption on the other three bases listed in the paragraph immediately above, but only if the exemption is for not more than 2,500 vehicles to be sold in the United States in any 12-month period. Exemptions on these three bases may be granted for not more than 2 years and can be renewed.

Over the years, NHTSA has granted numerous exemptions under the ''substantial economic hardship'' criteria, but relatively few under the other three bases. This proportion may change in the future. The use of the other three bases for granting petitions for the exemption of vehicles with high and full driving automation may become increasingly important prior to the development of ADS-specific standards.

Since the Act does not contain any prohibitions regarding the use of a motor vehicle, whether compliant or noncompliant, once a manufacturer receives an exemption from the prohibitions of section 30112(a)(1), the use of those vehicles is controlled only to the extent that NHTSA sets terms on the exemption. Its authority to set terms is broad. Since the terms would be the primary means of ensuring the safe operation of those vehicles, the Agency would consider carefully what types of terms to establish. The manufacturer would need to agree to abide by the terms set for that exemption in order to begin and continue producing vehicles pursuant to that exemption. Thus, if NHTSA were to establish the collaborative pilot research program for such vehicles discussed in this document, it could establish, for example, reporting terms to ensure a continuing flow of information to the Agency during and after the period of exemption to meet the Agency's, as well as the manufacturer's, research needs. Since only a very small portion of the total mileage that the exempted vehicles could be expected to travel during their useful life would have been driven by the end of the exemption period, it might be desirable for the data to be reported over a longer period of time to enable the Agency to make sufficiently reliable judgements. Such judgments might include a retrospective review of the judgments that the Agency made, at the time of granting the petition, about the anticipated safety effects of the exemption. Regardless of the period specified for reporting, NHTSA could also establish terms to specify what the consequences would be if the flow of information were to cease or become inadequate during or after the exemption period. NHTSA's regulations in 49 CFR part 555 provide that the Agency can revoke an exemption if a manufacturer fails to satisfy the terms of the exemption.

Question 19. How could the exemption process in section 30113 be used to facilitate a pilot program? For vehicles with high and full driving automation that lack means of manual control, how should NHTSA consider their participation, including their continued participation, in the pilot program in determining whether a vehicle would meet the statutory criteria for an exemption under section 30113? More specifically:

a. Would participation assist a manufacturer in showing that an exemption from a FMVSS would facilitate the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the FMVSS, as required to obtain an exemption under section 30113(b)(ii)? If so, please explain how.

b. Would participation assist a manufacturer in showing that compliance with the FMVSS would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles, as required to obtain an exemption under section 30113(b)(iv)? If so, please explain how.

c. The Agency requests comment on what role a pilot program could play in determining when to grant an exemption from the ''make inoperative'' prohibition under section 30122 for certain ''dual mode'' vehicles. Relatedly, what tools does NHTSA have to incentivize vehicles with high and full driving automation that have means of manual control and thus do not need an exemption to participate in the pilot program?

2. Exemptions From Prohibitions Concerning Noncompliant Vehicles Under Section 30114

Next, under section 30114, the ''Secretary of Transportation may exempt a motor vehicle or item of motor vehicle equipment from section 30112(a) of this title, on terms the Secretary decides are necessary, for

[24] 49 U.S.C. 30112(a)(1).

[25] 49 U.S.C. 30113.

research, investigations, demonstrations, training, competitive racing events, show, or display.'' [26] NHTSA has historically focused these types of exemptions on the noncompliant vehicles made outside the U.S. However, NHTSA is examining whether the language of section 30114 gives NHTSA the discretion to create a level playing field by expanding the coverage of exemption under that section to any vehicle, regardless of whether it is domestic or foreign, that meets the criteria of that section, particularly vehicles with high and full driving automation that do not meet existing standards and whose manufacturers are or seek to become engaged in research and demonstrations involving those vehicles. If so, NHTSA would be able to establish the terms with which a participant would need to comply in order to receive and continue to enjoy the benefits of an exemption. Such terms could include a wide variety of matters, including participation in a pilot program.

Question 20. What role could exemptions under section 30114 play in the pilot program? Could participation in the pilot program assist a manufacturer in qualifying for an exemption under section 30114? Could participation be considered part of the terms the Secretary determines are necessary to be granted an exemption under section 30114 for vehicles that are engaged in ''research, investigations, demonstrations, training, competitive racing events, show, or display''?

3. Exemption From Rendering Inoperative Prohibition

Finally, NHTSA has related exemption authority with regard to the ''make inoperative'' provision in its statute. Manufacturers, distributors, dealers, and motor vehicle repair businesses are prohibited from knowingly making inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable FMVSS unless they reasonably believe the vehicle or equipment will not be used (except for testing or a similar purpose *during* maintenance or repair) when the device or element is inoperative.[27]

However, NHTSA may prescribe regulations to exempt a person or a class of persons from this prohibition if the Agency decides the exemption is consistent with motor vehicle safety and the purposes of the Act. For example, pursuant to that authority, NHTSA has exempted from the ''make inoperative'' prohibition,[28] as a class, all motor vehicle repair businesses that modify a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle to the extent that those modifications affect the motor vehicle's compliance with the FMVSS or portions thereof specified in paragraph (c) of 49 CFR part 595. Such an exemption may be warranted for certain ''dual-mode'' vehicles, *i.e.,* those that may be operated with or without a human driver and are designed to have mandated and/or regulated components, such as brake pedals, retract under specified conditions. Comments are invited on this issue.

Question 21. What role could a pilot program play in determining when to grant an exemption from the ''make inoperative'' prohibition under section 30122 for certain ''dual mode'' vehicles? Relatedly, what tools does NHTSA have to incentivize vehicles with high and full driving automation that have means of manual control and thus do not need an exemption to participate in the pilot program?

4. Other Potential Obstacles

The Agency also wishes to better understand any other potential obstacles either to the development of the pilot program or vehicles with high and full driving automation more generally.

Question 22. If there are any obstacles other than the FMVSS to the testing and development of vehicles with high and full driving automation, please explain what those are and what could be done to relieve or lessen their burdens. To the extent any tension exists between a Federal pilot program and State or local law, how can NHTSA better partner with State and local authorities to advance our common interests in the safe and effective testing and deployment of ADS technology?

IV. Confidentiality of Information Provided by Program Participants

NHTSA recognizes that companies may be reluctant to share certain data or information with the Agency in connection with an exception, an exemption, or a pilot program because the data or information is proprietary. The Agency notes that 49 CFR part 512 sets forth the procedures and standards by which it will consider claims that information submitted to the Agency is entitled to confidential treatment under 5 U.S.C. 552(b), most often because the information constitutes confidential business information as described in 5 U.S.C. 552(b)(4). Part 512 also addresses the treatment of information determined to be entitled to confidential treatment. Commercial or financial information is considered confidential if it is voluntarily submitted to the Agency and is the type of information that is customarily not released to the general public. The Agency is seeking information from interested parties on how it might further protect non-public information that the Agency might need in connection with an exemption or pilot program.

V. Next Steps

The Agency wishes to re-emphasize that it has not made any decisions whether to establish a pilot program or how to structure such a program. After analyzing the public comments on this ANPRM and other available information, NHTSA will further assess the prospects for implementing a viable and effective program and identify the best approach to structuring one. Once it has done so, it will issue a notice, either an NPRM, if regulatory changes are determined to be necessary or a request for comment, if no regulatory changes are required, describing that approach and any promising alternative approaches and again seek public comment. After considering that second round of comments, the Agency will make a final decision about such a program in a final rule, if needed, or through another notice.

VI. Regulatory Notices

This action has been determined to be significant under Executive Order 12866, as amended by Executive Order 13563, and the Department of Transportation's Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget under that Order. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' Additionally, Executive Orders 12866 and 13563 require agencies to provide a meaningful opportunity for public participation. Accordingly, we have asked commenters to answer a variety of questions to elicit practical information about alternative approaches and relevant technical data. These comments will help the Department evaluate whether a proposed rulemaking is needed and appropriate. This action is not subject to the requirements of E.O. 13771 (82 FR 9339,

[26] 49 U.S.C. 30114.

[27] 49 U.S.C. 30122(b).

[28] 49 U.S.C. 30122.

February 3, 2017) because it is an advance notice of proposed rulemaking.

VII. Public Comment

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are filed in the correct docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). NHTSA established this limit to encourage you to write your primary arguments in a concise fashion so that the Agency and the public can more readily identify the more significant aspects of your comments. However, you may provide additional supporting arguments and relevant data by attaching necessary additional documents to your comments. There is no limit on the number or length of the attachments.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including the attachments, to the docket following the instructions given above under **ADDRESSES**. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you must submit three copies of your complete submission, including the information you claim to be confidential business information, to the Office of the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**.

In addition, you may submit a copy (two copies if submitting by mail or hand delivery) from which you have deleted the claimed confidential business information, to the docket by one of the methods given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR part 512).

Will NHTSA consider late comments?

NHTSA will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, NHTSA will also consider comments received after that date.

How can I read the comments submitted by other people?

You may read the comments received at the address given above under Comments. The hours of the docket are indicated above in the same location. You may also read the comments on the internet, identified by the docket number at the heading of this document, at *http://www.regulations.gov.*

Please note that, even after the comment closing date, NHTSA will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, NHTSA recommends that you periodically check the docket for new material.

Authority: 49 U.S.C. 30101 *et seq.,* 49 U.S.C. 30182.

Issued in Washington, DC, on October 3, 2018, under authority delegated in 49 CFR part 1.95.

Heidi Renate King,

Deputy Administrator.

[FR Doc. 2018–21919 Filed 10–9–18; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 83, No. 196

Wednesday, October 10, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0042]

Availability of an Environmental Assessment for Field Testing of a Swine Influenza Vaccine, DNA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed Swine Influenza Vaccine, DNA. Based on the environmental assessment, risk analysis, and other relevant data, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment. We are making the documents available to the public for review and comment.

DATES: We will consider all comments that we receive on or before November 9, 2018.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docket Detail;D=APHIS-2018-0042.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2018–0042, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0042* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road, Unit 148, Riverdale, MD 20737–1231; phone (301) 851–3426, fax (301) 734–4314.

For information regarding the environmental assessment or the risk analysis, or to request a copy of the environmental assessment (as well as the risk analysis with confidential business information redacted), contact Dr. Patricia L. Foley, Risk Manager, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 1920 Dayton Avenue, P.O. Box 844, Ames, IA 50010; phone (515) 337–6100, fax (515) 337–6120.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) is authorized to promulgate regulations designed to ensure that veterinary biological products are pure, safe, potent, and efficacious before a veterinary biological product license may be issued. Veterinary biological products include viruses, serums, toxins, and analogous products of natural or synthetic origin, such as vaccines, antitoxins, or the immunizing components of microorganisms intended for the diagnosis, treatment, or prevention of diseases in domestic animals.

APHIS issues licenses to qualified establishments that produce veterinary biological products and issues permits to importers of such products. APHIS also enforces requirements concerning production, packaging, labeling, and shipping of these products and sets standards for the testing of these products. Regulations concerning veterinary biological products are contained in 9 CFR parts 101 to 124.

A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS considers the potential effects of this product on the safety of animals, public health, and the environment. Based upon a risk analysis and other relevant data, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Antelope Valley Bios, Inc.

Product: Swine Influenza Vaccine, DNA.

Possible Field Test Locations: Minnesota, North Carolina, and Oklahoma.

The above-mentioned product is a DNA vaccine containing a hemagglutinin gene from swine influenza virus, subtype H3. The vaccine is intended for use in healthy swine 3 weeks of age or older, administered by intramuscular inoculation, as an aid in the prevention of disease due to swine influenza virus, subtype H3.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

We are publishing this notice to inform the public that we will accept written comments regarding the EA from interested or affected persons for a period of 30 days from the date of this notice. Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the

proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the associated product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following satisfactory completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 3rd day of October 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–21926 Filed 10–9–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0033]

Oral Rabies Vaccine Trial; Availability of a Supplement to an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a supplement to an environmental assessment and finding of no significant impact relative to an oral rabies vaccination field trial in New Hampshire, New York, Ohio, Vermont, and West Virginia. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Chipman, Rabies Program Coordinator, Wildlife Services, APHIS, 59 Chennell Drive, Suite 7, Concord, NH 03301; (603) 223–9623. To obtain copies of the supplement to the environmental assessment and the finding of no significant impact, contact Ms. Beth Kabert, Environmental Coordinator, Wildlife Services, 140–C Locust Grove Road, Pittstown, NJ 08867; (908) 735–5654, fax (908) 735–0821, email: *beth.e.kabert@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The Wildlife Services (WS) program in the Animal and Plant Health Inspection Service (APHIS) cooperates with Federal agencies, State and local governments, and private individuals to research and implement the best methods of managing conflicts between wildlife and human health and safety, agriculture, property, and natural resources. Wildlife-borne diseases that can affect domestic animals and humans are among the types of conflicts that APHIS–WS addresses. Wildlife is the dominant reservoir of rabies in the United States.

On July 3, 2018, we published in the **Federal Register** (83 FR 31117–31118, Docket No. APHIS–2018–0033) a notice [1] in which we announced the availability, for public review and comment, of a supplement to an environmental assessment (EA) that examined the potential environmental impacts associated with the proposed field trial to test the safety and efficacy of an experimental oral rabies vaccine (ORV) for wildlife in New Hampshire, New York, Ohio, Vermont, and West Virginia. In addition, the supplement analyzed the potential impacts of expanding the geographic range of the field trial zone to two additional counties in Ohio and four additional counties in West Virginia.

We solicited comments on the EA for 30 days ending August 2, 2018. We did not receive any comments.

In this document, we are advising the public of our finding of no significant impact (FONSI) relative to the ORV field trial in New Hampshire, New York, Ohio, Vermont, and West Virginia. The finding, which is based on the EA and the 2013, 2015, and 2017 supplements to the EA, reflects our determination that the distribution of this experimental wildlife rabies vaccine will not have a significant impact on the quality of the human environment.

The 2018 supplement to the EA and the FONSI may be viewed on the APHIS website at *http://www.aphis.usda.gov/wildlifedamage/nepa* and on the *Regulations.gov* website (see footnote 1). Copies of the 2018 supplement to the EA and the FONSI are also available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained as described under **FOR FURTHER INFORMATION CONTACT.**

The 2018 supplement to the EA and the FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 3rd day of October 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–21924 Filed 10–9–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

[1] To view the notice, the EA, and the FONSI, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0033.*

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[9/18/2018 through 10/1/2018]

Firm name	Firm address	Date accepted for investigation	Product(s)
Belta-4 Manufacturing, LLC	4300 Garland Drive, Haltom City, TX 76117.	9/19/2018	The firm manufactures metal parts and assemblies, including seat racks, manifolds, short rods with threads, base plates, and sleeves.
Tempel Steel Company, Inc	5500 North Wolcott Avenue, Chicago, IL 60640.	9/21/2018	The firm manufactures flat-rolled silicon electrical steel for the automotive, motor, generator, transformer, and lighting industries.
US Felt Company, Inc	61 Industrial Avenue, Sanford, ME 04073.	9/21/2018	The firm manufactures non-woven fabrics, felt, and composite materials.
Garage Graphics & Visuals, Inc. d/b/a Elemoose	2503 North Neergard Avenue, Springfield, MO 65803.	9/24/2018	The firm manufactures custom signs, exhibits, sculptures, stage sets, and architectural elements.
Environmental Advisors and Engineers, Inc.	19211 West 64th Terrace, Shawnee, KS 66218.	9/25/2018	The firm provides consulting services, including engineering and construction monitoring services.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Irette Patterson,

Program Analyst.

[FR Doc. 2018–21929 Filed 10–9–18; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–34–2018]

Foreign-Trade Zone (FTZ) 230—Greensboro, North Carolina, Authorization of Production Activity, Patheon Softgels (Pharmaceutical Products), High Point, North Carolina

On May 31, 2018, The Piedmont Triad Partnership, grantee of FTZ 230, submitted a notification of proposed production activity to the FTZ Board on behalf of Patheon Softgels, within Subzone 230C, in High Point, North Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (83 FR 26947, June 11, 2018). On September 28, 2018, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: October 1, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–21981 Filed 10–9–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that sales of certain lined paper products were not made at less than normal value during the September 1, 2016, through August 31, 2017, period of review (POR). We invite interested parties to comment on these preliminary results.

DATES: Applicable October 10, 2018.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or Joy Zhang, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone (202) 482–3797 or (202) 482–1168, respectively.

Background

On September 28, 2006, Commerce published the *CLPP from India Order* in the **Federal Register**.[1] On November 13, 2017, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), Commerce initiated an administrative review of the antidumping duty order on certain lined paper products from India.[2] On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.[3] On May 10, 2018, we extended the deadline for the preliminary results to October 3, 2018.[4]

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (*CLPP from India Order).*

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 52268 (November 13, 2017) (*Initiation Notice*).

[3] *See* memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

[4] *See* Memorandum, ''Certain Lined Paper Products from India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review; 2016–2017,'' dated May 10, 2018.

Commerce initiated this administrative review covering the following twelve companies: Goldenpalm Manufacturers PVT Limited (Goldenpalm), Kokuyo Riddhi Paper Products Pvt. Ltd. (Kokuyo), Lodha Offset Limited (Lodha), Lotus Global Private Limited (Lotus Global), Magic International Pvt. Ltd. (Magic), Marisa International (Marisa), Navneet Education Ltd. (Navneet), Pioneer Stationery Pvt. Ltd. (Pioneer), PP Bafna Ventures Private Limited (PP Bafna), SAB International, SGM Paper Products, and Super Impex.[5] On August 16, 2018, we rescinded the administrative review with respect to Goldenpalm, Super Impex, SAB International, Lotus Global, and PP Bafna.[6] This review covers two mandatory respondents, Navneet and Kokuyo. The following five companies were not selected for individual examination and remain subject to this administrative review: Lodha, Magic International Pvt. Ltd., Marisa, Pioneer Stationery Pvt. Ltd., and SGM Paper Products.

Scope of the Order

The merchandise covered by the *CLPP from India Order* is certain lined paper products. The merchandise subject to this order is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4811.90.9035, 4811.90.9080, 4820.30.0040, 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive. A full description of the scope of the *CLPP from India Order* is contained in the Preliminary Decision Memorandum.[7]

Preliminary Determination of No Shipments

On December 11 and 18, 2017, in their respective responses to Commerce's quantity and value questionnaire, Lodha and Marisa reported that they had no exports or sales of subject merchandise into the United States during the POR. To confirm Lodha's and Marisa's no-shipment claims, Commerce issued a no-shipment inquiry to U.S. Customs and Border Protection (CBP) requesting that it review Lodha's and Marisa's no-shipment claims. CBP did not report that it had any information to contradict these claims of no shipments during the POR.

Given that Lodha and Marisa reported that they made no shipments of subject merchandise to the United States during the POR, and there is no information calling their claims into question, we preliminarily determine that Lodha and Marisa made no shipments of subject merchandise during the POR. Consistent with Commerce's practice, we will not rescind the review with respect to Lodha and Marisa but, rather, will complete the review and issue instructions to CBP based on the final results.[8]

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the the Act. Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary results, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and is available to all parties in the Central Records Unit, Room B–8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Preliminary Results of the Review

As a result of this review, we preliminarily calculated a dumping margin of 0.33 percent (*de minimis)* for Navneet and zero percent for Kokuyo. We are applying to the non-selected companies the rates calculated for the mandatory respondents in these preliminary results, as referenced below.[9]

Producer/exporter	Weighted-average dumping margin (percent)
Kokuyo Riddhi Paper Products Pvt. Ltd.	0.00
Navneet Education Ltd	0.33 (*de minimis)*
Magic International Pvt. Ltd.	0.00
Pioneer Stationery Pvt. Ltd.	0.00
SGM Paper Products	0.00

Assessment Rate

Upon issuance of the final results, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. If the weighted-average dumping margin for Kokuyo or Navneet is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[10] If the weighted-average dumping margin for Kokuyo or Navneet is zero or *de minimis* in the final results, or an importer-specific assessment rate is zero or *de minimis* in the final results, we will instruct CBP not to assess antidumping duties on any of their entries in accordance with the *Final Modification for Reviews.*[11]

In accordance with Commerce's assessment practice, for entries of subject merchandise during the POR produced by each respondent for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

[5] *See Initiation Notice,* 82 FR at 52269.

[6] *See Certain Lined Paper Products from India: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 40750 (August 16, 2018).

[7] *See* the ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Lined Paper Products from India; 2016–2017,'' dated concurrently and hereby adopted by this notice (Preliminary Decision Memorandum).

[8] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306, 51307 (August 28, 2014).

[9] *See* Albemarle Corp. & Subsidiaries v. United States, 821 F.3d 1345 (Fed. Cir. 2016) (Albemarle).

[10] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012). (*Final Modification for Reviews*).

[11] *Id.* at 8102.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for respondents noted above will be the rates established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.91 percent, the all-others rate established in the investigation as modified by the section 129 determination.[12] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed in these preliminary results to parties in this proceeding within five days of the date of publication of this notice.[13]

Public Comment

Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[14] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[15] All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the established deadline.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

We intend to issue the final results of this administrative review, including the results of our analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and increase the subsequent assessment of the antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h)(1).

Dated: October 3, 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

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Preliminary Determination of No Shipments
V. Discussion of Methodology
  A. Comparisons to Normal Value
  1. Determination of Comparison Method
  2. Results of the Differential Pricing Analysis
  B. Product Comparisons
  C. Date of Sale
  D. Export Price
  E. Normal Value
  1. Home Market Viability
  2. Cost of Production Analysis
  a. Calculation of COP
  b. Test of Comparison Market Prices and COP
  c. Results of COP Test
  F. Level of Trade
  G. Calculation of Normal Value Based on Comparison Market Prices
  H. Margin for Companies Not Selected for Individual Examination
  I. Currency Conversions
VI. Recommendation

[FR Doc. 2018–21850 Filed 10–9–18; 8:45 am]

BILLING CODE 3510–DS–P

[12] *See Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders,* 72 FR 25261 (May 4, 2007).

[13] *See* 19 CFR 351.224(b).

[14] *See* 19 CFR 351.309(d).

[15] *See* 19 CFR 351.309(c)(2) and (d)(2) and 19 CFR 351.303 (for general filing requirements).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–847]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Mexico: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that sales of heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from Mexico have been made below normal value. Additionally, Commerce preliminarily determines that a company for which we initiated a review had no shipments during the period of review (POR). We invite interested parties to comment on these preliminary results.

DATES: Applicable October 10, 2018.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse or David Crespo, AD/CVD

Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6345 or (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on HWR pipes and tubes from Mexico. The notice of initiation of this administrative review was published on November 13, 2017.[1] This review covers 11 producers and/or exporters of the subject merchandise. Commerce selected two mandatory respondents for individual examination: Maquilacero S.A. de C.V. (Maquilacero) and Productos Laminados d Monterrey S.A. de C.V. (Prolamsa). The POR is March 1, 2016, through August 31, 2017.

In May 2018, Commerce extended the preliminary results of this review to no later than October 3, 2018.[2]

Scope of the Order

The merchandise subject to the order is certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm.[3] The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–500, grade B specifications, or comparable domestic or foreign specifications. Included products are those in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item number 7306.61.1000. Subject merchandise may also be classified under 7306.61.3000. Although the HTSUS numbers and ASTM specification are provided for convenience and for customs purposes, the written product description remains dispositive.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Preliminary Determination of No Shipments

One of the companies under review, Tuberia Nacional S.A. de C.V. (TUNA), properly filed a statement reporting that it made no shipments of subject merchandise to the United States during the POR. Based on the certification submitted by TUNA and our analysis of U.S. Customs and Border Protection (CBP) information, we preliminarily determine that TUNA had no shipments during the POR.[4] Commerce finds that it is not appropriate to preliminarily rescind the review with respect to this company, but rather, to complete the review with respect to it and issue appropriate instructions to CBP based on the final results of this review.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that weighted-average dumping margins exist for the respondents for the period March 1, 2016, through August 31, 2017, as follows:

Exporter/producer	Weighted-average dumping margin (percent)
Maquilacero S.A. de C.V	0.00
Productos Laminados d Monterrey S.A. de C.V	6.34

Review-Specific Average Rate Applicable to the Following Companies:[5]

Exporter/producer	Weighted-average dumping margin (percent)
Arco Metal S.A. de C.V	6.34
Forza Steel S.A. de C.V	6.34
Industrias Monterrey, S.A. de C.V	6.34
Perfiles y Herrajes LM S.A. de C.V	6.34
PYTCO S.A. de C.V	6.34
Regiomontana de Perfiles y Tubos S.A. de C.V	6.34
Ternium S.A. de C.V	6.34
Tuberia Nacional S.A. de C.V	*
Tuberia Procarsa S.A. de C.V	6.34

* No shipments or sales subject to this review.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[6]

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 52268 (November 13, 2017).

[2] *See* Memorandum, ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated May 10, 2018. In this memorandum, we noted that Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through January 22, 2018. *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018. As a result, the revised deadline for the preliminary results became October 3, 2018.

[3] For a complete description of the scope of the Order, *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2016–2017 Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See* TUNA's Letter re: Heavy Walled Rectangular Welded Carbon Pipes and Tubes from Mexico: Notice of No Sales, dated November 15, 2017. *See also* Memorandum, ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico,'' dated September 27, 2018.

[5] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

[6] *See* 19 CFR 351.224(b).

Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[7] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[8] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9] Case and rebuttal briefs should be filed using ACCESS.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[11] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[12]

Commerce intends to issue the final results of this administrative review, including the results of its analysis raised in any written briefs, not later than 120 days after the publication date of this notice, pursuant to section 751(a)(3)(A) of the Act, unless otherwise extended.[13]

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), where Maquilacero and Prolamsa reported the entered value for their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondents did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. We intend to instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212(d).

For the companies which were not selected for individual review, we will assign an assessment rate based on the average[14] of the cash deposit rates calculated for Maquilacero and Prolamsa, excluding any which are *de minimis* or determined entirely on adverse facts available. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[15]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the exporters listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.91 percent, the all-others rate made effective by the LTFV investigation.[16] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: October 3, 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

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
  a. Determination of the Comparison Method
  b. Results of the Differential Pricing Analysis
  c. Product Comparisons
  d. Export Price/Constructed Export Price
  e. Normal Value
  i. Home Market Viability
  ii. Affiliated-Party Transactions and Arm's-Length Test

[7] *See* 19 CFR 351.309(c).

[8] *See* 19 CFR 351.309(d).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See* 19 CFR 351.303.

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.310(d).

[13] *See* Section 751(a)(3)(A) of the Act.

[14] This rate will be calculated as discussed in footnote 4, above.

[15] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[16] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders,* 81 FR 62865, 62867 (September 13, 2016).

iii. Level of Trade
iv. Cost of Production Analysis
1. Cost Averaging Methodology
2. Calculation of COP
3. Test of Comparison Market Sales Prices
4. Results of the COP Test
v. Calculation of Normal Value Based on Comparison Market Prices
vi. Calculation of Normal Value Based on Constructed Value
V. Currency Conversion
VI. Recommendation

[FR Doc. 2018–21985 Filed 10–9–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–953]

Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies have been provided to producers and exporters of narrow woven ribbons with woven selvedge from the People's Republic of China (China). The period of review (POR) is January 1, 2016, through December 31, 2016. Interested parties are invited to comment on these preliminary results.

DATES: Applicable October 10, 2018.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova or Maria Tatarska, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–1562.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the notice of initiation of this administrative review on November 13, 2017.[1] On April 30, 2018, Commerce postponed the preliminary results of this administrative review and the revised deadline is now October 3, 2018.[2] For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[3]

Scope of the Order

The products covered by the order are narrow woven ribbons with woven selvedge from China. For a complete description of the scope of this administrative review, see the Preliminary Decision Memorandum.[4]

Methodology

Commerce is conducting this countervailing duty (CVD) review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying our preliminary conclusions, including our reliance, in part, on adverse facts available pursuant to sections 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum.[6] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following estimated countervailable subsidy rate exists:

Company	Subsidy rate
Yama Ribbons and Bows Co., Ltd.	23.70 percent.

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue assessment instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount indicated above. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose to interested parties the calculations and analysis performed in connection with this preliminary results within five days of publication of this notice in the **Federal Register**.[7] Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after publication of the preliminary results.[8] Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline for filing case briefs.[9] Parties who submit case briefs or rebuttal briefs in this administrative review are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[10]

Interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must do so within 30 days of publication of these preliminary results by submitting a

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 52268 (November 13, 2017).

[2] *See* Memorandum, ''Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Extension of Deadline for Preliminary Results of 2016 Countervailing Duty Administrative Review,'' dated April 30, 2018. In this memorandum, we noted that Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through January 22, 2018. *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018. As a result, the revised deadline for the preliminary results became October 3, 2018.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of 2016 Countervailing Duty Administrative Review: Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *Id.*

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[6] A list of topics discussed in the Preliminary Decision Memorandum can be found at the Appendix to this notice.

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309(c)(l)(ii).

[9] *See* 19 CFR 351.309(d).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system.[11] Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined.[12] Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, we intend to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

Notification to Interested Parties

These preliminary results are issued and published pursuant to sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: October 2, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Application of the Countervailing Duty Law to Imports from China
V. Diversification of China's Economy
VI. Use of Facts Otherwise Available and Adverse Inferences
VII. Subsidies Valuation
VIII. Interest Rate Benchmarks, Discount Rates, Input and Electricity
IX. Analysis of Programs
X. Conclusion

[FR Doc. 2018–21987 Filed 10–9–18; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–880]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that sales of heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Korea (Korea) have been made below normal value. Additionally, Commerce preliminarily determines that a company for which we initiated a review had no shipments during the period of review (POR). We invite interested parties to comment on these preliminary results.

DATES: Applicable October 10, 2018.

FOR FURTHER INFORMATION CONTACT: Alice Maldonado or Whitley Herndon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4682 or (202) 482–6274, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on HWR pipes and tubes from Korea. The notice of initiation of this administrative review was published on November 13, 2017.[1] This review covers 14 producers and exporters of the subject merchandise. The period of review is March 1, 2016 through August 31, 2017. Commerce selected two mandatory respondents for individual examination: Dong-A Steel Company (DOSCO) and HiSteel Co., Ltd (HiSteel). In May 2018, Commerce extended the preliminary results of this review to no later than October 3, 2018.[2]

Scope of the Order

The merchandise subject to the order is certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm.[3] The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–500, grade B specifications, or comparable domestic or foreign specifications. Included products are those in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The product is currently classified under following Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.61.1000. Subject merchandise may also be classified under 7306.61.3000. Although the HTSUS numbers and ASTM specification are provided for convenience and for customs purposes, the written product description remains dispositive.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 52268 (November 13, 2017).

[2] *See* Memorandum, ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated May 10, 2018. In this memorandum, we noted that Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through January 22, 2018. *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018. As a result, the revised deadline for the preliminary results became October 3, 2018.

[3] For a complete description of the scope of the Order, *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2016–2017 Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Preliminary Determination of No Shipments

Among the companies under review, one company, SeAH Steel Corporation (SeAH), properly filed a statement reporting that it made no shipments of subject merchandise to the United States during the POR. Based on the certification submitted by SeAH and our analysis of U.S. Customs and Border Protection (CBP) information, we preliminarily determine that SeAH had no shipments during the POR.[4] Consistent with its practice, Commerce finds that it is not appropriate to preliminarily rescind the review with respect to this company but, rather, to complete the review with respect to it and issue appropriate instructions to CBP based on the final results of this review.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that weighted-average dumping margins exist for the respondents for the period March 1, 2016, through August 31, 2017, as follows:

Exporter/producer	Weighted-average dumping margin (percent)
Dong-A Steel Company	30.61
HiSteel Co., Ltd	5.64

Review-Specific Average Rate Applicable to the Following Companies: [5]

Exporter/Producer	Weighted-average dumping margin (percent)
Ahshin Pipe & Tube Company	18.86
Bookook Steel Co., Ltd	18.86
Dongbu Steel Co., Ltd	18.86
Husteel Co., Ltd	18.86
Hyundai Steel Pipe Company	18.86
Hyundai Steel Co	18.86
Miju Steel Manufacturing Co., Ltd	18.86
NEXTEEL Co., Ltd	18.86
Sam Kang Industries Co., Ltd	18.86
SeAH Steel Corporation	*
Kukje Steel Co., Ltd	18.86
Yujin Steel Industry Co. Ltd	18.86

* No shipments or sales subject to this review.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[6] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[7] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[8] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9] Case and rebuttal briefs should be filed using ACCESS.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[11] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If

[4] *See* SeAH's Letter re: Administrative Review of the Antidumping Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea for the 2016–17 Review Period—No Shipments Letter, dated December 13, 2017.

[5] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, de minimis or based entirely on facts available. See section 735(c)(5)(A) of the Act.

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(c).

[8] *See* 19 CFR 351.309(d).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See* 19 CFR 351.303.

[11] *See* 19 CFR 351.310(c).

a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[12]

Commerce intends to issue the final results of this administrative review, including the results of its analysis raised in any written briefs, not later than 120 days after the publication date of this notice, pursuant to section 751(a)(3)(A) of the Act, unless otherwise extended.[13]

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), where DOSCO and HiSteel reported the entered value of their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondents did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. We intend to instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212(d).

For the companies which were not selected for individual review, we will assign an assessment rate based on the average[14] of the cash deposit rates calculated for DOSCO and HiSteel, excluding any which are *de minimis* or determined entirely based on adverse facts available. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[15]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the exporters listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.24 percent, the all-others rate made effective by the LTFV investigation.[16] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: October 3, 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—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Companies Not Selected for Individual Examination
V. Discussion of the Methodology
  a. Date of Sale
  b. Determination of Comparison Method
  c. Results of Differential Pricing Analysis
  d. Product Comparisons
  e. Export Price/Constructed Export Price
  f. Normal Value
  i. Particular Market Situation
  ii. Home Market Viability and Comparison Market
  iii. Level of Trade
  iv. Affiliated-Party Transactions and Arm's-Length Test
  v. Cost of Production Analysis
  1. Cost Averaging Methodology
  a. Significant of Cost Changes
  b. Linkage Between Sales and Cost Information
  2. Calculation of COP
  3. Test of Comparison Market Sales Prices
  4. Results of the COP Test
  vi. Calculation of Normal Value Based on Comparison Market Prices
  vii. Calculation of Normal Value Based on Constructed Value
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2018–21980 Filed 10–9–18; 8:45 am]

BILLING CODE 3510–DS–P

[12] *See* 19 CFR 351.310(d).

[13] *See* Section 751(a)(3)(A) of the Act.

[14] This rate was calculated as discussed in footnote 4, above.

[15] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[16] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders,* 81 FR 62865, 62866 (September 13, 2016).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–565–801]

Stainless Steel Butt-Weld Pipe Fittings From the Philippines: Final Results of Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that Enlin Steel Corporation (Enlin), Vinox Corporation (aka Vinoc Corporation) (Vinox) and E N Corporation should be treated as a

single entity for purposes of cash deposit and liquidation rates.

DATES: Applicable October 10, 2018.

FOR FURTHER INFORMATION CONTACT: Julie Geiger or Fred Baker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2057 or (202) 482–2924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 23, 2001, Commerce published the antidumping duty (AD) order on stainless steel butt-weld pipe fittings (pipe fittings) from the Philippines.[1] On May 24, 2018, Core Pipe Products, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc. (collectively, the petitioners) requested that Commerce conduct a CCR pursuant to 751(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(b).[2]

The petitioners alleged in their request that Enlin had been shipping subject merchandise to the United States at the ''all-others'' antidumping duty cash deposit rate in effect for Enlin's affiliates Vinox and E N Corporation, rather than at the company-specific rate of 33.81 percent established for Enlin in the less-than-fair-value (LTFV) investigation. The petitioners also alleged that Vinox and E N Corporation were, and are currently, the same business entity as Enlin. The petitioners, therefore, requested that Commerce conduct a CCR to determine that Enlin, Vinox, and E N Corporation are affiliated companies that should be treated as a single entity. They also requested that Commerce notify U.S. Customs and Border Protection (CBP) that it should impose and collect antidumping duty deposits on all unliquidated entries made by Vinox and E N Corporation at Enlin's 33.81 percent rate. The petitioners submitted a supplement to their request on May 31, 2018.[3] Enlin filed a letter objecting to the petitioners' request for a CCR on June 26, 2018.[4] The petitioners filed a response to Enlin's letter on June 26, 2018.[5] On July 5, 2018, we extended the deadline for initiating the CCR,[6] and published the initiation of this CCR on August 14, 2018.[7]

On August 20, 2018, we issued a questionnaire to Enlin, requesting further information about its relationship with Vinox and E N Corporation.[8] On September 3, 2018, Enlin filed a response,[9] stating that it agreed with the petitioners' requests that: (1) Enlin, Vinox, and E N Corporation should be treated as the same entity pursuant to 19 CFR 351.401(f); and (2) Commerce should instruct CBP to ''impose and collect antidumping duty deposits on all unliquidated entries made by Vinox and E N Corp{oration}'' of pipe fittings at the 33.81 percent cash deposit rate ''previously established for Enlin on their shipments of subject merchandise from the Philippines.'' [10] Due to the complexities of this proceeding, we extended the deadline for issuing the final results of this changed circumstances review by an additional eleven days, until October 1, 2018, and later by an additional eight days, until October 9, 2018.[11] On September 24, 2018, the petitioners filed a response to Enlin's questionnaire response, urging Commerce to apply the 33.81 percent cash deposit rate retroactively to all unliquidated entries made by Vinox and E N Corporation.[12]

Scope of the Order

The products covered by the *Order* are certain stainless steel butt-weld pipe fittings. Certain stainless steel butt-weld pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The products encompass all grades of stainless steel and ''commodity'' and ''specialty'' fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The fittings subject to the *Order* are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.,* DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Pipe fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by the *Order.*

The *Order* does not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The stainless steel butt-weld pipe fittings subject to the *Order* are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

Final Results of the Changed Circumstances Review

Based on evidence on the record,[13] and Enlin's assertion that it should be considered a single entity with Vinox and E N Corporation,[14] we find that Enlin, Vinox, and E N Corporation are affiliated parties which should be treated as a single entity. While, historically, Commerce has not applied 19 CFR 351.401(f) in the context of CCRs, we find that for purposes of this particular segment of the proceeding, the criteria in the regulation are relevant to ensure that the administration and effect of the underlying *Order* are not undermined.

[1] *See Antidumping Duty Orders: Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines,* 66 FR 11257 (February 23, 2001) (the *Order*).

[2] *See* Petitioners' Letter, ''Stainless Steel Butt-Weld Pipe Fittings from the Philippines—Petitioners' Request for Initiation of Changed Circumstances Review,'' dated May 24, 2018 (Review Request).

[3] *See* Petitioners' Letter, ''Stainless Steel Butt-Weld Pipe Fittings from the Philippines—Petitioners' Supplement to Changed Circumstances Review Request,'' dated May 31, 2018 (Request Supplement).

[4] *See* Enlin's Letter, dated June 26, 2018.

[5] *See* Petitioners' Letter, ''Antidumping Duty Order on Stainless Steel Butt-Weld Pipe Fittings from the Philippines—Petitioners' Rebuttal to Respondents' Opposition to Changed Circumstances Review Request,'' dated June 26, 2018.

[6] *See* Commerce's Letter, ''Stainless Steel Butt-Weld Pipe Fittings from the Philippines: Extension of Time for Changed Circumstances Review Initiation Decision,'' dated July 5, 2018.

[7] *See Stainless Steel Butt-Weld Pipe Fittings from the Philippines: Initiation of Antidumping Duty Changed Circumstances Review,* 83 FR 40227 (August 14, 2018) (*Initiation Notice*).

[8] *See* Commerce's Letter, ''Stainless Steel Butt-Weld Pipe Fittings from the Philippines: Antidumping Duty Changed Circumstances Review Questionnaire,'' dated August 20, 2018.

[9] *See* Enlin's Letter, ''Stainless Steel Butt-Weld Pipe Fittings from the Philippines: Questionnaire Response,'' dated September 3, 2018 (Questionnaire Response).

[10] *See* Review Request at 2 and 5; *see also* Request Supplement at 1, 2, and 4.

[11] *See* Memorandum, ''Stainless Steel Butt-Weld Pipe Fittings from the Philippines: Extension of Deadline for Final Results of Antidumping Duty Changed Circumstances Review,'' dated September 20, 2018, and Memorandum ''Stainless Steel Butt-Weld Pipe Fittings from the Philippines: Extension of Deadline for Final Results of Antidumping Duty Changed Circumstances Review,'' dated October 1, 2018.

[12] *See* Petitioners' Letter, ''Stainless Steel Butt-Weld Pine Fittings from the Philippines: Petitioners' Response to Enlin's Questionnaire Response,'' dated September 24, 2018.

[13] *See* Review Request at Attachments 1–7; *see also* Request Supplement at Attachments 1–4.

[14] *See* Questionnaire Response.

The petitioners claim that Enlin, Vinox, and E N Corporation are affiliated, pursuant to section 771(33) of the Act and 19 CFR 351.102(b), based on Enlin's direct statement of affiliation with Vinox in its Section A questionnaire response of the initial investigation, evidence of control over Vinox and E N Corporation by the same individuals or family members, similar or identical company addresses, and a common Canadian trademark.[15]

Pursuant to 19 CFR 351.401(f), Commerce will collapse affiliated entities when there is: (1) Evidence that the entities have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (2) a significant potential for the manipulation of price or production, such as through common ownership, overlap of directors and managers, and intertwined operations. There is evidence on the record to support that these criteria have been met.[16] Specifically, record evidence demonstrates that: (1) Enlin, Vinox, and E N Corporation are affiliated parties that each produce or have produced the subject merchandise and have shipped it to the same or similar importers in the United States, and (2) there is a ''significant potential for the manipulation of price or production,'' if we do not collapse the companies due to the level of common direction or control.[17]

Accordingly, given the evidence provided by the petitioners,[18] along with Enlin's acknowledgement that the three companies should be treated as a single entity and that CBP should collect antidumping duty cash deposits on all unliquidated entries made by Vinox and E N Corporation at the rate assigned to Enlin,[19] we find that: (1) There were sufficient changed circumstances in the trading patterns and activities of Enlin, Vinox, and E N Corporation that the petitioners allege resulted in a possible evasion of the *Order;* (2) Enlin, Vinox, and E N Corporation should be collapsed as a single entity; (3) the collapsed entity is subject to the cash deposit rate assigned to Enlin in the LTFV investigation;[20] and (4) the results of this CCR are applied retroactively from the publication date of the *Order.*[21]

Instructions to U.S. Customs and Border Protection

As a result of this determination, we find that both Vinox and E N Corporation are subject to the cash deposit rate currently assigned to Enlin (*i.e.,* 33.81 percent).[22] Therefore, Commerce will instruct CBP to continue suspension of liquidation and to collect estimated antidumping duties for all unliquidated entries and shipments of subject merchandise produced and exported by Enlin, Vinox, and/or E N Corporation at the cash deposit rate of 33.81 percent currently assigned to Enlin, from the date of the publication of the *Order.*[23] This cash deposit requirement shall remain in effect until further notice. We will also instruct CBP to liquidate any unliquidated entries and shipments of subject merchandise produced and exported by Vinox and/or E N Corporation made during periods for which Commerce has completed an administrative review or for which no administrative review was requested (*i.e.,* through and including January 31, 2018) at the 33.81 percent rate currently assigned to Enlin.

Notification to Parties

This notice is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Commerce is issuing and publishing these results in accordance with sections 751(b)(1) and (4) and 777(i) of the Act, and 19 CFR 351.216 and 19 CFR 351.221(c)(3)(i).

Dated: October 3, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–21983 Filed 10–9–18; 8:45 am]

BILLING CODE 3510–DS–P

[15] *See* Review Request; *see also* Request Supplement.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *See* Questionnaire Response, where Enlin stated that it agreed with the petitioners' request (in the Review Request at 2 and 5, and Request Supplement at 1, 2, and 4).

[20] *See* the *Order,* 66 FR 11257.

[21] *See, e.g., Large Power Transformers from the Republic of Korea: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 83 FR 45094 (September 5, 2018), and accompanying Issues and Decision Memorandum at 5–6.

[22] *See* the *Order,* 66 FR 11257.

[23] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–844]

Certain Lined Paper Products From India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Goldenpalm Manufacturers PVT Ltd. (Goldenpalm), a producer/exporter of lined paper products (lined paper) from India, received countervailable subsidies during the period of review (POR) January 1, 2016, through December 31, 2016. We invite interested parties to comment on these preliminary results.

DATES: Applicable October 10, 2018.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2006, Commerce issued the countervailing duty (CVD) order on lined paper from India.[1] Goldenpalm requested that Commerce conduct an administrative review of the *Lined Paper Order* with respect to the company, and on November 13, 2017, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the CVD order for Goldenpalm for the POR.[2] On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.[3] On May 31, 2018, Commerce extended the time period for issuing these preliminary results by 120 days, until October 3,2018, in accordance

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (*Lined Paper Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 52268 (November 13, 2017) (*Initiation Notice*).

[3] *See* memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).[4]

Scope of the Order

The product covered by the *Lined Paper Order* is certain lined paper products from India. For a full description of the scope of this order, *see* the Preliminary Decision Memorandum.[5]

Methodology

Commerce is conducting this CVD review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that confers a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying our preliminary conclusions, including our reliance, in part, on adverse facts available pursuant to sections 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as an Appendix to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

As a result of this review, we preliminarily determine the net countervailable subsidy rate to be:

Manufacturer/exporter	Net subsidy rate
Goldenpalm Manufacturers PVT Ltd.	188.70 percent *ad valorem*

[4] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review,'' dated May 31, 2018.

[5] *See* ''Decision Memorandum for Preliminary Results of 2016 Countervailing Duty Administrative Review: Certain Lined Paper Products from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity.

Public Comment

Interested parties may submit case briefs within 30 days of publication of this notice.[7] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[8] Parties who submit case or rebuttal briefs are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system.[10] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined.[11] Parties should confirm by telephone the date, time, and location of the hearing. Issues addressed at the hearing will be limited to those raised in the briefs.[12] All briefs and hearing requests must be filed electronically and received successfully in their entirety through ACCESS by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended, pursuant to section 751(a)(3)(A) of the Act, we intend to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

Assessment Rates and Cash Deposit Requirement

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned the subsidy rate in the amount shown above for the producer/exporter shown above. Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, CVDs on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of review.

[7] *See* 19 CFR 351.309(c)(l)(ii).

[8] *See* 19 CFR 351.309(c)(l)(ii) and 351.309(d).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See* 19 CFR 351.310(c).

[11] *Id.*

[12] *See* 19 CFR 351.310(c).

Pursuant to section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated CVDs, in the amount shown above for the company shown above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: October 3, 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

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Use of Facts Otherwise Available and Application of Adverse Inferences
V. Discussion and Analysis of Programs
VI. Recommendation

[FR Doc. 2018–21984 Filed 10–9–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 180904815–8815–01]

Request for Information Regarding Measurement Science Needs for Water Use Efficiency and Water Quality in Premise Plumbing Systems

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for Information (RFI).

SUMMARY: Premise plumbing systems are key to the built environment, given that our ability to live and thrive in buildings is highly dependent on efficient and sustainable access to potable water. The design of premise plumbing systems in the U.S. is based in part on decades-old data embodied in building codes, much of which was developed at the National Institute of Standards and Technology (NIST).

However, many important factors affecting these systems have changed considerably in recent years. Per capita water demand has declined, new materials have been introduced into plumbing systems, and there are growing concerns regarding human exposure to opportunistic pathogens in plumbing systems and other water quality issues. New information is needed to ensure that premise plumbing systems are designed, installed, and operated such that the goals of water efficiency, water quality, and energy efficiency are considered in an integrated manner. NIST requests information from the public regarding measurement science needs that must be addressed to inform future code revisions, green building standards, and guidance documents in ways that enable safe, reliable and efficient plumbing systems in buildings. Responses to this RFI will assist NIST in its execution of a project to investigate approaches that can reduce water and energy consumption and reduce or prevent water quality problems by informing improvements in plumbing system design, codes and standards.

DATES: Comments must be received by 5:00 p.m. Eastern time on November 9, 2018. Written comments in response to the RFI should be submitted according to the instructions in the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections below. Submissions received after that date may not be considered.

ADDRESSES: Responses to this RFI can be submitted by either of the following methods:

- *Agency Website:* [*https://www.nist.gov/el/energy-and-environment-division-73200/rfi-response*]. Follow the instructions for sending comments on the agency website.
- *Email: safeandsustainable plumbing@nist.gov.* Include ''RFI Response: Regarding Measurement Science Needs for Water Use Efficiency and Water Quality in Premise Plumbing Systems'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Dr. David Yashar, Deputy Chief, Energy and Environment Division, Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, MS 2201, Gaithersburg, MD 20899, 301–975–5868, or by email to *dyashar@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Premise plumbing systems are key to the built environment, given that our ability to live and thrive in buildings is highly dependent on efficient and sustainable access to potable water. The design of premise plumbing systems in the U.S. is based in part on decades-old data embodied in building codes, much of which was developed at NIST. However, as described below, many important factors affecting these systems have changed considerably in recent years. Per capita water demand has declined and concerns exist regarding human exposure to opportunistic pathogens in plumbing systems and other water quality issues. New technical information is needed to ensure that premise plumbing systems are designed, installed, and operated such that the goals of water efficiency, water quality, and energy efficiency are considered in an integrated manner, based in part on the following considerations:

- Population growth and concerns over the scarcity of water and the ability to deliver potable water through an aging treatment and distribution infrastructure have led Americans to implement measures that reduced indoor household water use by 22% since the late 1990's.[1] As a result, new premise plumbing systems are being designed and installed with water flow rates that are significantly lower than those corresponding to the design data in building codes and other guidance.
- Many existing plumbing systems are being operated at lower flow rates than those for which they were designed to operate. These low flow rates create situations where water remains in distribution and building plumbing systems for longer periods of time, potentially rendering water treatment practices less effective and leading to conditions that can promote the growth of opportunistic waterborne pathogens.
- Materials used in piping networks and fixtures have changed, and there is insufficient information about their performance and impacts over time.
- Water stressed areas are considering on-site reuse for non-potable uses. However, there is some uncertainty regarding design criteria to implement these systems in a healthy and sustainable manner.
- The distribution and consumption of water inside a building has significant influence on the amount of energy that a building consumes. Efforts to advance energy efficiency may affect how water moves in a building as well as its resulting water quality.
- The need to use water more efficiently to supply a growing population and economy will not diminish as water shortages, most notably in the western U.S., become more frequent and/or severe. The U.S. Government Accountability Office predicts that water shortages in non-drought conditions will be experienced in 40 of the 50 states by 2024.[2]

Based on these factors and trends, it is clear that research is needed to advance the state of knowledge that supports the design of new premise plumbing systems and the operation and retrofit of existing systems to conserve water resources, protect public health, and support community resilience.

The input received through this RFI may be incorporated into a long-term research agenda to develop the codes, standards, and guidance to advance building water use efficiency and water quality which will be accessible to multiple public and private sector organizations. This research agenda will target the following core issues:

- Updated data and models to support the codes, standards, and guidance necessary for the design of new premise plumbing systems based on the lower water flow rates, the use of new materials, and the increased awareness of opportunistic pathogens and other water quality issues.
- Information to inform codes, standards, and guidance for the operation and potential retrofit of existing plumbing systems that are subject to lower water flow rates than those for which they were designed and which may be affected by degradation in system materials over time.
- Codes, standards, and guidance for future plumbing systems based on increasing demands for water efficiency and water quality, employing technologies such as onsite reuse, and different scales of delivery and treatment.
- Codes, standards, and guidance for human factors related to water use as well as system operation and maintenance.

For the purposes of this RFI, premise plumbing is defined as all potable and non-potable, piping and appurtenances (*e.g.,* water heaters, chillers) within a property line, and includes reuse, collection system, and onsite storage within a residential or commercial facility. NIST is interested in issues related to the following aspects and features of premise plumbing systems:

- All premise plumbing systems in residential, commercial and industrial

[1] Water Research Foundation, Residential End Uses of Water, 2016. *http://www.waterrf.org/PublicReportLibrary/4309A.pdf.*

[2] U.S. Government Accountability Office, Freshwater: Supply Concerns Continue, and Uncertainties Complicate Planning, May 22, 2014. *http://www.gao.gov/products/GAO-14-430.*

buildings, per the above definition, including but not limited to irrigation systems, fire suppression systems, cooling towers, water features and data centers
- Materials used in plumbing systems, their resistance to corrosion, their ability to maintain structural integrity, and their interaction with contaminants and treatment chemicals
- System operation and maintenance, and occupant water use
- Water quality conditions at point of entry into the building
- Data needed for design and operation, including water demand assumptions
- Models for designing new systems and evaluating existing systems

II. Request for Information

NIST requests information from the public regarding measurement science needs that must be addressed to inform future code revisions, green building standards, and guidance documents in ways that enable safe, reliable and efficient plumbing systems in buildings. Responses to this RFI will assist NIST in its execution of a project to investigate approaches that can reduce water and energy consumption and reduce or prevent water quality problems by informing improvements in plumbing system design, codes and standards.

Respondents are encouraged—but are not required—to respond to each question and to present their answers after each question. The following questions cover the major areas about which NIST seeks comment. Respondents may organize their submissions in response to this RFI in any manner, and all responses that comply with the requirements listed in the **DATES** and **ADDRESSES** sections of this RFI will be considered.

Attachments will be accepted in plain text, Microsoft Word, or Adobe PDF formats. Comments sent by any method other than those specified in this notice, to any address or individual other than those specified in this notice, or received after the end of the comment period, may not be considered. Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. NIST reserves the right to publish comments publicly, unedited and in their entirety. Sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information. Do not submit confidential business information, or otherwise sensitive or protected information. Comments that contain profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

NIST is interested in receiving information from the stakeholder community to answer the following questions:

(1) What are the most important issues to design and operate safe, healthy, reliable, and efficient plumbing systems?;

(2) In the context of the core issues listed above or any other issues identified in this notice, what are the research needs that should be considered in developing this research agenda?;

(3) Is there any other information respondents want to provide regarding this effort?

Authority: 15 U.S.C. 272(b)(10).

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2018–21920 Filed 10–9–18; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG525

Fisheries of the Caribbean; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 57 Assessment Webinar II for Caribbean spiny lobster.

SUMMARY: The SEDAR 57 stock assessment process for Caribbean spiny lobster will consist of a Data Workshop, a series of data and assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 57 Assessment Webinar II will be held October 24, 2018, from 1 p.m. to 3 p.m. Eastern Time.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; *phone:* (843) 571–4366; *email: Julie.neer@safmc.net*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

1. Using datasets and initial assessment analysis recommended from the Data Webinar, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Participants will recommend the most appropriate methods and configurations for determining stock

status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action 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 Fishery Conservation and Management Act, provided the public has been notified of the 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 aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 4, 2018.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–21977 Filed 10–9–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG541

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Ecosystem Workgroup (EWG) will hold a meeting, which is open to the public.

DATES: The webinar meeting will be held on Thursday, October 25, 2018, from 1:30 p.m. to 5:30 p.m. (Pacific Daylight Time) or until business for the day has been completed.

ADDRESSES: The meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar (1) join by visiting this link *http://www.gotomeeting.com/online/webinar/join-webinar,* (2) enter the Webinar ID: 632–761–819, and (3) enter your name and email address (required). After logging in to the webinar, please (1) dial this TOLL number +1 (415) 655–0052 (not a toll-free number), (2) enter the attendee phone audio access code 911–302–407, and (3) then enter your audio phone pin (shown after joining the webinar). **Note:** We have disabled Mic/Speakers as an option and require all participants to use a telephone or cell phone to participate. Technical Information and system requirements: PC-based attendees are required to use Windows® 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See *https://www.gotomeeting.com/webinar/ipad-iphone-android-webinar-apps*). You may send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at 503–820–2280, extension 411 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The EWG will discuss the contents of its report to the Council in response to preliminary recommendations from the Council's Ad Hoc Climate Scenarios Investigation Committee. The EWG will also plan tasks and work product in connection with the Fishery Ecosystem Plan five-year review and the Climate and Communities Initiative.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, (503) 820–2411, at least 10 business days prior to the meeting date.

Dated: October 4, 2018.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–21986 Filed 10–9–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG538

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, October 24, 2018 at 9 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 100 Boardman Street, Boston, MA 02128; phone: (617) 567–6789.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Committee will review Framework (FW) 30 alternatives and analyses. The primary focus of this meeting will be to provide input on the range of specification alternatives. FW 30 will set specifications including ABC/ACLs, days-at-sea, access area allocations, total allowable catch for the Northern Gulf of Maine (NGOM) management area, targets for General Category incidental catch, and set-asides for the observer and research programs for fishing year 2019 and default specifications for fishing year 2020. Management measures in FW 30 include: Standard default measures. They also plan to review progress toward 2018 work items, make recommendations on 2019 scallop work priorities, and consider approaches for

moving priorities forward. Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final 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 Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: October 4, 2018.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–21982 Filed 10–9–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Policy, 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 Policy Board (DPB) will take place.

DATES: Closed to the Public Tuesday, October 9, 2018 from 8:00 a.m. to 5:45 p.m.

ADDRESSES: The closed meeting will be held at The Pentagon, 2000 Defense Pentagon, Washington, DC 20301–2000.

FOR FURTHER INFORMATION CONTACT: Marcus Bonds, (703) 571–0854 (Voice), 703–697–8606 (Facsimile), *marcus.bonds.civ@mail.mil* (Email). Mailing address is 2000 Defense Pentagon, Washington, DC 20301–2000.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the Defense Policy Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the meeting on October 9, 2018 of the Defense Policy Board. 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) (5 U.S.C., Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: To obtain, review and evaluate classified information related to the DPB's mission to advise on: (a) Issues central to strategic DoD planning; (b) policy implications of U.S. force structure and force modernization and on DoD's ability to execute U.S. defense strategy; (c) U.S. regional defense policies; and (d) other research and analysis of topics raised by the Secretary of Defense, the Deputy Secretary of Defense, or the Under Secretary of Defense for Policy.

Agenda: On October 9, the DPB will have Secret level or higher discussions on national security issues regarding the Space Force and Innovation and the Industrial Base. Topics and Speakers are (1) Annual Assessment of Threats to Cleared Industry, Stephanie Andrews, Defense Security Service; (2) Deliberation on Subgroup Report on Space; (3) DoD Technical Transfers, Beth M. McCormick, OSD Chair and Senior Advisor to the Commandant, National Defense University; (4) Committee on Foreign Investment in the United States, Thomas Feddo, Deputy Assistant Secretary Department of Treasury; (5) DoD Acquisition and Programs, Eric Chewing, Deputy Assistant Secretary of Defense for Industrial Policy, Under Secretary of Defense for Acquisition and Sustainment; and James A. Faist, Director of Defense Research and Engineering for Advanced Capabilities, Under Secretary of Defense Research and Engineering; (6) Discussion and out brief Secretary of Defense.

Meeting Accessibility: Pursuant to the Government in the Sunshine Act, the FACA, and the FACA Final Rule (41 CFR 102–3.155), the DoD has determined that this meeting shall be closed to the public. The Under Secretary of Defense (Policy), in consultation with the DoD FACA Attorney, has determined in writing that this meeting be closed to the public because the discussions fall under the purview of Section 552b(c)(1) of the Sunshine Act and are so inextricably intertwined with unclassified material that they cannot reasonably be segregated into separate discussions without disclosing secret or higher classified material.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140(c) and section 10(a)(3) of the FACA, the public or interested organizations may submit written statements to the membership of the DPB at any time regarding its mission or in response to the stated agenda of a planned meeting. Written statements should be submitted to the DPB's Designated Federal Officer (DFO); the DFO's contact information is listed in this notice or it can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.* Written statements that do not pertain to a scheduled meeting of the DPB may be submitted at any time. The DFO will review all submitted written statements and provide copies to all members.

Dated: October 3, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–21941 Filed 10–9–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Innovation Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Defense Innovation Board, Department of Defense, DoD.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following federal advisory committee meeting of the Defense Innovation Board (DIB) will take place.

DATES: Closed to the public Wednesday, October 10, 2018 from 10:00 a.m. to 12:00 p.m. Open to the public Wednesday, October 10, 2018 from 2:30 p.m. to 5:00 p.m.

ADDRESSES: The closed portion of the meeting will be held at the Pentagon, Arlington, Virginia. The open portion of the meeting will be held at the Johns Hopkins University, School of Advanced International Studies, Kenney Auditorium, 1740 Massachusetts Avenue NW, Washington, DC 20036. The public meeting will be live streamed for those who are unable to physically attend the meeting.

FOR FURTHER INFORMATION CONTACT: Michael L. Gable, (571) 372–0933 (Voice), *michael.l.gable.civ@mail.mil* (Email) or *OSD.Innovation@mail.mil*. Mailing address is Defense Innovation Board, ATTN: Designated Federal Officer, 3030 Defense Pentagon, Room 5E572, Washington, DC 20301–3030. Website: *http://innovation.defense.gov*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the Defense Innovation Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the meeting on October 10, 2018 of the Defense Innovation Board. 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) (5 U.S.C., Appendix), the Government in the Sunshine Act (5 U.S.C. 552b) (''the Sunshine Act''), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The mission of the DIB is to examine and provide the Secretary of Defense and the Deputy Secretary of Defense independent advice and recommendations on innovative means to address future challenges in terms of integrated change to organizational structure and processes, business and functional concepts, and technology applications. The DIB focuses on (a) technology and capabilities, (b) practices and operations, and (c) people and culture.

Agenda: During the closed portion of the meeting, the Board will discuss the National Defense Strategy with the Secretary of Defense, especially as it relates to artificial intelligence (AI) and software capabilities. The board will also meet with the Chief Information Officer to discuss AI principles and the Joint AI Center (JAIC). During the open portion of the meeting, the DIB will hear expert presentations on AI. Experts include Dr. Heather Roff, Sr. Research Analyst, John Hopkins University Applied Physics Lab, and Dr. Andrew Lohn, Engineer, RAND Corporation. The DIB will deliberate on artificial intelligence principles for defense and data as a strategic asset, as well as receive an update on progress on the Software Acquisition and Practices (SWAP) study directed in the National Defense Authorization Act for Fiscal Year 2018 (''the FY18 NDAA''). The DIB will hear from experts regarding SWAP study activities within DoD. Experts include Mr. Jeff Boleng, Office of the Under Secretary of Defense for Acquisition and Sustainment; Mr. Leo Garciga, Defense Threat Reduction Agency; Dr. Amy Henninger, Office of the Chief Management Officer; Ms. Philomena Zimmerman, Office of the Undersecretary of Defense for Research and Engineering; Ms. Jane Rathbun, Deputy Assistant Secretary of the Navy for Command, Control, Computers, Intelligence, Information Operations and Space; Major Justin Ellsworth, U.S. Air Force, Congressional Research Service. Additionally, Mr. Joshua Marcuse, in his role as the Innovation Advisor to the Chief Management Officer, will brief the DIB on DoD's latest implementation activities related to DIB recommendations. Members of the public will have an opportunity to provide oral comments to the DIB regarding its deliberations and potential recommendations. See below for additional information on how to sign up to provide public comments.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b(c)(1), the DoD has determined that the portion of the meeting from 10:00 a.m. to 12:00 p.m. shall be closed to the public. The USD(R&E), in consultation with the Office of the DoD General Counsel, has determined in writing that this portion of the DIB's meeting will be closed as the discussions will involve classified matters of national security. Such classified material is so inextricably intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without disclosing matters that are classified SECRET or higher. Pursuant to Federal statutes and regulations (the FACA, the Sunshine Act, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, the meeting is open to the public from 2:30 p.m. to 5:00 p.m. Seating is on a first-come basis. Members of the public wishing to attend the meeting or wanting to receive a link to the live stream webcast should register on the DIB website, *http://innovation.defense.gov,* no later than October 9, 2018. Members of the media should RSVP to Lieutenant Colonel Michelle Baldanza, U.S. Army, Office of the Secretary of Defense Public Affairs, at *michelle.l.baldanza.mil@mail.mil.*

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact the Designated Federal Officer (DFO), see **FOR FURTHER INFORMATION CONTACT** section for contact information, no later than October 8, 2018, so that appropriate arrangements can be made.

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.140, the public or interested organizations may submit written comments to the DIB about its approved agenda pertaining to this meeting or at any time regarding the DIB's mission. Individuals submitting a written statement must submit their statement to the DFO (see **FOR FURTHER INFORMATION CONTACT** section for contact information). Written comments that do not pertain to a scheduled meeting may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at the planned meeting, then such comments must be received in writing not later than October 9, 2018. The DFO will compile all written submissions and provide them to DIB members for consideration.

Oral Presentations: Individuals wishing to make an oral statement to the DIB at the public meeting may be permitted to speak for up to two minutes. Anyone wishing to speak to the DIB should submit a request by email at *osd.innovation@mail.mil* not later than October 9, 2018 for planning. Requests for oral comments should include a copy or summary of planned remarks for archival purposes. Individuals may also be permitted to submit a comment request at the public meeting; however, depending on the number of individuals requesting to speak, the schedule may limit participation. Webcast attendees will be provided instructions with the live stream link if they wish to submit comments during the open meeting.

Dated: October 4, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–22023 Filed 10–9–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the United States Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the United States Naval Academy Board of Visitors will take place.

DATES: The open session of the meeting will be held on December 3, 2018, from

9:00 a.m. to 11:15 a.m. The executive session held from 11:15 a.m. to 12:00 p.m. will be the closed portion of the meeting.

ADDRESSES: The meeting will be held at the United States Naval Academy in Annapolis, Maryland. The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: LCDR Lawrence Heyworth IV, USN, 410–293–1500 (Voice), 410–293–2303 (Facsimile), *heyworth@usna.edu* (Email). Mailing address is U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402. Website: *https://www.usna.edu/PAO/Superintendent/bov.php.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy.

Agenda: 0830–0900—Assemble/Coffee (OPEN to public); 0900—Call to Order (OPEN to public); 0900–1100—Business Session (OPEN to public); 1100–1115—Break (OPEN to public); 1115–1200—Executive Session (CLOSED to public).

Meeting Accessibility: The meeting will be handicap accessible.

Authority: 5 U.S.C. 552b.

Dated: October 3, 2018.

Meredith Steingold Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2018–21990 Filed 10–9–18; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of Navy

Notice of Intent To Grant an Exclusive License; Aviation Devices and Electronic Components, L.L.C.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Aviation Devices and Electronic Components, L.L.C., located at 3215 West Loop 820 South, Fort Worth, TX 76116, a revocable, nonassignable, exclusive license throughout all the contracting states of the European Patent Convention (EP), Mexico (MX), Canada (CA), and the Republic of Korea (KR) in all fields of use to practice the Government-Owned invention described in Patent Cooperation Treaty (PCT) Application Number PCT/US17/63346 filed November 28, 2017 entitled ''Synergistic Metal Polycarboxylate Corrosion Inhibitors,'' Navy Case Number PAX236.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than October 25, 2018.

ADDRESSES: Written objections are to be filed with the Naval Air Warfare Center Aircraft Division, Technology Transfer Office, Attention Michelle Miedzinski, Code 5.0H, 22347 Cedar Point Road, Building 2185, Box 62, Room 2160, Patuxent River, Maryland 20670. File an electronic copy of objection with *michelle.miedzinski@navy.mil.*

FOR FURTHER INFORMATION CONTACT: Michelle Miedzinski, 301–342–1133, Naval Air Warfare Center Aircraft Division, 22347 Cedar Point Road, Building 2185, Box 62, Room 2160, Patuxent River, Maryland 20670, *michelle.miedzinski@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: October 3, 2018.

Meredith Steingold Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2018–21962 Filed 10–9–18; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of Navy

Notice of Intent To Grant Exclusive License; CHEMEON Surface Technology, LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to CHEMEON Surface Technology, LLC located at 2241 Park Place, Suite B, Minden, NV 89423, a revocable, nonassignable, exclusive license throughout the Republic of China (CN), Japan (JP), India (IA) and Brazil (BR) in all fields of use to practice the Government-Owned invention described in Patent Cooperation Treaty (PCT) Application Number PCT/US17/63346 filed November 28, 2017 entitled ''Synergistic Metal Polycarboxylate Corrosion Inhibitors,'' Navy Case Number PAX236.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than October 25, 2018.

ADDRESSES: Written objections are to be filed with the Naval Air Warfare Center Aircraft Division, Technology Transfer Office, Attention Michelle Miedzinski, Code 5.0H, 22347 Cedar Point Road, Building 2185, Box 62, Room 2160, Patuxent River, Maryland 20670. File an electronic copy of objection with *michelle.miedzinski@navy.mil.*

FOR FURTHER INFORMATION CONTACT: Michelle Miedzinski, 301–342–1133, Naval Air Warfare Center Aircraft Division, 22347 Cedar Point Road, Building 2185, Box 62, Room 2160, Patuxent River, Maryland 20670, *michelle.miedzinski@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: October 3, 2018.

Meredith Steingold Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2018–21961 Filed 10–9–18; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2018–FSA–0065]

Privacy Act of 1974; Matching Program

AGENCY: Department of Education.

ACTION: Notice of a new matching program.

SUMMARY: This provides notice of the re-establishment of the matching program between the U.S. Department of Education (Department) and the Department of Veterans Affairs (VA), which sets forth the terms, safeguards, and procedures under which the VA will disclose data to the Department regarding Veterans whom VA has designated as (1) having a service-connected disability rating that is 100 percent disabling, or (2) being totally disabled based on an individual unemployability rating.

DATES: Submit your comments on the proposed matching program on or before November 9, 2018.

The matching program will go into effect 30 days after the publication of this notice, on November 9, 2018, unless comments have been received from interested members of the public

requiring modification and republication of the notice. The matching program will continue for 18 months after it becomes effective and may be extended for an additional 12 months, if the respective Data Integrity Boards (DIBs) of the Department and VA determine that the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''help'' tab.
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the matching program, address them to the Project Manager, Federal Student Aid, U.S. Department of Education, 830 First Street NE, Washington, DC 20202–5320.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Pam Eliadis, Service Director, System Operations & Aid Delivery Management, Federal Student Aid, U.S. Department of Education, 830 First Street NE, Washington, DC 20202–5320.

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

SUPPLEMENTARY INFORMATION: We provide this notice in accordance with Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a); Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818 (June 19, 1989); and OMB Circular No. A–108.

Participating Agencies: The U.S. Department of Education and the U.S Department of Veterans Affairs.

Authority for Conducting the Matching Program: The Department's legal authority to enter into this matching program is provided in sections 420N(c), 437(a), and 455(a)(1) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070g–2(c), 1087(a), and 1087e(a)(1)), and the regulations promulgated pursuant to those HEA sections (34 CFR 682.402(c), 685.213, and 686.42(b)), and subsection (a)(8) of the Privacy Act (5 U.S.C. 552a(a)(8)).

VA's legal authority to enter into this matching program and to disclose information as part of this matching program is described in subsection (a)(8) of the Privacy Act, 5 U.S.C. 552a(a)(8) and is in accordance with 5 U.S.C. 552a(b)(3).

Purpose(s): The matching program will assist the Department in its obligation to ensure that borrowers of loans under title IV of the HEA and individuals with Teacher Education Assistance for College and Higher Education (TEACH) Grant service obligations more efficiently and effectively apply for Total and Permanent Disability (TPD) discharge of their loans under title IV of the HEA and TEACH Grant service obligations. The Department will proactively send notices to inform individuals that they may be eligible for a TPD discharge, provided that the VA has designated them as having a service-connected disability rating that is 100 percent disabling, or being totally disabled based on an individual unemployability rating, as described in 38 CFR 3.4(b) and 38 CFR 3.340. Additionally, these individuals are eligible for a TPD discharge only where: (1) They owe a balance on any loans disbursed under the authority of title IV of the HEA, (2) they have had any loans under title IV of the HEA written off due to default, or (3) they are responsible for completing a service obligation in exchange for having received a TEACH Grant under the TEACH Grant Program. The Department's notices also will inform these individuals that the Department will accept VA data matched information in lieu of their submission of a VA Statement with their TPD loan discharge application, thereby making it easier for them to submit a TPD loan discharge application to the Department.

Categories of Individuals: The VA will disclose to the Department information in VA's records about Veterans who are in receipt of VA disability compensation benefits with a VA determination that they have a 100 percent disabling service-connected disability rating or that they are totally disabled based on an individual unemployability rating.

The Department will match this information on Veterans with its records on borrowers of loans under title IV of the HEA who owe balances on any loans or have had any loans written off due to default as well as on individuals who are responsible for completing a service obligation in exchange for having received a TEACH Grant under the TEACH Grant Program.

Categories of Records: The records to be used in the matching program are described as follows: VA will disclose to the Department, on a quarterly basis, the name (first, middle and last), date of birth (DOB), and Social Security number (SSN) of all Veterans who are in receipt of VA disability compensation benefits with a VA determination that they have a 100 percent disabling service-connected disability rating or that they are totally disabled based on an individual unemployability rating, along with the VA disability determination date for each Veteran.

The Department will match the data elements of name, DOB, and SSN received from VA with the Department's records on borrowers of loans under title IV of the HEA who owe balances on any loans or have had any loans written off due to default, as well as individuals who are responsible for completing a service obligation in exchange for having received a TEACH Grant under the TEACH Grant Program.

System(s) of Records: VA will use the system of records identified as ''BIRLS—VA'' (38VA21), first published at 49 FR 38095 (August 26, 1975), routine use 21, as added by 66 FR 30049 (June 4, 2001), which is the published system notice that added routine use 21 to this system of records notice. VA has determined that this system of records contains appropriate routine use disclosure authority and that the use is compatible with the purpose for which the information is collected.

The Department will match information on these Veterans with records in its system of records entitled ''National Student Loan Data System (NSLDS)'' (18–11–06), as last published in the **Federal Register** in full on June 28, 2013 (78 FR 38963) and last updated on April 2, 2014 (79 FR 18534).

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (such as, braille, large print, audiotape, or compact disc) on request to Lisa Tessitore, Program Operations Specialist, Federal Student Aid, U.S. Department of Education, 830 First Street NE, Washington, DC 20202–5320. Telephone: (202) 377–3249.

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

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

Dated: October 4, 2018.

James F. Manning,

Acting Chief Operating Officer, Federal Student Aid.

[FR Doc. 2018–22024 Filed 10–9–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

High Energy Physics Advisory Panel

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 29, 2018, 8:30 a.m. to 6:00 p.m. and Friday, November 30, 2018, 8:30 a.m. to 4:00 p.m.

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary; High Energy Physics Advisory Panel (HEPAP); U.S. Department of Energy; Office of Science; SC–25/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (301) 903–1298

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of high energy physics research.

Tentative Agenda: Agenda will include discussions of the following:

November 29–30, 2018

- Discussion of Department of Energy High Energy Physics Program
- Discussion of National Science Foundation Elementary Particle Physics Program
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. A webcast of this meeting will be available. Please check the website below for updates and information on how to view the meeting. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, (301) 903–1298 or by email at: *John.Kogut@science.doe.gov.* You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the U.S. Department of Energy's Office of High Energy Physics Advisory Panel website: *http://science.energy.gov/hep/hepap/meetings/.*

Signed in Washington, DC, on October 3, 2018.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–21905 Filed 10–9–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Case Number 2018–005, EERE–2017–BT–WAV–0043]

Energy Conservation Program: Extension of Waiver to Apple Inc. From the Department of Energy External Power Supply Test Procedure

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

ACTION: Notice of extension of waiver.

SUMMARY: The U.S. Department of Energy (''DOE'') is granting a waiver extension (Case No. 2018–005) to Apple Inc. (''Apple'') to waive certain requirements of the DOE external power supply test procedure for determining the energy efficiency of the Apple brand external power supply basic model A1882. Under this extension, Apple is required to test and rate this basic model in accordance with the applicable DOE test procedure, with the exception that the Nameplate Output Current shall be 2A when testing at the lowest achievable output voltage.

DATES: The Extension of Waiver is applicable as of October 10, 2018. The Extension of Waiver will terminate upon the compliance date of any future amendment to the test procedure for external power supplies located in 10 CFR part 430, subpart B, appendix Z that addresses the issues presented in this waiver. At such time, Apple must use the relevant test procedure for this product for any testing to demonstrate compliance with standards, and any other representations of energy use.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *AS_Waiver_Requests@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(g)), DOE gives notice of the issuance of an Extension of Waiver as set forth below. The Extension of Waiver extends the Decision and Order granted to Apple on March 16, 2018 (83 FR 11738; ''March 2018 Decision and Order'') to include Apple basic model A1882, as requested by Apple on May 17, 2018.[1] Apple must test and rate the specifically identified external power supply basic model in accordance with the alternate test procedure specified in the March 2018 Decision and Order. Apple's representations concerning the energy efficiency of the specified basic model must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the March 2018 Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy

[1] Apple's request is available at *https://www.regulations.gov/docket?D=EERE-2017-BT-WAV-0043.*

efficiency of this product. (42 U.S.C. 6293(c)).

DOE makes decisions on waiver extensions for only those basic models specifically set out in the request, not future models that may be manufactured by the petitioner. Apple may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of EPSs. Alternatively, if appropriate, Apple may request that DOE extend the scope of a waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 430.27(g).

Signed in Washington, DC, on October 2, 2018.

Kathleen B. Hogan,

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

Case Number 2018–005

Extension of Waiver

I. Background and Authority

The Energy Policy and Conservation Act of 1975, as amended (''EPCA'') [1] (42 U.S.C. 6291–6317), among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and industrial equipment. Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include external power supplies (''EPSs''), the focus of this extension. (42 U.S.C. 6291(36); 42 U.S.C. 6295(u)).

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), energy conservation standards (42 U.S.C. 6295), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), and the authority to require information and reports from manufacturers. (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s)).

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products. EPCA requires that test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for external power supplies is contained in 10 CFR part 430, subpart B, appendix Z, *Uniform Test Method for Measuring the Energy Consumption of External Power Supplies* (''appendix Z'').

Under 10 CFR 430.27, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy or water consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

A petitioner may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition. 10 CFR 430.27(g). DOE will publish any such extension in the **Federal Register**. Id.

II. Request for an Extension of Waiver: Assertions and Determinations

DOE issued a Decision and Order in Case Number EPS–001 (March 2018 Decision and Order), granting Apple a waiver to test its Apple brand basic models A1718, A1719, and A1540 using an alternate test procedure. 83 FR 11738 (March 16, 2018). In its petition for waiver, Apple had stated that the specified basic models meet the provisions of the International Electrotechincal Commission's ''Universal serial bus interfaces for data and power—Part 1–2: Common components—USB Power Delivery'' (''IEC 62680–1–2:2017'') specification. The IEC specification describes the particular architecture, protocols, power supply behavior, connectors, and cabling necessary for managing power delivery over a universal serial bus (''USB'') connection at power levels of up to 100 watts (''W''). The purpose behind this specification is to help provide a standardized approach for power supply and peripheral developers to ensure backward compatibility while retaining product design and marketing flexibility. See generally, IEC 62680–1–2:2017 (Abstract) (describing the standard's general provisions and purpose).

In Apple's view, applying the DOE test procedure to the adaptive EPS basic models identified in its petitions would yield results that would be unrepresentative of the active-mode efficiency of those products. The DOE test procedure requires that the average active-mode efficiency for adaptive EPSs [3] be measured by testing the unit twice—once at the highest achievable output voltage (''V'') and once at the lowest. The test procedure requires that active-mode efficiency be measured at four loading conditions relative to the nameplate output current of the EPS. See generally 10 CFR 430.23(bb) and Appendix Z. The lowest achievable output voltage supported by the IEC 62680–1–2:2017 specification is 5V and the nameplate current at this voltage output is 3 amps (''A''), resulting in a power output of 15W. Apple contended that while the IEC 62680–1–2:2017 specification requires the tested EPS to support this power output, the 15W at 5V condition will be rarely used and only for brief periods of time. Accordingly, Apple asserted that the DOE test procedure's measurement of efficiency at this power level is unrepresentative of the true energy consumption of the EPSs subject to the initial waiver request.

Based on the information provided by Apple, DOE determined that the current test procedure at Appendix Z would evaluate the adaptive EPS basic models specified in the March 2018 Decision and Order in a manner so unrepresentative of their true energy consumption characteristics as to

[1] All references to EPCA in this document refer to the statute as amended through the EPS Improvement Act of 2017, Public Law 115–115 (January 12, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

[3] An adaptive EPS is an EPS that can alter its output voltage during active-mode based on an established digital communication protocol with the end-use application without user-generated action. 10 CFR 430.2.

provide materially inaccurate comparative data. 83 FR 11739. The March 2018 Decision and Order specifies that Apple test and rate the subject basic models such that the 100% nameplate loading condition when testing at the lowest achievable output voltage is 2A (which corresponds to an output power of 10 watts). 83 FR 11740. The 75%, 50%, and 25% loading conditions shall be scaled accordingly and the nameplate output power of such an EPS, at the lowest output voltage, shall be equal to 10 watts. *Id.*

On May 17, 2018, Apple requested to extend the scope of the waiver it received in Case Number 2018–001, to the Apple brand basic model A1882. Apple stated that this basic model employs the same technology as the models covered by the existing waiver.

DOE has reviewed Apple's waiver extension request and determined that the adaptive EPS basic model identified in Apple's request incorporates the same design characteristics as those basic models covered under Apple's existing waiver such that the test procedure evaluates that basic model in a manner that is unrepresentative of its use when charging a product that is sold or intended to be used with the EPS. DOE also determined that the alternate procedure specified in Case Number EPS–001 will allow for the accurate measurement of the energy use of the basic model identified by Apple in its waiver extension request.

III. Order

After careful consideration of all the material submitted by Apple in this matter, it is Ordered that:

(1) Apple must test and rate the EPS of Apple brand basic model A1882, as of the date of publication of this Extension of Waiver in the **Federal Register**, as set forth in paragraph (2).

(2) The alternate test procedure for the basic model listed in paragraph (1) of this section is the test procedure for EPSs prescribed by DOE at 10 CFR part 430, subpart B, appendix Z, except that under section 4(a)(i)(E) and Table 1 of Appendix Z, the adaptive EPSs must be tested such that when testing at the lowest achievable output voltage (*i.e.,* 5V), the Nameplate Output Current shall be 2A (which corresponds to an output power of 10W at the 100% loading condition). The 75%, 50%, and 25% loading conditions shall be scaled accordingly and the nameplate output power of such an EPS, at the lowest output voltage, shall be equal to 10W.

(3) *Representations.* Apple may not make representations about the energy efficiency of the adaptive external power supply basic model identified in paragraph (1) for compliance, marketing, or other purposes unless the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing.

(4) This Extension of Waiver shall remain in effect consistent with the provisions of 10 CFR 430.27.

(5) This Extension of Waiver is issued on the condition that the statements, representations, and documents provided by Apple are valid. If Apple makes any modifications to the controls or configurations of this basic model, the waiver will no longer be valid and Apple will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this Extension of Waiver at any time if it determines the factual basis underlying the petition for Extension of Waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic model's true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, Apple may request that DOE rescind or modify the Extension of Waiver if the petitioner discovers an error in the information provided to DOE as part of its petition, determines that the Extension of Waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2)

(6) Granting of this extension does not release Apple from the certification requirements set forth at 10 CFR part 429.

Signed in Washington, DC, on October 2, 2018.

Kathleen B. Hogan,

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

[FR Doc. 2018–22004 Filed 10–9–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Case Number 2018–008, EERE–2017–BT–WAV–0038]

Energy Conservation Program: Extension of Waiver to Panasonic Appliances Refrigeration Systems Corporation of America (PAPRSA) From the Department of Energy Consumer Refrigerator and Refrigerator-Freezer Test Procedures

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

ACTION: Notice of extension of waiver.

SUMMARY: The U.S. Department of Energy (''DOE'') is granting a waiver extension (Case Number 2018–008) to Panasonic Appliances Refrigeration Systems Corporation of America (''PAPRSA'') to waive the requirements of the DOE refrigerator and refrigerator-freezer test procedures for determining the energy consumption of combination cooler-refrigerator basic model PR5181JKBC. PAPRSA is required to test and rate this basic model in accordance with the applicable DOE test procedure, with the exception that it must calculate the specified basic model's energy consumption using a correction factor (''K-factor'') of 0.85, as specified in the Extension of Waiver.

DATES: This Extension of Waiver is effective October 10, 2018. The Extension of Waiver will terminate on October 28, 2019, in conjunction with the compliance date that applies to the published standards for miscellaneous refrigeration products (''MREFs''). See 81 FR 75194 (Oct. 28, 2016).

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *AS_Waiver_Requests@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(g)), DOE gives notice of the issuance of an Extension of Waiver as set forth below. The Extension of Waiver extends the Decision and Order granted to PAPRSA on May 5, 2017 (82 FR 21209, ''May 2017 Decision and Order'') to include PAPRSA combination cooler-refrigerator basic model PR5181JKBC, as requested by PAPRSA on June 26, 2018.[1] PAPRSA must test and rate the specifically identified combination cooler-refrigerator basic model in accordance with the alternate test procedure described in the May 2017 Decision and Order. PAPRSA's representations concerning the energy consumption of the specified basic model must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the May 2017 Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and

[1] PAPRSA's request is available at *http://regulations.gov* in docket ID EERE–2017–BT–WAV–0038.

private labelers are held to the same requirements when making representations regarding the energy consumption of this product. (42 U.S.C. 6293(c))

DOE makes decisions on waiver extensions for only those basic models specifically set out in the request, not future models that may be manufactured by the petitioner. PAPRSA may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of combination cooler-refrigerators. Alternatively, if appropriate, PAPRSA may request that DOE extend the scope of a waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 430.27(g).

Signed in Washington, DC, on October 2, 2018.

Kathleen B. Hogan,

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

Case Number 2018–008—Extension of Waiver

I. Background and Authority

The Energy Policy and Conservation Act of 1975, as amended (''EPCA''),[1] (42 U.S.C. 6291–6317), among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and industrial equipment. Title III, Part B [2] EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include consumer refrigerators and refrigerator-freezers, the focus of this extension. (42 U.S.C. 6292(a)(1)).

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), energy conservation standards (42 U.S.C. 6295), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), and the authority to require information and reports from manufacturers. (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of these products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s)).

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products. EPCA requires that test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3) The test procedure for refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A, *Uniform Test Method for Measuring the Energy Consumption of Refrigerators, Refrigerator-Freezers, and Miscellaneous Refrigeration Products* (''appendix A'').

Under 10 CFR 430.27, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy or water consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

A petitioner may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition. 10 CFR 430.27(g). DOE will publish any such extension in the **Federal Register**. *Id.*

II. Request for an Extension of Waiver: Assertions and Determinations

DOE issued a Decision and Order in Case Number RF–043 granting PAPRSA a waiver to test its basic models PR6180WBC, KBCS24RSBS, SR6180BC, SR5180JBC, and PR5180JKBC using an alternate test procedure. 82 FR 21209 (May 5, 2017) (''May 2017 Decision and Order''). PAPRSA requested that it be permitted to use a modified version of the test procedure that would specify a higher standardized temperature for testing wine chiller compartments as opposed to the standardized compartment temperature of 39 degrees Fahrenheit (°F) for refrigerators, and use of a correction factor of 0.85 when calculating energy consumption. PAPRSA stated that it designed these models to provide an average temperature of 55 to 57 °F, which it determined is a commonly recommended temperature for wine storage, suggesting that this temperature is presumed to be representative of expected consumer use. 81 FR 4270, 4271 (February 25, 2016).

Based on its review of the information provided by PAPRSA, DOE determined that appendix A addresses the temperature issue identified by PAPRSA based on the amendments incorporated from the miscellaneous refrigeration products (''MREF'') test procedure final rule. See 81 FR 46768 (July 18, 2016) (MREF test procedure final rule) and 81 FR 49868 (July 29, 2016) (MREF test procedure final rule correction notice). As specified in the May 5, 2017 Decision and Order, DOE also identified the formulas in appendix A that, for purposes of the waiver, should incorporate a 0.85 correction factor (the correction factor accounts for the thermal load from loading warm items and from door openings). 82 FR at 21210. On August 4, 2017, in response to a request from PAPRSA, DOE issued a Decision and Order (Case Number RF–047) extending the waiver to include basic model PR5181WBC. 82 FR 36386.

On June 26, 2018, PAPRSA submitted a request under 10 CFR 430.27(g) to extend the scope of the waiver in Case Number RF–043 to a new basic model, PR5181JKBC. PAPRSA stated that the new basic model employs the same technology as the basic models set forth in the original petition for waiver. Specifically, PAPRSA stated that basic model PR5181JKBC employs the same wine compartment—beverage compartment technology and design characteristics as the basic models for which the original waiver was granted and that the basic model uses a heater that prevents the wine-chiller

[1] All references to EPCA in this document refer to the statute as amended through the EPS Improvement Act of 2017, Public Law 115–115 (January 12, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

compartment temperature from falling below 42 °F.

DOE has reviewed PAPRSA's waiver extension request in Case Number RF–043. Based on this review, DOE has determined that the basic model specified in PAPRSA's current waiver extension request incorporates the same design characteristics as those basic models covered under the waiver in Case Number RF–043 such that the DOE test procedure evaluates that basic model in a manner that is unrepresentative of its actual energy use. DOE also determined that applying the alternate procedure specified in Case Number RF–043 will allow for the accurate measurement of the energy use of the consumer refrigerator basic model identified by PAPRSA in its waiver extension request.

III. Order

After careful consideration of all the material submitted by PAPRSA in this matter, it is *Ordered that:*

(1) PAPRSA must, as of the date of publication of this Extension of Waiver in the **Federal Register**, test and rate the combination cooler-refrigerator basic model PR5181JKBC as set forth in paragraph (2).

(2) The alternate test procedure for the basic model listed in paragraph (1) is the test procedure in 10 CFR part 430, subpart B, appendix A, with the exception that PAPRSA must calculate energy consumption using a correction factor (''K-factor'') of 0.85, as follows.

The energy consumption is defined by:

If compartment temperatures are below their respective standardized temperatures for both test settings (according to 10 CFR part 430, subpart B, appendix A, sec. 6.2.4.1):

$E = (ET1 \times 0.85) + IET.$

If compartment temperatures are not below their respective standardized temperatures for both test settings, the higher of the two values calculated by the following two formulas (according to 10 CFR part 430, subpart B, appendix A, sec. 6.2.4.2):

Energy consumption of the ''cooler compartment'':

$ECooler\ Compartment = (ET1 + [(ET2 - ET1) \times (55\ °F - TW1)/(TW2 - TW1)]) \times 0.85 + IET$

Energy consumption of the ''fresh food compartment'':

$EFreshFood\ Compartment = (ET1 + [(ET2 - ET1) \times (39\ °F - TBC1)/(TBC2 - TBC1)]) \times 0.85 + IET.$

(3) *Representations.* PAPRSA may not make representations about the energy consumption of the combination cooler-refrigerator identified in paragraph (1) of this section for compliance, marketing, or other purposes unless that basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing.

(4) This Extension of Waiver shall remain in effect consistent with the provisions of 10 CFR 430.27. This Order will terminate on October 28, 2019, in conjunction with the compliance date that applies to the standards published on October 28, 2016 for miscellaneous refrigeration products (''MREFs''). See 81 FR 75194 (Oct. 28, 2016). Testing to demonstrate compliance with those standards must be performed in accordance with the MREF test procedure final rule. See 81 FR 46768 (July 18, 2016) (MREF test procedure final rule) and 81 FR 49868 (July 29, 2016) (MREF test procedure final rule correction notice).

(5) This Extension of Waiver is issued on the condition that the statements, representations, and documents provided by PAPRSA are valid. If PAPRSA makes any modifications to the controls or configurations of these basic models, the waiver will no longer be valid and PAPRSA will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this Extension of Waiver at any time if it determines the factual basis underlying the petition for extension of waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, PAPRSA may request that DOE rescind or modify the Extension of Waiver if the petitioner discovers an error in the information provided to DOE as part of its petition, determines that the Extension of Waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) Granting of this Extension of Waiver does not release PAPRSA from the certification requirements set forth at 10 CFR part 429.

Signed in Washington, DC, on October 2, 2018.

Kathleen B. Hogan,

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

[FR Doc. 2018–22003 Filed 10–9–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Request for Public Comment on the U.S. Department of Energy Interpretation of High-Level Radioactive Waste

AGENCY: Office of Environmental Management, U.S. Department of Energy.

ACTION: Notice of public comment period.

SUMMARY: The U.S. Department of Energy (DOE or the Department) provides this Notice and request for public comment on its interpretation of the definition of the statutory term ''high-level radioactive waste'' (HLW) as set forth in the Atomic Energy Act of 1954 and the Nuclear Waste Policy Act of 1982. This statutory term indicates that not all wastes from the reprocessing of spent nuclear fuel (''reprocessing wastes'') are HLW, and DOE interprets the statutory term such that some reprocessing wastes may be classified as not HLW (non-HLW) and may be disposed of in accordance with their radiological characteristics.

DATES: DOE invites stakeholders to submit written comments on its interpretation. The 60-day public comment period begins on October 10, 2018 and ends on December 10, 2018. Only comments received through one of the methods described below will be accepted. DOE will consider all comments received or postmarked by December 10, 2018.

ADDRESSES: Please direct comments to:

(a) *Email:* Send comments to *HLWnotice@em.doe.gov.* Please submit comments in Microsoft™ Word, or PDF file format, and avoid the use of encryption.

(b) *Mail:* Send to the following address: Theresa Kliczewski, U.S. Department of Energy, Office of Environmental Management, Office of Waste and Materials Management (EM–4.2), 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Theresa Kliczewski at *HLWnotice@em.doe.gov* or at U.S. Department of Energy, Office of Environmental Management, Office of Waste and Materials Management (EM–4.2), 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–3301.

SUPPLEMENTARY INFORMATION:

A. Background

DOE manages large inventories of legacy waste resulting from spent nuclear fuel (SNF) reprocessing activities from atomic energy defense programs, *e.g.,* nuclear weapons

production. DOE also manages a small quantity of vitrified waste from a demonstration of commercial SNF reprocessing. Reprocessing generally refers to the dissolution of irradiated SNF in acid, generating liquid or viscous wastes, and the chemical processing to separate the fission products or transuranic elements of the SNF from the desired elements of plutonium and uranium, which are recovered for reuse. Liquid reprocessing wastes have been or are currently stored in large underground tanks at three DOE sites: Savannah River Site (SRS) (South Carolina), Idaho National Laboratory (INL) (Idaho), and the Office of River Protection at the Hanford Site (Washington). Solid reprocessing wastes are liquid wastes that have been immobilized in solid form and are currently stored at SRS, INL, and the West Valley Demonstration Project (New York).

DOE's interpretation of HLW is that reprocessing waste is non-HLW if the waste:

I. Does not exceed concentration limits for Class C low-level radioactive waste as set out in section 61.55 of title 10, Code of Federal Regulations; or

II. Does not require disposal in a deep geologic repository and meets the performance objectives of a disposal facility as demonstrated through a performance assessment conducted in accordance with applicable regulatory requirements.

Under DOE's interpretation, waste meeting either of these criteria is non-HLW and may be classified and disposed of in accordance with its radiological characteristics.

At this time, DOE is not making—and has not made—any decisions on the disposal of any particular waste stream. Disposal decisions, when made, will be based on the consideration of public comments in response to this Notice and prior input and consultation with appropriate state and local regulators and stakeholders. DOE will continue its current practice of managing all its reprocessing wastes as if they were HLW unless and until a specific waste is determined to be another category of waste based on detailed technical assessments of its characteristics and an evaluation of potential disposal pathways.

B. High-Level Waste Interpretation

DOE interprets the term ''high-level radioactive waste'', as stated in the Atomic Energy Act of 1954 as amended (AEA),[1] and the Nuclear Waste Policy Act of 1982 as amended (NWPA)[2] in a manner that defines DOE reprocessing wastes to be classified as either HLW or non-HLW based on the radiological characteristics of the waste and their ability to meet appropriate disposal facility requirements. The basis for DOE's interpretation comes from the AEA and NWPA definition of HLW:

(A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

(B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.[3]

In paragraph A, Congress limited HLW to those materials that are both ''highly radioactive'' and ''resulting from the reprocessing of spent nuclear fuel.'' Reprocessing generates liquid wastes, with the first cycle of reprocessing operations containing the majority of the fission products and transuranic elements removed from the SNF. Thus, in paragraph A, Congress distinguished HLW with regard to its form as both ''liquid waste produced directly in reprocessing'' and ''any solid material derived from such liquid waste that contains fission products in sufficient concentrations.''

In paragraph B, Congress defined HLW also to include ''other highly radioactive material'' that the Nuclear Regulatory Commission (NRC) determines by rule ''requires permanent isolation.'' HLW under paragraph B includes highly radioactive material regardless of whether the waste is from reprocessing or some other activity. Further, under paragraph B, classification of material as HLW is based on its radiological characteristics and whether the material requires permanent isolation.

The common element of these statutory paragraphs defining HLW is the requirement and recognition that the waste be ''highly radioactive.'' Additionally, both paragraphs reflect a primary purpose of the NWPA, which is to define those materials for which disposal in a deep geologic repository is the only method that would provide reasonable assurance that the public and the environment will be adequately protected from the radiological hazards the materials pose.

The terms ''highly radioactive,'' and ''sufficient concentrations'' are not defined in the AEA or the NWPA. By providing in paragraph A that liquid reprocessing waste is HLW only if it is ''highly radioactive,'' and that solid waste derived from liquid reprocessing waste is HLW only if it is ''highly radioactive'' and contains fission products in ''sufficient concentrations'' without further defining these standards, Congress left it to DOE to determine when these standards are met. Given Congress' intent that not all reprocessing waste is HLW, it is appropriate for DOE to use its expertise to interpret the definition of HLW, consistent with proper statutory construction, to distinguish waste that is non-HLW from waste that is HLW.

The DOE interpretation is informed by the radiological characteristics of reprocessing waste and whether the waste can be disposed of safely in a facility other than a deep geologic repository. This interpretation is based upon the principles of the NRC's regulatory structure for the disposal of low-level radioactive wastes.[4]

In its regulations, NRC has identified four classes of low-level radioactive waste (LLW)—Class A, B or C—for which near-surface disposal is safe for public health and the environment, and greater-than-Class C LLW for which near-surface disposal may be safe for public health and the environment. This waste classification regime is based on the concentration levels of a combination of specified short-lived and long-lived radionuclides in a waste stream, with Class C LLW having the highest concentration levels. Waste that exceeds the Class C levels is evaluated on a case-specific basis to determine whether it requires disposal in a deep geologic repository, or whether an alternative disposal facility can be demonstrated to provide safe disposal. The need for disposal in a deep geologic repository results from a combination of two radiological characteristics of the waste: High activity radionuclides, including fission products, which generate high levels of radiation; and long-lived radionuclides which, if not properly disposed of, would present a risk to human health and the environment for hundreds of thousands of years.

Because the NRC has long-standing regulations that set concentration limits for radionuclides in waste that is acceptable for near-surface disposal, it is reasonable to interpret ''highly radioactive'' to mean, at a minimum,

[1] 42 U.S.C. 2011 *et seq.* This definition of HLW was first enacted in the Nuclear Waste Policy Act of 1982, as amended, and incorporated into the AEA in 1988.

[2] 42 U.S.C. 10101 *et seq.*

[3] 42 U.S.C. 10101(12)(A), (B).

[4] NRC licensing requirements for the land disposal of LLW, originally promulgated in 1962, are codified in Part 61 of the Code of Federal Regulations, 10 CFR part 61.

radionuclide concentrations greater than the Class C limits. Reprocessing waste that does not exceed the Class C limits is non-HLW.

DOE interprets ''sufficient concentrations'' in the statutory context in which the definition was enacted, which, as discussed above, is focused on protecting the public and the environment from the hazards posed by nuclear waste. In addition to the characteristics of the waste itself, the risk that reprocessing waste poses to human health and the environment depends on the physical characteristics of the disposal facility and that facility's ability to safely isolate the waste from the human environment. Relevant characteristics of a disposal facility may include the depth of disposal, use of engineered barriers, and geologic, hydrologic, and geochemical features of the site. Taking these considerations into account, it is reasonable to interpret ''sufficient concentrations'' to mean concentrations of fission products in combination with long-lived radionuclides that would require disposal in a deep geologic repository.

Accordingly, under DOE's interpretation, solid waste that exceeds the NRC's Class C limits would be subject to detailed characterization and technical analysis of the radiological characteristics of the waste. This, combined with the physical characteristics of a specific disposal facility and the method of disposal, would determine whether the facility could meet its performance objectives, and if the waste can be disposed of safely. This approach would be governed by the waste characterization and analysis process and performance objectives for the disposal facility established by the applicable regulator, and thereby protective of human health and the environment.

The DOE interpretation does not require the removal of key radionuclides to the maximum extent that is technically and economically practical before DOE can define waste as non-HLW. Nothing in the statutory text of the AEA or the NWPA requires that radionuclides be removed to the maximum extent technically and economically practical prior to determining whether waste is HLW. DOE has determined that the removal of radionuclides from waste that already meets existing legal and technical requirements for safe transportation and disposal is unnecessary and inefficient, and does not benefit human health or the environment. To the contrary, it potentially presents a greater risk to human health and the environment because it prolongs the temporary storage of waste.

Therefore, under DOE's interpretation, waste resulting from the reprocessing of SNF is non-HLW if the waste:

I. Does not exceed concentration limits for Class C low-level radioactive waste as set out in section 61.55 of title 10, Code of Federal Regulations; or

II. Does not require disposal in a deep geologic repository and meets the performance objectives of a disposal facility as demonstrated through a performance assessment conducted in accordance with applicable regulatory requirements.

Reprocessing waste meeting either I or II of the above is non-HLW, and may be classified and disposed in accordance with its radiological characteristics in an appropriate facility provided all applicable requirements of the disposal facility are met.

C. Request for Comments

The Department specifically requests comments on its interpretation that reprocessing waste meeting either of the two criterion stated above is non-HLW. This Notice is intended to solicit public feedback on the DOE interpretation to better understand stakeholder perspectives prior to appropriate input and consultation with affected state and local regulators and any waste disposal classification decisions.

The Department will consider all comments received during the public comment period, and modify its proposed approach, as appropriate, based on public comment.

Signed at Washington, DC, on October 4, 2018.

Anne Marie White,

Assistant Secretary for Environmental Management.

[FR Doc. 2018–22002 Filed 10–9–18; 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: EC19–2–000.
Applicants: AL Sandersville, LLC, Effingham County Power, LLC, MPC Generating, LLC, Walton County Power, LLC, Washington County Power, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of AL Sandersville, LLC, et. al.
Filed Date: 10/3/18.
Accession Number: 20181003–5078.
Comments Due: 5 p.m. ET 10/24/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1521–004; ER10–1520–004;ER10–1522–003.
Applicants: Occidental Power Marketing, L.P., Occidental Power Services, Inc., Occidental Chemical Corporation.
Description: Second Supplement to June 29, 2018 Updated Market Power Analysis for the Central Region of the Occidental MBRA Entities.
Filed Date: 9/28/18.
Accession Number: 20180928–5171.
Comments Due: 5 p.m. ET 10/19/18.

Docket Numbers: ER17–2515–004.
Applicants: Chambers Cogeneration, Limited Partnership.
Description: Compliance filing: Settlement Compliance Filing to be effective 11/1/2017.
Filed Date: 10/1/18.
Accession Number: 20181001–5150.
Comments Due: 5 p.m. ET 10/22/18.

Docket Numbers: ER18–1424–001.
Applicants: Rio Bravo Fresno, A California Joint Venture.
Description: Report Filing: refund report 2018 to be effective N/A.
Filed Date: 10/2/18.
Accession Number: 20181002–5171.
Comments Due: 5 p.m. ET 10/23/18.

Docket Numbers: ER18–1427–001.
Applicants: Rio Bravo Rocklin, A California Joint Venture.
Description: Report Filing: refund report 2018 to be effective N/A.
Filed Date: 10/2/18.
Accession Number: 20181002–5174.
Comments Due: 5 p.m. ET 10/23/18.

Docket Numbers: ER18–2175–001.
Applicants: Mid-Atlantic Interstate Transmission, LLC, West Penn Power Company, The Potomac Edison Company, Monongahela Power Company, Trans-Allegheny Interstate Line Company, American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: Tariff Amendment: MAIT et al submit Supplement in ER18–2175–000 re: IAs, SA Nos 2149 and 3743 to be effective 10/5/2018.
Filed Date: 10/3/18.
Accession Number: 20181003–5013.
Comments Due: 5 p.m. ET 10/24/18.

Docket Numbers: ER18–2426–001.
Applicants: The Potomac Edison Company, PJM Interconnection, L.L.C.
Description: Tariff Amendment: Potomac submits Supplemental Filing in ER18–2426–000 re: IA SA No. 4452 to be effective 11/13/2018.

Filed Date: 10/3/18.
Accession Number: 20181003–5007.
Comments Due: 5 p.m. ET 10/24/18.

Docket Numbers: ER19–29–001.
Applicants: NorthWestern Corporation.
Description: Tariff Amendment: New Baseline—Service Agreements under Montana OATT (Part 1) to be effective 10/8/2018.
Filed Date: 10/3/18.
Accession Number: 20181003–5008.
Comments Due: 5 p.m. ET 10/24/18.

Docket Numbers: ER19–29–002.
Applicants: NorthWestern Corporation.
Description: Tariff Amendment: New Baseline—Service Agreements under Montana OATT (Part 2) to be effective 10/8/2018.
Filed Date: 10/3/18.
Accession Number: 20181003–5012.
Comments Due: 5 p.m. ET 10/24/18.

Docket Numbers: ER19–29–003.
Applicants: NorthWestern Corporation.
Description: Tariff Amendment: New Baseline—Service Agreements under Montana OATT (Part 3 of 3) to be effective 10/8/2018.
Filed Date: 10/3/18.
Accession Number: 20181003–5014.
Comments Due: 5 p.m. ET 10/24/18.

Docket Numbers: ER19–33–001.
Applicants: NorthWestern Corporation.
Description: Tariff Amendment: New Baseline—Other Rate Schedules (Montana) to be effective 10/8/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5183.
Comments Due: 5 p.m. ET 10/23/18.

Docket Numbers: ER19–34–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–10–02_MISO Pseudo-Tie Congestion Overlap Phase 2 Filing to be effective 3/1/2019.
Filed Date: 10/2/18.
Accession Number: 20181002–5155.
Comments Due: 5 p.m. ET 10/23/18.

Docket Numbers: ER19–35–000.
Applicants: CPV Biomass Holdings, LLC.
Description: Tariff Cancellation: Notice of Cancellation of Market-Based Rate Tariff to be effective 10/3/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5156.
Comments Due: 5 p.m. ET 10/23/18.

Docket Numbers: ER19–36–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 4910; Queue No. AC2–161 to be effective 11/5/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5157.
Comments Due: 5 p.m. ET 10/23/18.

Docket Numbers: ER19–37–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–10–02_SA 3176 NSP–NSP GIA (J460) to be effective 9/28/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5184.
Comments Due: 5 p.m. ET 10/23/18.

Docket Numbers: ER19–38–000.
Applicants: Dominion Energy Fairless, LLC.
Description: Baseline eTariff Filing: Informational Reort—Rate Schedule No. 2 to be effective 12/7/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5185.
Comments Due: 5 p.m. ET 10/23/18.

Docket Numbers: ER19–39–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Eldorado Substation Additional Facilities and Interconnection Agreement to be effective 12/3/2018.
Filed Date: 10/3/18.
Accession Number: 20181003–5002.
Comments Due: 5 p.m. ET 10/24/18.

Docket Numbers: ER19–40–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1628R13 Western Farmers Electric Cooperative NITSA to be effective 12/1/2018.
Filed Date: 10/3/18.
Accession Number: 20181003–5011.
Comments Due: 5 p.m. ET 10/24/18.

Docket Numbers: ER19–41–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: MAIT submits IA SA No. 4577 to be effective 12/3/2018.
Filed Date: 10/3/18.
Accession Number: 20181003–5018.
Comments Due: 5 p.m. ET 10/24/18.

Docket Numbers: ER19–42–000.
Applicants: NorthWestern Corporation.
Description: Tariff Cancellation: Cancellation of NWE Montana OATT under Tariff ID 28 to be effective 10/8/2018.
Filed Date: 10/3/18.
Accession Number: 20181003–5075.
Comments Due: 5 p.m. ET 10/24/18.

Docket Numbers: ER19–43–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 3389; Queue No. X3–081 to be effective 10/17/2018.
Filed Date: 10/3/18.
Accession Number: 20181003–5076.
Comments Due: 5 p.m. ET 10/24/18.

Docket Numbers: ER19–44–000.
Applicants: Idaho Power Company.
Description: Tariff Cancellation: Notice of Cancellation of Rate Schedule 163—Comm Agree—LaGrande-Pocatello to be effective 12/3/2018.
Filed Date: 10/3/18.
Accession Number: 20181003–5080.
Comments Due: 5 p.m. ET 10/24/18.

Docket Numbers: ER19–45–000.
Applicants: Citizens Sunrise Transmission LLC.
Description: § 205(d) Rate Filing: Annual TRBAA Filing October 2018 to be effective 1/1/2019.
Filed Date: 10/3/18.
Accession Number: 20181003–5086.
Comments Due: 5 p.m. ET 10/24/18.

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: October 3, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21939 Filed 10–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR18–39–000]

Andeavor Field Services LLC; Notice of Request for Temporary Waiver

Take notice that on September 28, 2018, pursuant to Rules 202 and 203 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.202 and 203, Andeavor Field Services LLC (Andeavor) filed a petition seeking a temporary waiver of the tariff filing and reporting requirements applicable to

interstate oil pipelines under sections 6 and 20 of the Interstate Commerce Act and parts 341 and 357 of the Commission's regulations. This request pertains to certain natural gas liquids pipeline facilities that will be owned and operated by Andeavor within the State of North Dakota, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the 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 p.m. Eastern time on October 29, 2018.

Dated: October 2, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–21893 Filed 10–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–8–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Sweetwater Solar, LLC

This is a supplemental notice in the above-referenced proceeding Sweetwater Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 22, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 2, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21940 Filed 10–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the New York Independent System Operator, Inc. (NYISO):

NYISO Business Issues Committee Meeting

October 10, 2018, 10 a.m.–4 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic&directory=2018-10-10*

NYISO Operating Committee Meeting

October 11, 2018, 10 a.m.–4 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=oc&directory=2018-10-11*

NYISO Electric System Planning Working Group Meeting

October 24, 2018, 10 a.m.–4 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic_espwg&directory=2018-10-24*

NYISO Management Committee Meeting

October 31, 2018, 10 a.m.–2 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=mc&directory=2018-10-31*

The discussions at the meetings described above may address matters at issue in the following proceedings:

New York Independent System Operator, Inc., Docket No. ER15–2059.

New York Independent System Operator, Inc., Docket No. ER17–2327.

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: October 2, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–21891 Filed 10–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–3–000]

Notice of Petition for Declaratory Order: NorthWestern Corporation

Take notice that on October 2, 2018, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(2018), NorthWestern Corporation (Petitioner) filed a petition for declaratory order (petition) requesting the Commission issue a declaratory order determining that (1) in periods when NorthWestern Corporation has excess generation and cannot back down its generation, the avoided cost for energy to Qualifying Facilities should be zero; and (2) nothing in Public Utility Regulatory Policies Act of 1978, including the rule against non-discrimination in pricing of avoided cost, permits the establishment of a rate in excess of the utility's avoided cost, all as more fully explained in the petition.

Any person desiring to intervene or to protest in this proceeding 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) on or before 5:00 p.m. Eastern time on the specified comment date. 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 FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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 November 1, 2018.

Dated: October 3, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21938 Filed 10–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–26–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2018–10–01 Congestion Revenue Rights Auction Efficiency Track 1B Modification to be effective 1/1/2019.
Filed Date: 10/2/18.
Accession Number: 20181002–5001.
Comments Due: 5 p.m. ET 10/12/18.

Docket Numbers: ER19–28–000.
Applicants: Flanders Energy LLC.
Description: Baseline eTariff Filing: Market-Based Rate Tariff Application to be effective 10/3/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5059.
Comments Due: 5 p.m. ET 10/23/18.

Docket Numbers: ER19–29–000.
Applicants: NorthWestern Corporation.
Description: Baseline eTariff Filing: New Baseline—Montana OATT to be effective 10/8/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5072.
Comments Due: 5 p.m. ET 10/23/18.

Docket Numbers: ER19–30–000.
Applicants: R–WS Antelope Valley Gen-Tie, LLC.
Description: Baseline eTariff Filing: Certificates of Concurrence for Shared Facilities Agreements to be effective 10/14/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5073.
Comments Due: 5 p.m. ET 10/23/18.

Docket Numbers: ER19–31–000.
Applicants: Oregon Clean Energy, LLC.
Description: Baseline eTariff Filing: Reactive Power Tariff Application to be effective 12/1/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5112.
Comments Due: 5 p.m. ET 10/23/18.

Docket Numbers: ER19–32–000.
Applicants: Benson Power, LLC.
Description: Tariff Cancellation: Notice of Cancellation of Market-Based Rate Tariff to be effective 10/3/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5133.
Comments Due: 5 p.m. ET 10/23/18.

Docket Numbers: ER19–33–000.
Applicants: NorthWestern Corporation.
Description: Baseline eTariff Filing: New Baseline—Other Rate Schedules (South Dakota) to be effective 10/8/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5134.
Comments Due: 5 p.m. ET 10/23/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date.

Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 2, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21932 Filed 10–9–18; 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 exempt wholesale generator filings:

Docket Numbers: EG19–1–000.
Applicants: King Mountain Upton Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of King Mountain Upton Wind, LLC.
Filed Date: 10/1/18.
Accession Number: 20181001–5370.
Comments Due: 5 p.m. ET 10/22/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–936–004; ER13–342–014; ER13–343–010; ER15–960–004; ER16–700–003; ER16–701–003; ER17–1531–002; ER10–1514–004.
Applicants: Benson Power, LLC, CPV Biomass Holdings, LLC, CPV Fairview, LLC, CPV Keenan II Renewable Energy Company, LLC, CPV Maryland, LLC, CPV Shore, LLC, CPV Towantic, LLC, CPV Valley, LLC.
Description: Notice of Change in Status of Benson Power, LLC, *et. al.*
Filed Date: 10/1/18.
Accession Number: 20181001–5394.
Comments Due: 5 p.m. ET 10/22/18.

Docket Numbers: ER19–9–001.
Applicants: Mankato Energy Center II, LLC.
Description: Tariff Amendment: Amendment to MBR Authority Application and Initial Baseline Tariff Filing to be effective 12/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5298.
Comments Due: 5 p.m. ET 10/22/18.

Docket Numbers: ER19–15–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: § 205(d) Rate Filing: New Executed Agreements between Wolverine and MPPA to be effective 9/17/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5278.
Comments Due: 5 p.m. ET 10/22/18.

Docket Numbers: ER19–16–000.
Applicants: NorthWestern Corporation.
Description: Tariff Cancellation: Cancellation of NWE SD OATT under Tariff ID 28 to be effective 10/2/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5286.
Comments Due: 5 p.m. ET 10/22/18.

Docket Numbers: ER19–17–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2041R8 Kansas City Board of Public Utilities PTP Agreement to be effective 9/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5288.
Comments Due: 5 p.m. ET 10/22/18.

Docket Numbers: ER19–18–000.
Applicants: Atlantic City Electric Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Atlantic City Electric submits revisions to OATT, Att. H–1A re: FAS 109 Recovery to be effective 10/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5300.
Comments Due: 5 p.m. ET 10/22/18.

Docket Numbers: ER19–19–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Financial Transmission Rights Default Disposition Filing to be effective 12/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5309.
Comments Due: 5 p.m. ET 10/22/18.

Docket Numbers: ER19–20–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–10–01_SA 3168 MPPA–MPPA GIA (J540) to be effective 9/17/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5310.
Comments Due: 5 p.m. ET 10/22/18.

Docket Numbers: ER19–21–000.
Applicants: Alcoa Power Generating Inc.
Description: § 205(d) Rate Filing: Third Supplemental Transmission Services Agreement to be effective 10/2/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5313.
Comments Due: 5 p.m. ET 10/22/18.

Docket Numbers: ER19–22–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 4941; Queue No. AC2–162 to be effective 11/7/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5325.
Comments Due: 5 p.m. ET 10/22/18.

Docket Numbers: ER19–23–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Default Allocation Assessment Clarifying Revisions to be effective 12/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5334.
Comments Due: 5 p.m. ET 10/22/18.

Docket Numbers: ER19–24–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Financial Transmission Rights ? Bilateral Transaction to be effective 12/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5343.
Comments Due: 5 p.m. ET 10/22/18.

Docket Numbers: ER19–25–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: FTRs ? Conditional Extension of Time—Limited Revisions to Liquidation Provision to be effective 12/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5346.
Comments Due: 5 p.m. ET 10/22/18.

Docket Numbers: ER19–27–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Request for Waiver of Midcontinent Independent System Operator, Inc.
Filed Date: 10/1/18.
Accession Number: 20181001–5372.
Comments Due: 5 p.m. ET 10/22/18.

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: October 2, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21931 Filed 10–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–9–000]

Mankato Energy Center II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Mankato Energy Center II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 22, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 2, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21937 Filed 10–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL18–206–000, QF16–557–001]

Red Lake Falls Community Hybrid, LLC; Notice of Petition for Enforcement

Take notice that on September 26, 2018, pursuant to section 210(h) of the Public Utility Regulatory Policies Act of 1978 (PURPA), Red Lake Falls Community Hybrid, LLC (Petitioner) filed a Petition for Enforcement, requesting that the Federal Energy Regulatory Commission (Commission) initiate an enforcement action against Minnesota Public Utilities Commission to remedy their alleged improper implementation of PURPA, all as more fully explained in their petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Petitioners.

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 17, 2018.

Dated: October 2, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–21892 Filed 10–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–2–000]

Notice of Complaint: Tipmont Rural Electric Member Cooperative v. Wabash Valley Power Authority

Take notice that on October 1, 2018, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Tipmont Rural Electric Member Cooperative (Complainant) filed a formal complaint against Wabash Valley Power Authority (Respondent) requesting that the Commission find that the Complainant may terminate services early under its wholesale requirements power sales agreements with the Respondent, subject to the Complaint paying any stranded cost that Respondent may incur as a result of such early termination, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts for Respondent, as listed on the Commission's list of Corporate Officials, to the extent such officials remain at Wabash Valley.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. 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 Complainants.

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 electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 22, 2018.

Dated: October 3, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–21942 Filed 10–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP18–369–002.
Applicants: Sea Robin Pipeline Company, LLC.
Description: Compliance filing Quality Compliance to be effective 8/1/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5033.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–27–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: STEP Project Non-Conforming Interim Agreements to be effective 10/1/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5000.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–29–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Volume No. 2—Neg Rate Agmt—NextEra Energy Marketing, LLC SP338828 to be effective 10/1/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5042.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–31–000.
Applicants: Dauphin Island Gathering Partners.
Description: § 4(d) Rate Filing: Negotiated Rate Filing 10–2–2018 to be effective 11/1/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5088.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–32–000.
Applicants: Dominion Energy Transmission, Inc.
Description: § 4(d) Rate Filing: DETI—October 2, 2018 Nonconforming Service Agreements to be effective 11/1/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5110.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–33–000.
Applicants: Caledonia Energy Partners, L.L.C.
Description: § 4(d) Rate Filing: Updates to Caledonia Energy Partners, LLC FERC Gas Tariff to be effective 11/1/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5113.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–34–000.
Applicants: Freebird Gas Storage, L.L.C.
Description: § 4(d) Rate Filing: Updates to Freebird Gas Storage, LLC FERC Gas Tariff to be effective 11/1/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5114.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–35–000.
Applicants: Cimarron River Pipeline, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates 2018–10–03 to be effective 10/3/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5158.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–36–000.
Applicants: Dominion Energy Questar Pipeline, LLC.
Description: § 4(d) Rate Filing: Statement of Negotiated Rates Version 8.0.0—Highpoint Operating Corp. to be effective 10/2/2018.
Filed Date: 10/2/18.
Accession Number: 20181002–5173.
Comments Due: 5 p.m. ET 10/15/18.

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: October 3, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21933 Filed 10–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP18–806–001.
Applicants: ENGIE Gas & LNG LLC, Exelon Generation Company, LLC.
Description: Joint Petition to Amend Temporary Waivers of Capacity Release Regulations and Policies, et al.
Filed Date: 9/28/18.
Accession Number: 20180928–5188.
Comments Due: 5 p.m. ET 10/5/18.

Docket Numbers: RP17–913–003.
Applicants: Natural Gas Pipeline Company of America.
Description: Compliance filing Filing Settlement Rates Phase II November 1 2018 to be effective 11/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5321.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–1–000.
Applicants: DBM Pipeline, LLC.
Description: Compliance filing Cost and Revenue Study under Docket No. CP15–104–000.

Filed Date: 10/1/18.
Accession Number: 20181001–5075.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–2–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: EPCR Semi-Annual Adjustment—Fall 2018 to be effective 11/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5086.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–3–000.
Applicants: Cimarron River Pipeline, LLC.
Description: § 4(d) Rate Filing: Fuel Tracker 2018—Winter Season Rates to be effective 11/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5092.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–4–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 100118 Negotiated Rates—Mercuria Energy America, Inc. R–7540–02 to be effective 11/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5095.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–5–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Capacity Release Agreements—10/1/2018 to be effective 10/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5107.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–6–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Tenaska Marketing Ventures Amendment to NRA to be effective 10/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5118.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–7–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: 2018 Fuel Tracker Filing to be effective 11/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5121.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–8–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 10–1–18 to be effective 10/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5154.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–9–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: 2018 LNG Fuel Tracker Filing to be effective 11/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5155.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–10–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Amendment—Kinzer to be effective 10/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5157.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–11–000.
Applicants: Nautilus Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate—BP Exploration—contract 630154 to be effective 10/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5163.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–12–000.
Applicants: High Point Gas Transmission, LLC.
Description: Compliance filing Compliance Tariff Filing to be effective 11/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5178.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–13–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: Compliance filing Compliance with CP17–8–000 East-West Project to be effective 12/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5197.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–14–000.
Applicants: WBI Energy Transmission, Inc.
Description: § 4(d) Rate Filing: 2018 Add Line Section 31 for VEP to be effective 11/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5208.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–15–000.
Applicants: WBI Energy Transmission, Inc.
Description: § 4(d) Rate Filing: 2018 Non-Conforming Service Agreements FT–1468 & FT–1469 to be effective 11/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5218.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–16–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: STEP Project Negotiated Rate Interim Agreements to be effective 10/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5233.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–17–000.
Applicants: WBI Energy Transmission, Inc.
Description: Compliance filing 2018 Compliance Filing for VEP to be effective 11/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5234.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–18–000.
Applicants: Southern Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Fairburn Negotiated Rate to be effective 11/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5275.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–19–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Sequent 911362 to be effective 10/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5277.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–20–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: APL 2018 Fuel Filing to be effective 11/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5280.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–21–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Update to Fuel Exemption Paths Filing to be effective 11/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5296.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–22–000.
Applicants: Enable Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—October 2018—Newfield 1011022 to be effective 10/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5297.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–23–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Negotiated Rate Agreement (Saavi) to be effective 11/1/2018.
Filed Date: 10/1/18.

Accession Number: 20181001–5320.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–24–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Transporter Use Gas Annual Adjustment—Fall 2018 to be effective 11/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5322.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–25–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (JERA 37469 to EDR Trading No Amer 37422) to be effective 10/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5344.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–26–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: NCF Agreements—Constellation—511057 & 511058 to be effective 10/1/2018.
Filed Date: 10/1/18.
Accession Number: 20181001–5345.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: RP19–28–000.
Applicants: WBI Energy Transmission, Inc.
Description: Annual Penalty Credit Revenue Report of WBI Energy Transmission, Inc.
Filed Date: 10/1/18.
Accession Number: 20181001–5378.
Comments Due: 5 p.m. ET 10/15/18.

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: October 2, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21934 Filed 10–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC18–17–000]

Commission Information Collection Activities (FERC–576); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–576 (Report of Service Interruptions) and submitting the information collection to the Office of Management and Budget (OMB) for review. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. On July 23, 2018, the Commission published a Notice in the **Federal Register** in Docket No. IC18–17–000 requesting public comments. The Commission received no comments.

DATES: Comments on the collection of information are due November 9, 2018.

ADDRESSES: Comments filed with OMB, identified by OMB Control No. 1902–0004, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer.

A copy of the comments should also be sent to the Commission, in Docket No. IC18–17–000, by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–576, Report of Service Interruptions.

OMB Control No.: 1902–0004.

Type of Request: Three-year extension of the FERC–576 information collection requirements with no changes to the current reporting requirements.

Abstract: A natural gas company must obtain Commission authorization to engage in the transportation, sale, or exchange of natural gas in interstate commerce under the Natural Gas Act (NGA).[1] The NGA also empowers the Commission to oversee continuity of service in the transportation of natural gas in interstate commerce. The information collected under FERC–576 notifies the Commission of: (1) Damage to jurisdictional natural gas facilities as a result of a hurricane, earthquake, or other natural disaster, or terrorist activity, (2) serious interruptions to service, and (3) damage to jurisdictional natural gas facilities due to natural disaster or terrorist activity, that creates the potential for serious delivery problems on the pipeline's own system or the pipeline grid.

Filings (in accordance with the provisions of section 4(d) of the NGA)[2] must contain information necessary to advise the Commission when a change in service has occurred. Section 7(d) of the NGA[3] authorizes the Commission to issue a temporary certificate in cases of emergency to assure maintenance of adequate service or to serve particular customers, without notice or hearing.

Respondents to the FERC–576 are encouraged to submit the reports by email to *pipeline.outage@ferc.gov* but also have the option of faxing the reports to the Director of the Division of Pipeline Certificates. 18 CFR 260.9(b) requires that a report of service interruption or damage to natural gas facilities state: (1) The location of the service interruption or damage to natural gas pipeline or storage facilities; (2) The nature of any damage to pipeline or storage facilities; (3) Specific identification of the facilities damaged; (4) The time the service interruption or damage to the facilities occurred; (5) The customers affected by the service interruption or damage to the facilities; (6) Emergency actions taken to maintain

[1] Public Law 75 688; 15 U.S.C. 717–717w.
[2] 15 U.S.C. 717c.
[3] 15 U.S.C. 717f.

service; and (7) Company contact and telephone number. The Commission may contact pipelines reporting damage or other pipelines to determine availability of supply, and if necessary, authorize transportation or construction of facilities to alleviate constraints in response to these reports.

A report required by 18 CFR 260.9(a)(1)(i) of damage to natural gas facilities resulting in loss of pipeline throughput or storage deliverability shall be reported to the Director of the Commission's Division of Pipeline Certificates at the earliest feasible time when pipeline throughput or storage deliverability has been restored.

In any instance in which an incident or damage report involving jurisdictional natural gas facilities is required by Department of Transportation (DOT) reporting requirements under the Natural Gas Pipeline Safety Act of 1968, a copy of such report shall be submitted to the Director of the Commission's Division of Pipeline Certificates, within 30 days of the reportable incident.[4]

If the Commission failed to collect these data, it would lose the ability to monitor and evaluate transactions, operations, and reliability of interstate pipelines and perform its regulatory functions. These reports are kept by the Commission Staff as non-public information and are not made part of the public record.

Type of Respondents: Natural gas companies.

Estimate of Annual Burden:[5] The Commission estimates the average annual burden and cost[6] for this information collection as follows.

FERC–576, REPORT OF SERVICE INTERRUPTIONS

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours and cost ($) per response (4)	Total annual burden hours and total annual cost (3) * (4) = (5)	Cost per respondent[7] ($) (5) ÷ (1)
Submittal of Original Email/Fax	21	3	63	1 hr.; $133.80	63 hrs.; $8,429.40	$401.40
Submittal of Damage Report	21	3	63	0.25 hrs.; $33.45	15.75 hrs.; $2,107.35	100.35
Submittal of DOT Incident Report	21	1	21	0.25 hrs.; $33.45	5.25 hrs.; $702.45	33.45
Total					84 hrs.; $11,239.20	

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost 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 collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: October 2, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–21890 Filed 10–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–28–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Flanders Energy LLC

This is a supplemental notice in the above-referenced proceeding Flanders Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 22, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for

[4] 18 CFR 260.9(d).

[5] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. Refer to 5 CFR 1320.3 for additional information.

[6] Costs (for wages and benefits) are based on wage figures from the Bureau of Labor Statistics (BLS) for May 2016 (at *https://www.bls.gov/oes/current/naics2_22.htm*) and benefits information (for December 2017, issued March 20, 2018, at *https://www.bls.gov/news.release/ecec.nr0.htm*). Commission staff estimates that 20% of the work is performed by a manager, and 80% is performed by legal staff members. The hourly costs for wages plus benefits are: $94.28 for management services (code 11–0000), and $143.68 for legal services (code 23–0000). Therefore, the weighted hourly cost (for wages plus benefits) is $133.80 [or (0.80 * $143.68) + (0.20 * $94.28)].

[7] In the 60-day Notice published July 23, 2018, the figures in this column for ''Submittal of Original Email/Fax'' and ''Submittal of Damage Report'' inadvertently showed ''cost per response'' rather than ''cost per respondent.'' Those figures are corrected in this notice to show ''cost per respondent.''

electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 2, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21936 Filed 10–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited		
1. EL16–49–000, ER18–1314–000, ER18–1314–001, EL18–178–000.	9–21–2018	Natural Gas Supply Association.
2. CP15–554–002	9–27–2018	Pipeliners Union 798.
3. CP15–88–000	9–28–2018	Brea College, President Lyle D. Roelofs.
Exempt		
1. ER18–2208–000	9–18–2018	U.S. Congress.[1]
2. EL15–95–000	9–19–2018	State of New Jersey Assemblyman Ron Dancer.
3. CP15–115–000, CP15–115–001	9–21–2018	Duffield Camp & Retreat Center Inc.
4. CP15–88–000	9–21–2018	Lexington-Fayette Urban County Government Office of the Mayor.
5. P–10808–000	9–25–2018	U.S. Senator Debbie Stabenow.
6. CP14–96–000	9–25–2018	U.S. Congresswoman Nita M. Lowey.
7. ER18–2208–000	9–26–2018	U.S. Senate.[2]
8. P–2413–000	9–26–2018	U.S. Congressman Jody Hice.
9. CP17–495–000	9–27–2018	FERC Staff.[3]
10. CP16–9–000	9–27–2018	U.S. Congressman Stephen F. Lynch.

[1] Congressmen Joseph P. Kennedy III, Frank Pallone, Jr., Bobby L. Rush, Fred Upton, Richard E. Neal, Peter Welch, Niki Tsongas, James P. McGovern, Katherine Clark, Seth Moulton, Michael E. Capuano, and David N. Cicilline.

[2] Senators Richard Blumenthal, Sheldon Whitehouse, Jack Reed, Edward J. Markey, Elizabeth Warren, and Jeanne Shaheen.

[3] Memorandum dated September 27, 2018 forwarding letter from the Oregon State Historic Preservation Office.

Dated: October 2, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21935 Filed 10–9–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0057; FRL–9983–04]

Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Environmental Protection Agency's (EPA's) Office of Pesticide Programs is announcing a public meeting of the Pesticide Program Dialogue Committee (PPDC) on October 31, 2018. This

meeting is intended to provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides.

DATES: The PPDC meeting will be held on Wednesday, October 31, 2018, from 8:30 a.m. to 5 p.m. on Thursday, November 1, 2018, from 8:30 a.m. to 12 p.m. there will be an informational seminar on biotechnology-pesticide issues held for stakeholders.

Agenda: A draft agenda will be posted on or before October 19, 2018.

Accommodations requests: To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The PPDC Meeting and informational seminar will be held at 1 Potomac Yard South, 2777 S. Crystal Dr., Arlington, VA, in the lobby-level Conference Center.

EPA's Potomac Yard South Bldg. is approximately 1 mile from the Crystal City Metro Station.

FOR FURTHER INFORMATION CONTACT: Shannon Jewell, Office of Pesticide Programs, Environmental Protection Agency, 2777 Crystal Drive, Arlington, VA 22206; telephone number: (703) 347–0109; email address: *jewell.shannon@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you work in an agricultural setting or if you are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996; the Pesticide Registration Improvement Act, and the Endangered Species Act. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farm worker groups; pesticide users and growers; animal rights groups; pest consultants; State, local, and tribal governments; academia; public health organizations; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0057, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

The PPDC is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established the PPDC in September 1995 to provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides. The following sectors are represented on the current PPDC: Environmental/public interest and animal rights groups; farm worker organizations; pesticide industry and trade associations; pesticide user, grower, and commodity groups; Federal and State/local/tribal governments; the general public; academia; and public health organizations.

III. How can I request to participate in this meeting?

PPDC meetings are free, open to the public, and no advance registration is required. Public comments may be made during the public comment session on October 31st or in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 5, 2018.

Richard P. Keigwin, Jr.,

Director, Office of Pesticide Programs.

[FR Doc. 2018–22015 Filed 10–9–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0748]

Information Collection Being Reviewed by the Federal Communications Commission

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 Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. 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 FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 PRA comments should be submitted on or before December 10, 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 contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0748.

Title: Section 64.1504, 64.1509, 64.1510 Pay-Per-Call and Other Information Services.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,125 respondents; 5,175 responses.

Estimated Time per Response: 2 to 260 hours.

Frequency of Response: Annual and on occasion reporting and recordkeeping requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority(s) for the information collection is found at 47 U.S.C. 228(c)(7)–(10); Public Law 192–556, 106 stat. 4181 (1992), codified at 47 U.S.C. 228 (The Telephone Disclosure and Dispute Resolution Act of 1992).

Total Annual Burden: 47,750 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 64.1504 of the Commission's rules incorporates the requirements of Sections 228(c)(7)–(10) of the Communications Act restricting the manner in which toll-free numbers may be used to charge telephone subscribers for information services. Common carriers may not charge a calling party for information conveyed on a toll-free number call, unless the calling party: (1) Has executed a written agreement that specifies the material terms and conditions under which the information is provided, or (2) pays for the information by means of a prepaid account, credit, debit, charge, or calling card and the information service provider gives the calling party an introductory message disclosing the cost and other terms and conditions for the service. The disclosure requirements are intended to ensure that consumers know when charges will be levied for calls to toll-free numbers and are able to obtain information necessary to make informed choices about whether to purchase toll-free information services.

47 CFR 64.1509 of the Commission rules incorporates the requirements of 47 U.S.C. (c)(2) and 228 (d)(2)–(3) of the Communications Act. Common carriers that assign telephone numbers to pay-per-call services must disclose to all interested parties, upon request, a list of all assigned pay-per-call numbers. For each assigned number, carriers must also make available: (1) A description of the pay-per-call services; (2) the total cost per minute or other fees associated with the service; and (3) the service provider's name, business address, and telephone number. In addition, carriers handling pay-per-call services must establish a toll-free number that consumers may call to receive information about pay-per-call services. Finally, the Commission requires carriers to provide statements of pay-per-call rights and responsibilities to new telephone subscribers at the time service is established and, although not required by statute, to all subscribers annually.

Under 47 CFR 64.1510 of the Commission's rules, telephone bills containing charges for interstate pay-per-call and other information services must include information detailing consumers' rights and responsibilities with respect to these charges. Specifically, telephone bills carrying pay-per-call charges must include a consumer notification stating that: (1) The charges are for non-communication services; (2) local and long distance telephone services may not be disconnected for failure to pay per-call charges; (3) pay-per-call (900 number) blocking is available upon request; and (4) access to pay-per-call services may be involuntarily blocked for failure to pay per-call charges. In addition, each call billed must show the type of services, the amount of the charge, and the date, time, and duration of the call. Finally, the bill must display a toll-free number which subscribers may call to obtain information about pay-per-call services. Similar billing disclosure requirements apply to charges for information services either billed to subscribers on a collect basis or accessed by subscribers through a toll-free number. The billing disclosure requirements are intended to ensure that telephone subscribers billed for pay-per-call or other information services can understand the charges levied and are informed of their rights and responsibilities with respect to payment of such charges.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–21889 Filed 10–9–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0057]

Information Collection Being Reviewed by the Federal Communications Commission

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 FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 10, 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 contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0057.

Title: Application for Equipment Authorization, FCC Form 731.

Form Number: FCC Form 731.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 11,291 respondents; 24,851 responses.

Estimated Time per Response: 8.11 hours (rounded up).

Frequency of Response: On occasion reporting requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the 47 U.S.C. 154(i), 301, 302, 303(e), 303(f) and 303(r).

Total Annual Burden: 201,450 hours.

Total Annual Costs: $50,110,000.

Privacy Act Impact Assessment: The personally identifiable information (PII) in this information collection is covered by a Privacy Impact Assessment (PIA), Equipment Authorizations Records and Files Information System. It is posted at: *https://www.fcc.gov/general/privacy-act-information#pia.*

Nature and Extent of Confidentiality: Minimal exemption from the Freedom of Information Act (FOIA) under 5 U.S.C. 552(b)(4) and FCC rules under 47 CFR 0.457(d) is granted for trade secrets which may be submitted as attachments to the application FCC Form 731. No other assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this revised information collection to the Office of Management and Budget (OMB) after this 60-day comment period to obtain the three-year clearance. There is an increase in respondents/burden cost estimates to reflect the increased complexity of devices subject to the Commission rules and costs associated with testing by third-party test firms and review by Telecommunications Certification Bodies. At the same time the changes in system and consolidation of different information collection projects a reduction of burden hours.

The Commission is seeking a revision of the Equipment Authorization information collection because of a redesign of the electronic system that collects the information (Equipment Authorization System) that streamlines the processes for filing the information associated with applications for equipment Certification pursuant to subpart J of part 2 of the Commission rules. The new electronic system also allows the Commission to consolidate and combine information that is currently authorized separately.[1] The system is designed to process all data collection electronically and will eliminate repetitive information collection within applications and will permit parties to reference previously submitted information at the time of equipment authorization application. The justification has been revised to represent the updated information collected from different parties, to note that previously submitted information can be referenced in individual applications and to project the updated costs associated with testing the more complex devices that predominate the current environment.

The Commission rules require manufacturers of certain radio frequency (RF) equipment[2] to obtain equipment authorization approval prior to marketing their equipment. Manufacturers may then market their RF equipment based on a showing of compliance with the applicable technical standards. The Commission typically adopts or modifies its technical standards in response to new technologies and in conjunction with changes to spectrum allocations. Under the equipment authorization rules there are two types of authorization processes: Certification and Suppliers Declaration of Conformity. The technical rules for the services in which the equipment is proposed to operate will specify which type of equipment authorization must be obtained before the equipment can be marketed. This information collection is specific for equipment subject to Certification. Appendix A of this statement provides the current list of rules that require Certification. Applications for Certification are submitted on FCC Form 731.[3]

Accordingly, this information collection applies to RF equipment that:

(a) Is currently manufactured, or may be manufactured in the future, and

(b) operates under varying technical standards.

A party (*e.g.,* an RF equipment manufacturer) seeking device Certification pursuant to § 2.911 must first obtain a grantee code. This is a one-time application, as the party may use the same grantee code in all of its subsequent equipment authorization applications. The party provides its contact information and the FCC Registration Number (FRN) to obtain the grantee code on the Grantee Code Application web page of FCC Form 731.[4] A grantee code is assigned pursuant to § 2.926(c) of the Commission rules, and any information changes (as described in § 2.929) must be updated on the electronic system.

A party seeking device Certification is required to submit its application to an FCC-recognized Telecommunications Certification Body (TCB). The FCC recognizes TCBs pursuant to §§ 2.960 and 2.962. TCBs must be designated by appropriate designating authorities in the United States or through a mutual recognition agreement (MRA) for foreign countries where an MRA is in place, pursuant to § 2.960. A TCB's designation is only recognized when it is supported by an accrediting organization meeting the requirements specified in § 2.960(c). Information about the TCBs including their scope of responsibilities pursuant to § 2.962, the TCB accrediting body (TCBA) and the TCB designating authority (TDA) is submitted by the parties on the specific web pages of FCC Form 731. The information about a TCB, TCBA or TDA is only collected when a new entity is added or there is a change in the scope of the entity responsibilities. The information is used for verification and validation when a TCB submits information indicating approval of the application for grant of Certification.

TCBs have flexibility in the format they use to collect information for application for equipment Certification—*e.g.* they may require applicants to submit the required information in a format that mirrors FCC Form 731, or they may opt to use a customized format. In all cases, the information required is governed by the procedural rules in Part 2 and a showing of compliance with the FCC technical standards for the specific type of equipment that is the subject of the application.

TCBs process application as follows:

(i) The TCB receives and reviews the information submitted by the party seeking Certification of an RF device.

(ii) The TCB enters the information on the appropriate FCC Form 731 web page. The TCB submits the final recommendation on the disposal of the application. If the recommendation is to authorize the grant, a grant of certification is published through the system. If the recommendation is not to approve, this decision is noted in the system.

[1] The revised collection will include the information collection previously authorized under OMB 3060–0398 (Secs. 2.948, 2.949 except for Section 15.117(g)(2)).

[2] *See* Section 2.803 (47 CFR 2.803*).* The kinds of equipment that are being marketed include devices such as cellular telephones, tablets, remote control devices and scanning devices. However, the types of equipment that are manufactured may change in response to changing technologies and new spectrum allocations made by the Commission.

[3] The information collection for Suppliers Declaration for conformity is authorized under OMB 3060–0636.

[4] Information collection for FCC Registration Number is authorized under OMB 3060–0917.

All applications for Certification require the product to be tested for rules compliance by measurement test firms (TF) accredited by test firm accreditation bodies (TFAB) that have been recognized by the FCC (see §§ 2.948 and 2.949, respectively). TF and TFAB information is submitted through FCC Form 731 web pages for such information for verification and validation when the TCB reviews the application. The information collection for TF and TFAB is currently approved under OMB 3060–0398, but is being included in this revision.

An application for Certification must contain the following data, as is specified in § 2.1033:

- Information about the Grantee or their agents submitting the application on the Grantee's behalf.
- Information specific to the equipment including FCC Identifier, equipment class, technical specifications, etc.
- Attachments that demonstrate compliance with FCC rules may include any combination of the following based on the applicable FCC rule parts for the equipment for which authorization is requested:
  - Identification of equipment (§ 2.925);
  - Attestation statements that may be required for specific equipment;
  - External photos;
  - Block diagram of the device;
  - Schematics;
  - Test Report;
  - Test Setup Photos;
  - User's Manual;
  - Internal Photos;
  - Parts List/Tune Up Information;
  - RF Exposure Information;
  - Operational Description;
  - Cover Letters;
  - Software Defined Radio/Cognitive Radio Files;
  - Pre-approval guidance correspondence with TCB; and
  - Pre-approval inquiry correspondence with applicant

Applications for devices subject to multiple rule parts or to different requirements within the same rule part can be included in a single submission that provides whatever additional relevant information is necessary to show compliance with additional requirements. Applications subject to pre-approval guidance pursuant to § 2.964 must include the guidance correspondence.

Applications for devices operating under certain service rules (as specified in § 2.1033) must also include information specified in the rule parts.[5] This documentation, as well as any other information that demonstrates conformance with FCC Rules, may range from 100 to 1,000 pages, and is essential to control potential interference to radio communications. The FCC may use this information to investigate complaints of harmful interference.

The decision on the grant of application is made on the Equipment Authorization System electronically pursuant to §§ 2.915, 2.917 or 2.919. A Certification is subject to the limitations under § 2.927 and the grantee is responsible for ongoing compliance including record retention pursuant to §§ 2.931, 2.937 and 2.938.

The grantee is responsible to ensure that the device continues to comply with the rules. Device changes will require a new application for Certification pursuant to §§ 2.932 and 2.933, unless they can be classified as permissive changes under the rules for Class II or III permissive changes, as specified in § 2.1043(b). For a permissive change, the grantee is required to file supplementary information explaining the changes and must provide updated test information to a TCB for review. The TCB will then submit the data on the FCC Form 731 web pages for permissive changes. The only data required is that which supports the compliance of the changed functions. For changes which are considered Class I under §§ 2.1043(b) or 2.924 no further submissions are necessary although the applicant is responsible for keeping records of the changes.

Information on the procedures for equipment authorization applications can be obtained from the internet at: *https://www.fcc.gov/engineering-technology/laboratory-division/general/equipment-authorization.*

Appendix A

RULE PARTS REFERENCING EQUIPMENT CERTIFICATION

Rule sections (47 CFR)	Reference
2.911, 2.1033	Applications.
11.34	EAS Equipment acceptability for filing.
15.201	Equipment Authorization Requirements.
18.203	Equipment Authorization.
20.19(b)	HAC Requirements.
20.21(e)(2)	Signal Boosters.
22.377	Certification of transmitters.
24.51	Equipment Authorization (including 24.52 RF Hazards).
25.129	Equipment Authorization for portable earth-station transceivers.
27.51	Equipment Authorization (including 27.52 RF Safety).
30.201	Equipment Authorization (30.201(c) refers to verification).
74.451	Certification of equipment—remote pickup.
74.750	Low Power TV (type notified).
74.851	Certification of equipment—LPAS.
80.203	Authorization of transmitters—maritime services (special manual or other type approval requirements).
87.147	Authorization of equipment—Aviation.
90.203	Certification required—Private land mobile radio.
95.335	Operation of non-certified transmitters prohibited—Personal Radio Service.
95.361	Transmitter Certification—Personal Radio Service.
95.561	FRS transmitter certification.
95.761	RCRS transmitter certification.
95.961	CBRS transmitter certification.
95.1761	GMRS transmitter certification.
95.1951	Certification—200 MHz.

[5] See 47 CFR Sections 2.1033(b)(9)–(14), 2.1033(c)(13)–(21) and 2.1033(d).

RULE PARTS REFERENCING EQUIPMENT CERTIFICATION—Continued

Rule sections (47 CFR)	Reference
95.2161	LPRS transmitter certification.
95.2361	WMTS transmitter certification.
95.2561	MedRadio transmitter certification.
95.2761	MURS transmitter certification.
95.2961	PLB and MSLD transmitter certification.
95.3161	OBU transmitter certification.
95.3361	Certification—76–81GHz Radar service.
96.49	Equipment Authorization CBRS.
97.315	Certification of external RF power amplifiers—Amateur Radio.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–21960 Filed 10–9–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Economic Inclusion (ComE–IN); Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of Open Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Economic Inclusion (ComE–IN), which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on initiatives to expand access to banking services by underserved populations.

DATES: Wednesday, October 24, 2018, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will be focused on the presentation and review of the FDIC's 2017 National Survey of Unbanked and Underbanked Households, a review of the UK-Financial Conduct Authority (FCA) Mobile Study, and youth employment programs and deposit accounts. The agenda is subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This ComE–IN meeting will be Webcast live via the internet *http://fdic.windrosemedia.com.* Questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed internet connection is recommended. The ComE–IN meeting videos are made available on-demand approximately two weeks after the event.

Dated: October 4, 2018.

Federal Deposit Insurance Corporation

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2018–21992 Filed 10–9–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 6, 2018.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Kimberly Leasing Corporation, Augusta, Wisconsin; to merge with Augusta Financial Corporation, Augusta, Wisconsin and thereby indirectly acquire, Unity Bank, of Augusta Wisconsin.

2. Kimberly Leasing Corporation, Augusta, Wisconsin; to merge with Caprice Corporation, Augusta, Wisconsin, and thereby indirectly acquire, Unity Bank North, Red Lake Falls, Wisconsin.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President), 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Equitable Financial Corp., Grand Island, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Equitable Bank, Grand Island, Nebraska.

C. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice

President), 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Adam Bank Group, Inc., College Station, Texas; to acquire voting shares of Andrews Holding Company, and thereby indirectly acquire Commercial State Bank, both of Andrews, Texas.

Board of Governors of the Federal Reserve System, October 4, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–21978 Filed 10–9–18; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Senior Executive Service Performance Review Board

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance Review Board for the Federal Retirement Thrift Investment Board. The purpose of the Performance Review Board is to make written recommendations on each executive's annual summary ratings, performance-based pay adjustment, and performance awards to the appointing authority.

DATES: This notice is applicable on October 10, 2018.

FOR FURTHER INFORMATION CONTACT: Kelly Powell, HR Specialist, at 202–942–1681.

SUPPLEMENTARY INFORMATION: Title 5, U.S. Code, 4314(c)(4), requires that the appointment of Performance Review Board members be published in the **Federal Register** before Board service commences. The following persons will serve on the Federal Retirement Thrift Investment Board's Performance Review Board which will review initial summary ratings to ensure the ratings are consistent with established performance requirements, reflect meaningful distinctions among senior executives based on their relative performance and organizational results and provide recommendations for ratings, awards, and pay adjustments in a fair and equitable manner: Jim Courtney, Vijay Desai, Sean McCaffrey, and Tee Ramos.

Dharmesh Vashee,

Deputy General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2018–21970 Filed 10–9–18; 8:45 am]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

[File No. 182 3144]

VenPath, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 29, 2018.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: ''VenPath, Inc.'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/venpathconsent/* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''VenPath, Inc.; File No. 1823144'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ruth Yodaiken (202–326–2127), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 27, 2018), on the World Wide Web, at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 29, 2018. Write ''VenPath, Inc.; File No. 1823144'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at *https://www.ftc.gov/policy/public-comments.*

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/venpathconsent/* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that website.

If you prefer to file your comment on paper, write ''VenPath, Inc.; File No. 1823144'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at *http://www.ftc.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or

confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 29, 2018. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to VenPath, Inc. (''VenPath'' or ''the company'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that VenPath made to consumers concerning its participation in the Privacy Shield framework agreed upon by the U.S. and the European Union (''EU''). The Privacy Shield framework allows U.S. companies to transfer data outside the EU consistent with EU law. To join the EU–U.S. Privacy Shield framework, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing ''adequate'' privacy protection. The principles include notice; choice; accountability for onward transfer; security; data integrity and purpose limitation; access; and recourse, enforcement, and liability. The related requirements include, for example, securing an independent recourse mechanism to handle any disputes about how the company handles information about EU citizens. Commerce reviews these applications for self-certification and maintains a public website, *https://www.privacyshield.gov/list,* where it posts the names of companies that have self-certified to the EU–U.S. Privacy Shield framework and completed the requirements for certification. The listing of companies indicates whether their self-certification is current. Companies are required to re-certify every year in order to retain their status as current members of the EU–U.S. Privacy Shield framework.

VenPath offers data analytics services related to mobile apps. According to the Commission's complaint, the company has set forth on its website, *https://www.venpath.net,* privacy policies and statements about its practices, including statements related to the status of its participation in the EU–U.S. Privacy Shield framework.

The Commission's complaint alleges that VenPath deceptively represented that it was a current participant in the EU–U.S. Privacy Shield framework when, in fact, it was not. The complaint also alleges that the company deceptively represented that it would abide by the EU–U.S. Privacy Shield framework principles, but did not do so. The principles include a requirement that if a company ceases to participate in the EU–U.S. Privacy Shield framework, it must affirm to Commerce that it will continue to apply the principles to personal information that it received during the time it participated in the program, but according to the complaint, VenPath did not make such an affirmation.

Part I of the proposed order prohibits the company from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the EU–U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework. Because the company had a certification that had lapsed, Part II requires the company to comply with the Privacy Shield requirement to continue to protect, on a going forward basis, personal information it had received while in the program, or return or delete the information.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires acknowledgement of the order and dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status and mandates that the company submit an initial compliance report to the FTC. Part V requires the company to retain documents relating to its compliance with the order for a five-year period.

Part VI mandates that the company make available to the FTC information or subsequent compliance reports, as requested. Part VII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission, Commissioner Wilson not participating.

Donald S. Clark,

Secretary.

[FR Doc. 2018–21947 Filed 10–9–18; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 182 3154]

SmartStart Employment Screening, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the

complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 29, 2018.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: ''SmartStart Employment Screening, Inc.'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/smartstartconsent/* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''SmartStart Employment Screening, Inc.; File No. 1823154'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ruth Yodaiken (202–326–2127), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 27, 2018), on the World Wide Web, at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 29, 2018. Write ''SmartStart Employment Screening, Inc.; File No. 1823154'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at *https://www.ftc.gov/policy/public-comments.*

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/smartstartconsent/* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that website.

If you prefer to file your comment on paper, write ''SmartStart Employment Screening, Inc.; File No. 1823154'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at *http://www.ftc.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 29, 2018. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to SmartStart Employment Screening, Inc. (''SmartStart'' or ''the company'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that SmartStart made to consumers concerning its participation in the Privacy Shield framework agreed upon by the U.S. and the European Union (''EU''). The Privacy Shield framework allows U.S. companies to transfer data outside the EU consistent with EU law. To join the EU–U.S. Privacy Shield

framework, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing ''adequate'' privacy protection. The principles include notice; choice; accountability for onward transfer; security; data integrity and purpose limitation; access; and recourse, enforcement, and liability. The related requirements include, for example, securing an independent recourse mechanism to handle any disputes about how the company handles information about EU citizens. Commerce reviews these applications for self-certification and maintains a public website, *https://www.privacyshield.gov/list,* where it posts the names of companies that have self-certified to the EU–U.S. Privacy Shield framework and completed the requirements for certification. The listing of companies indicates whether their self-certification is current. Companies are required to re-certify every year in order to retain their status as current members of the EU–U.S. Privacy Shield framework.

SmartStart offers background and employment screening services. According to the Commission's complaint, the company has set forth on its website, *http://www.smartstartemploymentscreeninginc.com,* privacy policies and statements about its practices, including statements related to the status of its participation in the EU–U.S. Privacy Shield framework.

The Commission's complaint alleges that SmartStart deceptively represented that it was a current participant in the EU–U.S. Privacy Shield framework when, in fact, it was not. The complaint also alleges that the company deceptively represented that it would abide by the EU–U.S. Privacy Shield framework principles, but did not do so. The principles include a requirement that if a company ceases to participate in the EU–U.S. Privacy Shield framework, it must affirm to Commerce that it will continue to apply the principles to personal information that it received during the time it participated in the program, but according to the complaint, SmartStart did not make such an affirmation.

Part I of the proposed order prohibits the company from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the EU–U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework. Because the company had a certification that had lapsed, Part II requires the company to comply with the Privacy Shield requirement to continue to protect, on a going forward basis, personal information it had received while in the program, or return or delete the information.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires acknowledgement of the order and dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status and mandates that the company submit an initial compliance report to the FTC. Part V requires the company to retain documents relating to its compliance with the order for a five-year period.

Part VI mandates that the company make available to the FTC information or subsequent compliance reports, as requested. Part VII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission, Commissioner Wilson not participating.

Donald S. Clark,

Secretary.

[FR Doc. 2018–21946 Filed 10–9–18; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 182 3150]

IDmission LLC; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 29, 2018.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: ''IDmission LLC'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/idmissionconsent/* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''IDmission LLC; File No. 1823150'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ruth Yodaiken (202–326–2127), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 27, 2018), on the World Wide Web, at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 29, 2018. Write ''IDmission LLC; File No. 1823150'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at *https://www.ftc.gov/policy/public-comments.*

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/idmissionconsent/* by following the instructions on the web-based form. If

this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that website.

If you prefer to file your comment on paper, write ''IDmission LLC; File No. 1823150'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at *http://www.ftc.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 29, 2018. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to IDmission LLC (''IDmission'' or ''the company'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that IDmission made to consumers concerning its participation in the Privacy Shield framework agreed upon by the U.S. and the European Union (''EU''). The Privacy Shield framework allows U.S. companies to transfer data outside the EU consistent with EU law. To join the EU–U.S. Privacy Shield framework, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing ''adequate'' privacy protection. The principles include notice; choice; accountability for onward transfer; security; data integrity and purpose limitation; access; and recourse, enforcement, and liability. The related requirements include, for example, securing an independent recourse mechanism to handle any disputes about how the company handles information about EU citizens. Commerce reviews these applications for self-certification and maintains a public website, *https://www.privacyshield.gov/list,* where it posts the names of companies that have self-certified to the EU–U.S. Privacy Shield framework and completed the requirements for certification. The listing of companies indicates whether their self-certification is current. Companies are required to re-certify every year in order to retain their status as current members of the EU–U.S. Privacy Shield framework.

IDmission offers a cloud-based technology platform to help business clients engage with their customers. According to the Commission's complaint, the company has set forth on its website, *http://www.idmission.com/,* privacy policies and statements about its practices, including statements related to the status of its participation in the EU–U.S. Privacy Shield framework.

The Commission's complaint alleges that IDmission deceptively represented that it was a participant in the EU–U.S. Privacy Shield framework when, in fact, it did not complete the steps necessary to participate in the EU–U.S. Privacy Shield framework.

Part I of the proposed order prohibits the company from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the EU–U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires acknowledgement of the order and dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part III ensures notification to the FTC of changes in corporate status and mandates that the company submit an initial compliance report to the FTC. Part IV requires the company to retain documents relating to its compliance with the order for a five-year period.

Part V mandates that the company make available to the FTC information or subsequent compliance reports, as requested. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of

the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission, Commissioner Wilson not participating.

Donald S. Clark,

Secretary.

[FR Doc. 2018–21944 Filed 10–9–18; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 182 3143]

mResource LLC; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 29, 2018.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: ''mResource LLC'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/mresourceloopworks* consent by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''MResource LLC; File No. 1823143'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ruth Yodaiken (202–326–2127), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 27, 2018), on the World Wide Web, at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 29, 2018. Write ''mResource LLC; File No. 1823143'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at *https://www.ftc.gov/policy/public-comments.*

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/mresourceloopworksconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that website.

If you prefer to file your comment on paper, write ''mResource LLC; File No. 1823143'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at *http://www.ftc.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 29, 2018. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to mResource LLC, doing business as Loop Works LLC (''Loop Works'' or ''the company'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that Loop Works made to consumers concerning its participation in the Privacy Shield framework agreed upon by the U.S. and the European Union (''EU''). The Privacy Shield framework allows U.S. companies to transfer data outside the EU consistent with EU law. To join the EU–U.S. Privacy Shield framework, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing ''adequate'' privacy protection. The principles include notice; choice; accountability for onward transfer; security; data integrity and purpose limitation; access; and recourse, enforcement, and liability. The related requirements include, for example, securing an independent recourse mechanism to handle any disputes about how the company handles information about EU citizens. Commerce reviews these applications for self-certification and maintains a public website, *https://www.privacyshield.gov/list,* where it posts the names of companies that have self-certified to the EU–U.S. Privacy Shield framework and completed the requirements for certification. The listing of companies indicates whether their self-certification is current. Companies are required to re-certify every year in order to retain their status as current members of the EU–U.S. Privacy Shield framework.

Loop Works offers recruitment and ''talent management'' services. According to the Commission's complaint, the company has set forth on its website, *http://www.loopworks.com,* privacy policies and statements about its practices, including statements related to the status of its participation in the EU–U.S. Privacy Shield framework.

The Commission's complaint alleges that Loop Works deceptively represented that it was a current participant in the EU–U.S. Privacy Shield framework when, in fact, it was not.

Part I of the proposed order prohibits the company from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the EU–U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires acknowledgement of the order and dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part III ensures notification to the FTC of changes in corporate status and mandates that the company submit an initial compliance report to the FTC. Part IV requires the company to retain documents relating to its compliance with the order for a five-year period.

Part V mandates that the company make available to the FTC information or subsequent compliance reports, as requested. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission, Commissioner Wilson not participating.

Donald S. Clark,

Secretary.

[FR Doc. 2018–21945 Filed 10–9–18; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–19–18FO]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Delta Impact Recipient Monitoring and Assessment Tools to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on January 19, 2018 to obtain comments from the public and affected agencies. CDC received two anonymous non-substantive public comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

DELTA Impact Recipient Monitoring and Assessment Tools—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Violence is a serious, yet preventable, public health problem. Intimate partner violence (IPV) affects millions of women, men, and children. In the United States, one in four women and one in nine men experience contact sexual violence, physical violence, and/or stalking by an intimate partner with a negative impact such as injury, fear, concern for safety, or needing services. The Centers for Disease Control and

Prevention's (CDC) National Intimate Partner and Sexual Violence Survey (NISVS) data showed many victims of IPV began experiencing these forms of violence prior to adulthood.

Authorized by the Family Violence and Prevention Services Act (FVPSA) statute (42 U.S.C. 10414), CDC has funded the Domestic Violence Prevention Enhancements and Leadership Through Alliances (DELTA) Program since 2002. The DELTA program funds State Domestic Violence Coalitions to implement statewide IPV prevention efforts, while also providing assistance and funding for local communities to implement IPV prevention activities. The DELTA Impact cooperative agreement advances IPV prevention activities through these components: 1. Implementation and program evaluation of state and local level IPV prevention strategies targeting community or societal level change using a public health approach and effective prevention principles. 2. Development or enhancement of a State Action Plan (SAP) to increase the use of data for planning and the prioritization of primary prevention of IPV based on any existing health inequities within their jurisdictions. 3. Provision of training and technical assistance (TA) to DELTA Impact organizations on the implementation of IPV prevention strategies.

The Centers for Disease Control and Prevention (CDC) seeks OMB approval to collect annual progress report (APR) information from the currently grantees funded under Domestic Violence Prevention Enhancement and Leadership Through Alliances (DELTA) Impact. Recipients will report relevant information on the implementation of their prevention strategies, implementation of statewide planning, as well as the extent to which they implement and evaluate multiple specific prevention programs. These data will be submitted through an electronic reporting system at the time of their annual non-competing continuation application. The report has been designed in a way that collects consistent information across recipients while allowing the flexibility to account for varying prevention strategies.

Information to be collected will provide crucial data for program performance monitoring, will allow CDC to analyze and synthesize information from grantees, help ensure consistency in documenting progress and technical assistance, enhance accountability of the use of federal funds, and provide timely reports as frequently requested by HHS, the White House, and Congress.

Submission of the Annual Progress Report is required for cooperative agreement grantees. Over the three-year period of this information collection request, the annualized estimated burden for 10 recipients is 117 with a total three-year burden of 350 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
DELTA Impact Program Recipients State Domestic Violence Coalitions.	Annual Progress Report—Year 1	10	1	5
	Annual Progress Report—Year 2 and 3	10	2	3.3

Jeffrey M. Zirger,

Acting Chief, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–22007 Filed 10–9–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–19–0950]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled The National Health and Nutrition Examination Survey (NHANES) to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on May 11, 2018 to obtain comments from the public and affected agencies. CDC received five comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

The National Health and Nutrition Examination Survey (NHANES), (OMB No. 0920–0950, expires 12/31/2019)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as

amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability; environmental, social and other health hazards; and determinants of health of the population of the United States. The National Health and Nutrition Examination Surveys (NHANES) have been conducted periodically between 1970 and 1994, and continuously since 1999 by the National Center for Health Statistics, CDC.

NHANES programs produce descriptive statistics, which measure the health and nutrition status of the general population. With physical examinations, laboratory tests, and interviews, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States.

NHANES monitors the prevalence of chronic conditions and risk factors and are used to produce national reference data on height, weight, and nutrient levels in the blood. Results from more recent NHANES can be compared to findings reported from previous surveys to monitor changes in the health of the U.S. population over time.

In 2019, we will implement a new data collection schedule. To increase operational efficiency, NHANES will survey a nationally representative sample over the course of a two-year cycle instead of annually. The change to a two-year cycle will permit more days allocated to each primary sampling unit (PSU). This results in less travel time, which allows more time to screen and recruit potential participants, and allows for more exam slots. As in previous years, the base sample will remain at approximately 5,000 interviewed and examined individuals annually.

NCHS collects personally identifiable information (PII). Participant level data items will include basic demographic information, name, address, social security number, Medicare number and participant health information to allow for linkages to other data sources such as the National Death Index and data from the Centers for Medicare and Medicaid Services (CMS).

A variety of agencies sponsors data collection components on NHANES. To keep burden down and respond to changing public health research needs, NCHS cycles in and out various components. The 2019–20 NHANES physical examination includes the following components: Anthropometry (all ages), 24-hour dietary recall (all ages), physician's examination (all ages, blood pressure is collected here), oral health examination (age one and older), dual X-ray absorptiometry (DXA) (ages 50+ bone density; ages 8–69 total body scan) and audiometry (ages 6–19 and 70+).

While at the examination center, additional interview questions are asked (six and older)and a second 24-hour dietary recall (all ages) is scheduled to be conducted by phone 3–10 days later.

Starting in 2019, we will collect blood pressure using an automated device, instead of using manual devices. The 2019–20 survey will bring back the cognitive function test (ages 60+). We plan to add a Words-In-Noise (ages 70+) exam to the audiometry component, genetic testing related to the liver elastography exam, and a standing balance exam (ages 40+,) which includes two vision tests (contrast sensitivity and visual acuity).

NHANES also plans to conduct developmental projects during NHANES 2019–20. These may include a 24-hour blood pressure measurement pilot among NHANES participants ages 18 and older, creating and testing a social media campaign and testing modifications to incentive amounts or how incentives are provided.

The biospecimens collected for laboratory tests include urine, blood, and vaginal and penile swabs. Serum, plasma and urine specimens are stored for future testing, including genetic research, if the participant consents. Consent to store DNA is continuing in NHANES. Collecting an oral rinse for HPV analyses is cycling back into the survey (ages 8–69 years). In addition, we will again collect a water sample in the home for fluoride.

The following analytes have been discontinued in 2018 for participants from the smoking sample subset: Aromatic Amines, Heterocyclic Amines, Urine Cotinine, Tobacco-Specific Nitrosamines, Perchlorate, Nitrates, and Thiocyanate, Urinary Arsenic, Mercury, Iodine and Metals.

Cycling out of NHANES in 2019–20 are the blood pressure methodology project, Human Papillomavirus (HPV) in serum, Aldehydes in serum, Volatile N-nitrosamines (VNAs) tobacco biomarkers, Urine heterocyclic amines, urine aromatic amines and urine tobacco-specific nitrosamines

New additions to the survey questionnaires include two questions on WIC participation, a birth to less than 24-month questionnaire module, collecting information on infant and toddler formula. We are also modifying multiple questionnaire sections so they better align with questions asked in the National Health Interview Survey (NHIS) (OMB Control No. 0920–0214, Exp. Date 12/31/2019), compliment exam or lab content, or in order to reduce respondent burden.

Most sections of the NHANES interviews provide self-reported information to be used in combination with specific examination or laboratory content, as independent prevalence estimates, or as covariates in statistical analysis (*e.g.,* socio-demographic characteristics). Some examples include alcohol, drug, and tobacco use, sexual behavior, prescription and aspirin use, and indicators of oral, bone, reproductive, and mental health. Several interview components support the nutrition-monitoring objective of NHANES, including questions about food security and nutrition program participation, dietary supplement use, and weight history/self-image/related behavior.

In 2019–2020, we plan to continue or expand upon existing multi-mode screening and electronic consent procedures in NHANES. Our yearly goal for interview, exam and post exam components is 5,000 participants. To achieve this goal we may need to screen up to 15,000 individuals annually.

Burden for individuals will vary based on their level of participation. For example, infants and children tend to have shorter interviews and exams than adults. This is because young people may have fewer health conditions or medications to report so their interviews take less time or because certain exams are only conducted on individuals 18 and older, etc. In addition, adults often serve as proxy respondents for young people in their families.

Participation in NHANES is voluntary and confidential. There is no cost to respondents other than their time. We are requesting a three-year approval, with 68,417 annualized hours of burden.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Individuals in households	Screener	15,000	1	5/60
Individuals in households	Household Interview	5,000	1	1.5
Individuals in households	MEC Interview & Examination	5,000	1	4
Individuals in households	Telephone Dietary Recall & Dietary Supplements	5,000	1	30/60
Individuals in households	Flexible Consumer Behavior Survey Phone Follow-Up	5,000	1	20/60
Individuals in households	Developmental Projects & Special Studies	3,500	1	3
Individuals in households	24 hour Blood Pressure Pilot	1,000	1	25

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–22008 Filed 10–9–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; System of Records

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of withdrawal.

SUMMARY: The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), is withdrawing the notice published on September 17, 2018 to modify system of records No. 09–70–0541, titled ''Medicaid Statistical Information System (MSIS).'' The notice was prematurely published. A revised version will be published at a later date.

DATES: The notice of withdrawal is applicable October 10, 2018.

ADDRESSES: Any comments should be submitted by mail or email to: CMS Privacy Act Officer, Division of Security, Privacy Policy & Governance, Information Security & Privacy Group, Office of Information Technology, CMS, Location N1–14–56, 7500 Security Blvd., Baltimore, MD 21244–1870, or *walter.stone@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: General questions may be submitted by phone, mail or email to Barbara Demopulos, (phone 410–786–6340), CMS Privacy Advisor, Division of Security, Privacy Policy & Governance, Information Security & Privacy Group, Office of Information Technology, CMS, Location N1–14–40, 7500 Security Blvd., Baltimore, MD 21244–1870, or *Barbara.demopulos@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: A notice establishing or significantly modifying a system of records is required by subsection (r) of the Privacy Act (5 U.S.C. 552a(r)) to be reported to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) in advance of publication in the **Federal Register**, in order to permit an evaluation of the potential effect of the proposal on the privacy and other rights of individuals. The notice published at 83 FR 46951 (Sept. 17, 2018) did not comply with this requirement and is therefore withdrawn, as prematurely published. A revised version will be published at a later date and in compliance with 5 U.S.C. 552a(r) and section 7 of OMB Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' 81 FR 94424 (Dec. 23, 2016).

Barbara Demopulos,

CMS Privacy Advisor, Division of Security, Privacy Policy and Governance Information Security and Privacy Group, Office of Information Technology, Centers for Medicare & Medicaid Services.

[FR Doc. 2018–21899 Filed 10–9–18; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Children's Bureau; Proposed Information Collection Activity; Comment Request

AGENCY: Administration for Children and Families, U.S. Department of Health and Human Services.

Title: RPG National Cross-Site Evaluation and Evaluation Technical Assistance.

OMB No.: New Collection.

Description: The Children's Bureau (CB) within the Administration for Children and Families of the U.S. Department of Health and Human Services seeks approval to collect information for the Regional Partnership Grants to Increase the Well-being of and to Improve Permanency Outcomes for Children Affected by Substance Abuse (known as the Regional Partnership Grants Program or ''RPG'') Cross-Site Evaluation and Evaluation-Related Technical Assistance project. The Child and Family Services Improvement and Innovation Act (Pub. L. 112–34) includes a targeted grants program (section 437(f) of the Social Security Act) that directs the Secretary of Health and Human Services to reserve a specified portion of the appropriation for these Regional Partnership Grants, to be used to improve the well-being of children affected by substance abuse. Under three prior rounds of RPG, the Children's Bureau has issued 74 grants to organizations such as child welfare or substance abuse treatment providers or family court systems to develop interagency collaborations and integration of programs, activities, and services designed to increase well-being, improve permanency, and enhance the safety of children who are in an out-of-home placement or are at risk of being placed in out-of-home care as a result of a parent's or caretaker's substance abuse. In 2017, CB awarded grants to a fourth cohort of 17 grantees and in 2018 they plan to award 10 grants to a fifth cohort.

The RPG cross-site evaluation will extend our understanding of what types of programs and services grantees provided to participants, how grantees leveraged their partnerships to coordinate services for children and families, and what the outcomes were for children and families enrolled in RPG programs. First, the cross-site evaluation will describe the characteristics of participants served by RPG programs, the types of services provided to families, the dosage of each

type of service received by families, and the level of participant engagement with the services provided. Second, the cross-site will assess the coordination of partners' service systems (*e.g.,* shared participant data, joint staff training) to better understand how partners' collaborative effort affects the array of services offered to families. The cross-site evaluation will also focus more deeply on the partnership between the child welfare and substance use disorder (SUD) treatment agencies, to add to the research base about how these agencies can collaborate to address the needs of children and families affected by SUD. Finally, the evaluation will assess the outcomes of children and adults served through the RPG program.

The evaluation is being undertaken by the Children's Bureau and its contractor Mathematica Policy Research. The evaluation is being implemented by Mathematica Policy Research and its subcontractor, WRMA Inc.

The RPG Cross-Site Evaluation will include the following data collection activities:

1. *Site visits and key informant interviews.* The cross-site evaluation team will visit up to 21 sites to better understand the partnership and coordination between the child welfare and SUD treatment agencies. The remaining six grantees will participate in telephone interviews to gather similar information about their design and implementation. The site visits and phone interviews will focus on the RPG planning process; how and why particular services were selected; the ability of the child welfare, substance use disorder treatment, and other service systems to collaborate and support quality implementation of the RPG services; challenges experienced; and the potential for sustaining the collaborations and services after RPG funding ends.

2. *Partner survey.* To describe the interagency collaboration within RPG sites, grantees and their partners will participate in an online survey once during the grant period. One person from each organization knowledgeable about the RPG program will be invited to participate in the survey. The survey will collect information about communication and service coordination among partners. The survey will also collect information on characteristics of strong partnerships (*e.g.,* data sharing agreements, colocation of staff, referral procedures, and cross-staff training).

3. *Semi-annual progress reports.* The semi-annual progress reports will be used to obtain updated information from grantee project directors about their program operations and partnerships, including any changes from prior periods. The CB has tailored the semi-annual progress reports to collect information on grantees' programs and other services grantees implement, the target population for the RPG program, and grantees' perceived successes and challenges to implementation.

4. *Enrollment, client, and service data.* To document participant characteristics and their enrollment in RPG services, all grantees will provide data on family characteristics, and enrollment of and services provided to RPG families. These data include demographic information on family members, dates of entry into and exit from RPG services, and information on RPG service dosage. These data will be submitted on an ongoing basis by staff at the grantee organizations into an information system developed by the cross-site evaluation team.

5. *Outcome and impact data.* To measure participant outcomes, all grantees will collect self-administered standardized instruments from RPG adults. The standardized instruments used in RPG collect information on child well-being, adult and family functioning, and adult substance use. Grantees will share the responses on these self-report instruments with the cross-site evaluation team. Grantees will also obtain administrative data on a common set of child welfare and substance use disorder treatment data elements.

In addition to conducting local evaluations and participating in the RPG Cross-Site Evaluation, the RPG grantees are legislatively required to report performance indicators aligned with their proposed program strategies and activities. A key strategy of the RPG Cross-Site Evaluation is to minimize burden on the grantees by ensuring that the cross-site evaluation, which includes all grantees in a study that collects data to report on implementation, the partnerships, and participant characteristics and outcomes, fully meets the need for performance reporting. Thus, rather than collecting separate evaluation and performance indicator data, the grantees need only participate in the cross-site evaluation. In addition, using the standardized instruments that the Children's Bureau has specified will ensure that grantees have valid and reliable data on child and family outcomes for their local evaluations. The inclusion of an impact study conducted on a subset of grantees with rigorous designs will also provide the Children's Bureau, Congress, grantees, providers, and researchers with information about the effectiveness of RPG programs.

This 60-Day **Federal Register** Notice covers the following data collection activities: (1) The site visits with grantees; (2) the web-based survey of grantee partners (3) the semi-annual progress reports; (4) enrollment and service data provided by grantees; and (6) outcome and impact data provided by grantees.

Respondents. Respondents include grantee staff or contractors (such as local evaluators) and partner staff. Specific types of respondents and the expected number per data collection effort are noted in the burden table below.

Annual burden estimates. The following instruments are proposed for public comment under this 60-Day **Federal Register** Notice. Burden for all components is annualized over three years.

RPG Cross-Site Evaluation Annualized Burden Estimates

Data collection activity	Total number of respondents	Number of responses per respondent (each year)	Average burden hours per response (in hours)	Estimated total burden hours	Total annual burden hours
Site Visit and Key Informant Data Collection					
Program director in-person interview	21	.33	2	42	14
Program manager/supervisor in-person interview	21	.33	1	21	7
Partner representative interviews	63	.33	1	63	21
Frontline staff interview	42	.33	1	42	14
Program director/manager phone interview	12	.33	1	4.0	12

RPG CROSS-SITE EVALUATION ANNUALIZED BURDEN ESTIMATES—Continued

Data collection activity	Total number of respondents	Number of responses per respondent (each year)	Average burden hours per response (in hours)	Estimated total burden hours	Total annual burden hours
Partner survey	135	.33	0.42	56.3	18.8
Enrollment, client and service data					
Semi-annual progress reports	27	2	16.5	2,673	891
Case enrollment data	81	43	0.25	2,612.3	870.8
Case closure	81	43	0.017	174.2	58.1
Case closure—prenatal	81	33	0.017	133.7	44.6
Service log entries	162	2,288	0.03	37,065	12,355
Outcome and impact data					
Administrative Data:					
Obtain access to administrative data	27	1	42.6	3,450.6	1150.2
Report administrative data	27	2	144	23,328	7,776
Standardized instruments:					
Review and adopt reporting templates	27	.33	8	216	72
Data entry for standardized instruments	27	130	1.25	13,162.5	4,387.5
Review records and submit	27	2	25	4,050	1,350
Data entry for comparison study sites (22 grantees)	22	130	1.25	10,725	3,575
Estimated Total Burden Hours				97,827	32,609

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Children's Bureau within the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to Administration for Children and Families, Office of Administration, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–22020 Filed 10–9–18; 8:45 am]

BILLING CODE 4184–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3685]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; ADB–FUBINACA; ADB–CHMINACA; Cyclopropyl Fentanyl; Methoxyacetyl Fentanyl; para-Fluoro Butyrfentanyl; Tramadol; Pregabalin; Cannabis Plant and Resin; and Eight Additional Substances; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit comments concerning abuse potential, actual abuse, medical usefulness, trafficking, and impact of scheduling changes on availability for medical use of 16 drug substances. These comments will be considered in preparing a response from the United States to the World Health Organization (WHO) regarding the abuse liability and diversion of these drugs. WHO will use this information to consider whether to recommend that certain international restrictions be placed on these drugs. This notice requesting comments is required by the Controlled Substances Act (the CSA).

DATES: Submit either electronic or written comments by October 31, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before (enter date), 2018. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 31, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any

confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–3685 for ''International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; ADB–FUBINACA; FUB–AMB(MMB–FUBINACA_AMB–FUBINACA); ADB–CHMINACA; CUMYL–4CN–BINACA; Cyclopropyl Fentanyl; Methoxyacetyl Fentanyl; *Ortho*-Fluorofentanyl; *Para*-Fluoro Butyrfentanyl; *Para*-Methoxybutyrfentanyl; *N*-Ethylnorpentylone; Tramadol; Pregabalin; Cannabis Plant and Resin; Extracts and Tinctures of Cannabis; Delta-9-Tetrahydrocannabinol; Stereoisomers of Tetrahydrocannabinol; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT:

James R. Hunter, Center for Drug Evaluation and Research, Controlled Substance Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5150, Silver Spring, MD 20993–0002, 301–796–3156, email: *james.hunter@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a party to the 1971 Convention on Psychotropic Substances (Psychotropic Convention). Article 2 of the Psychotropic Convention provides that if a party to the convention or WHO has information about a substance, which in its opinion may require international control or change in such control, it shall so notify the Secretary-General of the United Nations (the U.N. Secretary-General) and provide the U.N. Secretary-General with information in support of its opinion.

Paragraph (d)(2)(A) of the CSA (21 U.S.C. 811) (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) provides that when WHO notifies the United States under Article 2 of the Psychotropic Convention that it has information that may justify adding a drug or other substances to one of the schedules of the Psychotropic Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the notice to the Secretary of Health and Human Services (Secretary of HHS). The Secretary of HHS must then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments that will be considered by HHS in its preparation of the scientific and medical evaluations of the drug or substance.

II. WHO Notification

The Secretary of HHS received the following notice from WHO (non-relevant text removed):

Ref.: C.L.26.2018

The World Health Organization (WHO) presents its compliments to Member States and Associate Members and has the pleasure of informing that the 41th Expert Committee on Drug Dependence (ECDD) will meet in Geneva from 12 to 16 November 2018. The 41th ECDD will convene to review psychoactive substances on their potential to cause dependence, abuse and harm to health, and their potential therapeutic applications. WHO will make recommendations to the UN Secretary-General on the need for and level of international control of these substances.

Member States are invited to collaborate, as in the past, in this process by providing pertinent information as requested in the questionnaire and concerning substances under review. At its 126th session in January 2010, the Executive Board approved the publication ''Guidance on the WHO review of psychoactive substances for international control'' (EB126/2010/REC1, Annex 6) which requires the Secretariat to request relevant information from Ministers of Health in Member States to prepare a report for submission to the ECDD.

For this purpose, a questionnaire was designed to gather information on the legitimate use, harmful use, status of national control and potential impact of international control for each substance under evaluation. A list of substances for which Member States will receive questionnaires is attached.

Kindly note that Member States who submitted questionnaire responses that were reviewed at the 40th ECDD on cannabis and cannabis-related substances will not be requested to re-submit questionnaires for those substances for the 41st ECDD. However, if Member States would like to amend their responses or submit additional information on cannabis and cannabis-related substances, it is requested that they inform the Secretariat.

It would be appreciated if a person from the Ministry of Health could be designated as the focal point responsible for coordinating answers to the questionnaires. A list of focal

points designated by Member States for the 40th ECDD in June 2018 is attached. It is requested that if a focal point's contact details including email address are to be added or amended, that Member States inform the Secretariat by 17 September 2018. Any additions or amendments to focal point designations should be emailed to *ecddsecretariat@who.int.*

If no additions or amendments to focal point details are made by this date, the focal point from 2018 will be approached by the Secretariat for questionnaire completion. Where there is a competent National Authority under the International Drug Control Treaties, it is kindly requested that the questionnaires be completed in collaboration with such body.

Once the Secretariat has received the contact details, focal points will be given further instructions and direct access to an online questionnaire. The questionnaires will be analysed by the Secretariat and prepared as a report that will be shared with the Committee for review.

Member States are also encouraged to provide any additional relevant information (unpublished or published) that is available on these substances to: *ecddsecretariat@who.int.* This information will be an invaluable contribution to the ECDD and all submissions will be treated as confidential.

The WHO takes this opportunity to renew to Member States and Associate Members the assurance of its highest consideration.
GENEVA, 21 August 2018

Attachment:

41st WHO Expert Committee on Drug Dependence

Member State Questionnaire Substances

SYNTHETIC CANNABINOIDS

ADB–FUBINACA
FUB–AMB (MMB–FUBINACA, AMB–FUBINACA)
ADB–CHMINACA
CUMYL–4CN–BINACA

FENTANYLS

Cyclopropyl Fentanyl
Methoxyacetyl Fentanyl
Ortho-Fluorofentanyl
Para-Fluoro Butyrfentanyl
Para-Methoxybutyrfentanyl

(METH)CATHINONE

N-Ethylnorpentylone

MEDICINES

Tramadol
Pregabalin

FDA has verified the website addresses contained in the WHO notice, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time. Access to view the WHO questionnaire can be found at *http://www.who.int/medicines/access/controlled-substances/ecdd_41_meeting/en/.*

III. Substances Under WHO Review

ADB–FUBINACA (chemical name: *N*-[1-(aminocarbonyl)-2,2-dimethylpropyl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide) is an indazole-based synthetic cannabinoid that is a potent, full agonist at CB1 receptors. This substance functionally (biologically) mimics the effects of the structurally unrelated delta-9-tetrahydrocannabinol (THC), a Schedule I substance, and the main psychoactive chemical constituent in the cannabis (marijuana) plant. Synthetic cannabinoids have been marketed under the guise of ''herbal incense,'' and promoted by drug traffickers as legal alternatives to marijuana. ADB–FUBINACA use has been associated with serious adverse events including death in the United States. There are no commercial or approved medical uses for ADB–FUBINACA. On April 10, 2017, ADB–FUBINACA was temporarily controlled as a Schedule I substance under the CSA.

FUB–AMB (other names: MMB–FUBINACA; AMB–FUBINACA; chemical name: methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate) is an indazole-based synthetic cannabinoid that is a potent full agonist at CB1 receptors. This substance functionally (biologically) mimics the effects of the structurally unrelated THC, a Schedule I substance, and the main psychoactive chemical constituent in marijuana. Synthetic cannabinoids have been marketed under the guise of ''herbal incense,'' and promoted by drug traffickers as legal alternatives to marijuana. FUB–AMB use has been associated with serious adverse events including death in the United States. There are no commercial or approved medical uses for FUB–AMB. On November 3, 2017, FUB–AMB was temporarily controlled as a Schedule I substance under the CSA.

ADB–CHMINACA (other name: MAB–CHMINACA; chemical name: *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indole-3-carboxamide) is an indazole-based synthetic cannabinoid that is a potent full agonist at CB1 receptors. This substance functionally (biologically) mimics the effects of the structurally THC, a Schedule I substance, and the main psychoactive chemical constituent in marijuana. Synthetic cannabinoids have been marketed under the guise of ''herbal incense,'' and promoted by drug traffickers as legal alternatives to marijuana. ADB–CHMINACA use has been associated with serious adverse events including death in the United States. There are no commercial or approved medical uses for ADB–CHMINACA. On February 5, 2016, ADB–CHMINACA was temporarily controlled as a Schedule I substance under the CSA.

CUMYL–4CN–BINACA (chemical name: 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1 H-indazole-3-carboxamide) is a clandestinely produced indazole-3-carboxamide based synthetic cannabinoid that has been sold online and used to mimic the biological effects of THC, the main psychoactive chemical constituent in marijuana. Synthetic cannabinoids have been marketed under the guise of ''herbal incense,'' and promoted by drug traffickers as legal alternatives to marijuana. Hospital, scientific publications and law enforcement reports show that CUMYL–4CN–BINACA is abused for its psychoactive properties. CUMYL–4CN–BINACA has been associated with serious adverse events in the United States, in addition to multiple deaths in Europe. CUMYL–4CN–BINACA has no commercial or medical uses. On July 10, 2018, CUMYL–4CN–BINACA was temporarily controlled as a Schedule I substance under the CSA.

Cyclopropyl fentanyl is a synthetic opioid that has a pharmacological profile similar to other Schedule I and II controlled opioid substances such as acetyl fentanyl, fentanyl, and other related mu-opioid receptor agonist substances. This clandestinely produced analog of fentanyl is associated with adverse events typically associated with opioid use such as respiratory depression, anxiety, constipation, tiredness, hallucinations, and withdrawal. Cyclopropyl fentanyl has been associated with numerous fatalities. At least 115 confirmed overdose deaths involving cyclopropyl fentanyl abuse have been reported in the United States. Cyclopropyl fentanyl has no commercial or currently accepted medical uses in the United States. On January 4, 2018, cyclopropyl fentanyl was temporarily placed into Schedule I of the CSA.

Methoxyacetyl fentanyl has a pharmacological profile similar to other Schedule I and II opioid substances such as acetyl fentanyl, fentanyl, and other related mu-opioid receptor agonist substances. Evidence suggests that the pattern of abuse of fentanyl analogues, including methoxyacetyl fentanyl is similar to heroin and prescription opioid analgesics. Law enforcement and public health reports demonstrate that methoxyacetyl fentanyl is being illicitly distributed and abused. The Drug Enforcement Administration (DEA) is aware of at least two overdose deaths associated with the abuse of methoxyacetyl fentanyl in the United

States. Methoxyacetyl fentanyl has no currently accepted medical use in treatment in the United States. On October 26, 2017, methoxyacetyl fentanyl was temporarily placed into Schedule I of the CSA.

Ortho-fluorofentanyl has a pharmacological profile similar to fentanyl and other related mu-opioid receptor agonist. *Ortho*-fluorofentanyl has no currently accepted medical use in treatment in the United States. *Ortho*-fluorofentanyl has been encountered by law enforcement and public health officials. The DEA has received reports for at least 13 confirmed overdose deaths involving *ortho*-fluorofentanyl abuse in the United States. On October 26, 2017, *ortho*-fluorofentanyl was temporarily placed into Schedule I of the CSA.

Para-fluorobutyrfentanyl shares pharmacological profile with other Schedule I (*e.g.,* butyryl fentanyl) and II (*e.g.,* fentanyl) opioid substances. *Para*-fluorobutyrfentanyl has no currently accepted medical use in treatment in the United States. The abuse of *para*-fluorobutyrfentanyl carries public health risks similar to that of heroin, fentanyl, and prescription opioid analgesics. On February 1, 2018, *para*-fluorobutyrfentanyl was temporarily placed into Schedule I of the CSA.

Para-methoxybutyrfentanyl shares pharmacological profile with other Schedule I (*e.g.,* butyryl fentanyl) and II (*e.g.,* fentanyl) opioid substances. *Para*-methoxybutyrfentanyl has no currently accepted medical use in treatment in the United States. The abuse of *para*-methoxybutyrfentanyl carries public health risks similar to that of heroin, fentanyl, and prescription opioid analgesics. On February 1, 2018, *para*-methoxybutyrfentanyl was temporarily placed into Schedule I of the CSA.

N-ethylnorpentylone (other name: *N*-ethylpentylone) is a synthetic cathinone with stimulant and psychoactive properties similar to cathinone, a Schedule I substance. *N*-ethylpentylone abuse has been associated with adverse health effects leading to emergency department admissions, and deaths. *N*-ethylpentylone has no currently accepted medical use in treatment in the United States. On August 31, 2018, *N*-ethylnorpentylone was temporarily controlled as a Schedule I substance under the CSA.

Tramadol, an opioid analgesic, was first approved by the FDA for medical use in March of 1995 for the treatment of moderate to moderately severe pain. It is available as immediate-release, extended-release, and combination products containing acetaminophen. Tramadol has been abused alone or in combination with other psychoactive substances. On July 2, 2014, the DEA issued a Final Rule controlling tramadol as a Schedule IV substance under the CSA with effective date of August 18, 2014.

The ECDD pre-reviewed tramadol at its 39th meeting in November 2017 noting growing evidence of abuse of tramadol in many countries, in some cases serious, accompanied by adverse reactions and tramadol-associated deaths and recommending that tramadol be subject to a critical review at a subsequent meeting.

Pregabalin is an FDA-approved medication in the United States and is available as an oral capsule and oral solution and approved for the management of neuropathic pain associated with diabetic peripheral neuropathy, postherpetic neuralgia, and adjunctive therapy for partial onset seizures, fibromyalgia, and neuropathic pain associated with spinal cord injury. Although the mechanism of action of pregabalin is unknown, pregabalin is thought to produce its therapeutic effects on neuropathic pain via binding with high affinity to the alpha 2-delta receptor site (a subunit of voltage gated calcium channels) within the central nervous system. Reports indicate that patients are self-administering higher than recommended doses to achieve euphoria, especially patients who have a history of substance abuse, particularly opioids. While effects of excessively high doses are generally non-lethal, gabapentinoids such as pregabalin are increasingly being identified in postmortem toxicology analyses. Pregabalin is a Schedule V controlled substance in the United States under the CSA. At its 39th meeting in November 2017, the WHO Expert Committee on Drug Dependence (ECDD) pre-reviewed pregabalin and, noting increasing evidence of misuse and abuse in many countries, the ECDD recommended that pregabalin be subject to a future critical review.

Cannabis, also known as marijuana, is a plant known by biological names *Cannabis sativa* or *Cannabis indica.* It is a complex plant substance containing multiple cannabinoids and other compounds, including the psychoactive chemical THC and other structurally similar compounds. Cannabinoids are defined as having activity at cannabinoid 1 and 2 (CB1 and CB2 respectively) receptors. Agonists of CB1 receptors are widely abused and are known to modulate motor coordination, memory processing, pain, and inflammation, and have anxiolytic effects.

The principal cannabinoids in the cannabis plant include THC, cannabidiol (CBD), and cannabinol. These substances are controlled in Schedule I under the CSA. The synthetically derived single pure stereoisomer, (−)-trans-delta-9-THC (also known as dronabinol) is the active ingredient in two approved drug products in the United States, MARINOL (dronabinol) capsules (and generics) and SYNDROS (dronabinol) oral solution. MARINOL is controlled in Schedule III, while SYNDROS is controlled in Schedule II under the CSA. Both MARINOL and SYNDROS are approved to treat anorexia associated with weight loss in patients with acquired immunodeficiency syndrome (AIDS), and nausea and vomiting associated with cancer chemotherapy in patients who have failed to respond adequately to conventional treatment.

CBD is another cannabinoid constituent of the cannabis plant. In the United States, one CBD-containing product, Epidiolex oral solution, has received marketing approval by FDA for the treatment of seizures associated with two rare and severe forms of epilepsy, Lennox-Gastaut syndrome and Dravet syndrome, in patients 2 years of age and older. The CBD in Epidiolex is extracted and purified from the cannabis plant. Currently, CBD is controlled generally as a Schedule I substance under the CSA. However, the recent scheduling action on September 28, 2018, by the DEA for Epidiolex, and any future, similar formulations of CBD that become FDA-approved medications, places these FDA-approved CBD formulations in Schedule V under the CSA.[1] CBD is not specifically listed in the schedules of the 1961, 1971, or 1988 International Drug Control conventions.

At the 40th (2018) meeting of the ECDD, the committee critically-reviewed CBD and pre-reviews of cannabis plant and resin; extracts and tinctures of cannabis; THC; and isomers of THC. The 40th ECDD recommended that preparations considered to be pure CBD should not be scheduled within the International Drug Control Conventions, and that cannabis plant and resin; extracts and tinctures of cannabis; THC; and isomers of THC proceed to a Critical Review.

IV. Opportunity To Submit Domestic Information

As required by paragraph (d)(2)(A) of the CSA, FDA, on behalf of HHS, invites

[1] *https://www.ecfr.gov/cgi-bin/text-idx?SID=f43ff6b6883b0b81774fab03dcea8fa5&mc=true&node=pt21.9.1308&rgn=div5#se21.9.1308_115.*

interested persons to submit comments regarding the 16 drug substances. Any comments received will be considered by HHS when it prepares a scientific and medical evaluation for drug substances that is responsive to the WHO Questionnaire for these drug substances. HHS will forward such evaluation of these drug substances to WHO, for WHO's consideration in deciding whether to recommend international control/decontrol of any of these drug substances. Such control could limit, among other things, the manufacture and distribution (import/export) of these drug substances and could impose certain recordkeeping requirements on them.

Although FDA is, through this notice, requesting comments from interested persons, which will be considered by HHS when it prepares an evaluation of these drug substances, HHS will not now make any recommendations to WHO regarding whether any of these drugs should be subjected to international controls. Instead, HHS will defer such consideration until WHO has made official recommendations to the Commission on Narcotic Drugs, which are expected to be made in mid-2018. Any HHS position regarding international control of these drug substances will be preceded by another **Federal Register** notice soliciting public comments, as required by paragraph (d)(2)(B) of the CSA.

Dated: October 3, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21954 Filed 10–9–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA 2016–D–1254]

Assessing Adhesion With Transdermal and Topical Delivery Systems for Abbreviated New Drug Applications; Revised Draft Guidance 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 a revised draft guidance for industry entitled ''Assessing Adhesion With Transdermal and Topical Delivery Systems for ANDAs.'' This revised draft guidance supersedes the draft guidance entitled ''Assessing Adhesion with Transdermal Delivery Systems and Topical Patches for ANDAs,'' which was announced in the **Federal Register** on June 1, 2016. This revised draft guidance provides recommendations for the design and conduct of studies evaluating the adhesive performance of a transdermal or a topical delivery system (collectively referred to as TDS). Depending on the objectives of a TDS product development program, applicants may choose to evaluate TDS adhesion in clinical studies performed to evaluate TDS adhesion only or in clinical studies performed with a combined purpose (*e.g.,* for the simultaneous evaluation of adhesion and bioequivalence (BE) with pharmacokinetic (PK) endpoints). The recommendations in this revised draft guidance relate exclusively to studies submitted in support of an abbreviated new drug application (ANDA).

DATES: Submit either electronic or written comments on the revised draft guidance by December 10, 2018 to ensure that the Agency considers your comment on this revised 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 2016–D–1254 for ''Assessing Adhesion With Transdermal and Topical Delivery Systems for ANDAs.'' 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 this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Kris Andre, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4728, Silver Spring, MD 20993–0002, 240–402–7959.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance for industry entitled ''Assessing Adhesion With Transdermal and Topical Delivery Systems for ANDAs.'' This revised draft guidance supersedes the draft guidance entitled ''Assessing Adhesion with Transdermal Delivery Systems and Topical Patches for ANDAs,'' which was announced in the **Federal Register** on June 1, 2016 (81 FR 35025). FDA received six comments on the draft guidance, which were considered before publication of this revised draft guidance.

This revised draft guidance provides recommendations for the design and conduct of studies evaluating the adhesive performance of a TDS submitted in support of an ANDA. Depending on the objectives of a TDS product development program, applicants may choose to evaluate TDS adhesion in studies performed to evaluate TDS adhesion only or in studies performed with a combined purpose (*e.g.,* for the simultaneous evaluation of adhesion and BE with PK endpoints). FDA recommends that applicants consult this revised draft guidance in conjunction with any relevant product-specific guidances for industry, when considering the design and conduct of studies that may be appropriate to support the BE of a proposed generic TDS product to its reference listed drug and/or reference standard product.

During the product's labeled wear period, a TDS is reasonably expected to encounter torsional strains arising from body movements, changes in environmental temperature or humidity such as the daily exposure to water (*e.g.,* during routine showering), and contact with clothing, bedding, or other surfaces. TDS products that do not maintain consistent and uniform adhesion with the skin during the labeled wear period can experience varying degrees of TDS detachment, including complete detachment, at different times during the product wear.

When the adhesion characteristics of a TDS are not sufficiently robust, as evaluated against its labeled conditions of use, the TDS may exhibit variability in the surface area that is in contact with the skin. For example, when a TDS is partially detached, there may be uncertainty about the resulting drug delivery profile and, hence, uncertainty about the rate and extent of drug absorption from the TDS. When the potential for complete detachment of the TDS increases, the risk of unintentional exposure of the drug product to an unintended recipient (*e.g.,* a household member who may be a child) also increases.

This revised draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The revised draft guidance, when finalized, will represent the current thinking of FDA on ''Assessing Adhesion With Transdermal and Topical Delivery Systems for ANDAs.'' 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.

II. Paperwork Reduction Act of 1995

This revised draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 314 have been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: October 3, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21959 Filed 10–9–18; 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 December 10, 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 September 14, 2018.

This notice announces new or revised draft product-specific guidances that are being posted on FDA's website concurrently with FDA's new draft guidance for industry entitled ''Assessing the Irritation and Sensitization Potential of Transdermal and Topical Delivery Systems for ANDAs'' and FDA's revised draft guidance for industry entitled ''Assessing Adhesion With Transdermal and Topical Delivery Systems for ANDAs.'' FDA recommends that applicants consult the relevant product-specific guidance, in conjunction with the guidances referenced above, when considering the design and conduct of studies that may be appropriate to support a topical delivery system product intended for submission in an ANDA.

II. Drug Products for Which New Draft Product-Specific Guidances Are Available

FDA is announcing the availability of 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

Capsaicin
Estradiol; Norethindrone acetate

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

Buprenorphine
Clonidine
Diclofenac epolamine
Estradiol (multiple Reference Listed Drugs)
Ethinyl estradiol; Norelgestromin
Fentanyl
Granisetron
Lidocaine
Menthol; Methyl salicylate
Methylphenidate
Nicotine

TABLE 2—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS—Continued

Nitroglycerin (multiple Reference Listed Drugs)
Oxybutynin (multiple Reference Listed Drugs)
Rivastigmine
Rotigotine
Scopolamine
Selegiline
Testosterone

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: October 3, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21957 Filed 10–9–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–3546]

Assessing the Irritation and Sensitization Potential of Transdermal and Topical Delivery Systems for Abbreviated New Drug Applications; Draft Guidance 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 a draft guidance for industry entitled ''Assessing the Irritation and Sensitization Potential of Transdermal and Topical Delivery Systems for ANDAs.'' This draft guidance provides recommendations for the design and conduct of studies to evaluate the in vivo skin irritation and sensitization (I/S) potential of a proposed transdermal or topical delivery system (collectively referred to as TDS). The recommendations in this draft guidance relate exclusively to studies submitted in support of an abbreviated new drug application (ANDA).

DATES: Submit either electronic or written comments on the draft guidance by December 10, 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–2018–D–3546 for ''Assessing the Irritation and Sensitization Potential of Transdermal and Topical Delivery Systems for ANDAs.'' 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 guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food

and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. 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 document.

FOR FURTHER INFORMATION CONTACT: Diana Solana-Sodeinde, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 2724, Silver Spring, MD 20993–0002, 240–402–3908.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Assessing the Irritation and Sensitization Potential of Transdermal and Topical Delivery Systems for ANDAs.''

The components and composition of a TDS formulation, including the nature of the drug substance and/or the occlusivity of the TDS materials, in conjunction with other factors such as the environmental humidity or the condition of the skin, may have the potential to irritate the skin or lead to a sensitization reaction. Such reactions can be unpleasant to the patient and may affect patient compliance, skin permeability, and/or adhesion of the TDS to the skin. The collective consequence of these potential effects could create uncertainty about the resulting drug delivery profile and uncertainty about the rate and extent of drug absorption from the TDS. Therefore, applicants should perform a comparative assessment of the test (T) and reference (R) TDS products using an appropriately designed skin I/S study with human subjects to demonstrate that the potential for a skin irritation or sensitization reaction with the T TDS is no worse than the reaction observed with the R TDS.

This draft guidance provides recommendations for the design and conduct of studies to evaluate the in vivo skin I/S potential of a proposed TDS. The recommendations in this draft guidance relate exclusively to studies submitted in support of an ANDA.

The Agency is seeking comments on the recommendations reflected in the draft guidance announced in this notice. In addition, FDA invites comments on the scales and any alternative approaches, including those recommended by international regulatory agencies, that may have been used with success for the comparative assessment of the I/S potential for proposed generic TDS products. FDA also specifically invites comments regarding the comparative assessment of sensitization itself, *i.e.,* whether there are clinical scenarios where a comparative sensitization assessment may be uninformative when done in addition to a comparative irritation assessment.

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 ''Assessing the Irritation and Sensitization Potential of Transdermal and Topical Delivery Systems for ANDAs.'' 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.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 314.94 have been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: October 3, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21958 Filed 10–9–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurobiology of Learning and Memory.
Date: October 24, 2018.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street NW, Washington, DC 20037.
Contact Person: Alexei Kondratyev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *kondratyevad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Health Disparities in and Caregiving for Alzheimer's Disease.
Date: November 2, 2018.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Gabriel B. Fosu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Infectious Diseases and Microbiology.
Date: November 5–6, 2018.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Palomar, 2121 P Street NW, Washington, DC 20037.
Contact Person: Tamara Lyn McNealy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, Bethesda, MD 20892, 301–827–2372, *tamara.mcnealy@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Risk, Prevention and Health Behavior.
Date: November 5–6, 2018.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.
Contact Person: Martha M. Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 435–3575, *faradaym@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering Sciences and Technologies.

Date: November 5, 2018.
Time: 11:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).
Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 404–7419, *rosenzweign@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Nephrology.
Date: November 5, 2018.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Julia Spencer Barthold, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, *julia.barthold@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Traumatic Brain Injury.
Date: November 5, 2018.
Time: 1:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892–7846, 301–435–1254, *yakovleva@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Healthcare Delivery and Methodologies.
Date: November 5, 2018.
Time: 12:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jacinta Bronte-Tinkew, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 806–0009, *brontetinkewjm@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 2, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–21898 Filed 10–9–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4396–DR; Docket ID FEMA–2018–0001]

Commonwealth of the Northern Mariana Islands; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of the Northern Mariana Islands (FEMA–4396–DR), dated September 29, 2018, and related determinations.

DATES: The declaration was issued September 29, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 29, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of the Northern Mariana Islands resulting from Typhoon Mangkhut during the period of September 10 to September 11, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of the Northern Mariana Islands.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Benigno Bern Ruiz, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of the Northern Mariana Islands have been designated as adversely affected by this major disaster:

The islands of Rota, Saipan, and Tinian for Individual Assistance.

The islands of Rota, Saipan and Tinian for Public Assistance.

All areas within the Commonwealth of the Northern Mariana Islands are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–21927 Filed 10–9–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4366–DR; Docket ID FEMA–2018–0001]

Hawaii; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Hawaii (FEMA–4366–DR), dated May 11, 2018, and related determinations.

DATES: The amendment was issued on October 2, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Dolph A. Diemont, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Benigno Bern Ruiz as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–21915 Filed 10–9–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4397–DR; Docket ID FEMA–2018–0001]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–4397–DR), dated October 1, 2018, and related determinations.

DATES: The declaration was issued October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 1, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New York resulting from severe storms and flooding during the period of August 13 to August 15, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Seamus K. Leary, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New York have been designated as adversely affected by this major disaster:

Broome, Chemung, Chenango, Delaware, Schuyler, Seneca, and Tioga Counties for Public Assistance.

All areas within the State of New York are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–21923 Filed 10–9–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4393–DR; Docket ID FEMA–2018–0001]

North Carolina; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4393–DR), dated September 14, 2018, and related determinations.

DATES: This amendment was issued September 24, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 14, 2018.

Hoke, Hyde, Johnston, Lee, Moore, Pitt, Richmond, Scotland, and Wilson Counties for Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–21917 Filed 10–9–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4398–DR; Docket ID FEMA–2018–0001]

Guam; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the territory of Guam (FEMA–4398–DR), dated October 1, 2018, and related determinations.

DATES: The declaration was issued October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 1, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage to the territory of Guam resulting from Typhoon Mangkhut during the period of September 10 to September 11, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the territory of Guam.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the territory. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Benigno Bern Ruiz, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the territory of Guam have been designated as adversely affected by this major disaster:

The territory of Guam for Public Assistance.

All areas within the territory of Guam are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–21925 Filed 10–9–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4382–DR; Docket ID FEMA–2018–0001]

California; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA–4382–DR), dated August 4, 2018, and related determinations.

DATES: This amendment was issued October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 19, 2018.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–21916 Filed 10–9–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of determination.

SUMMARY: The Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border of the United States in Cameron County in the State of Texas.

DATES: This determination takes effect on October 10, 2018.

SUPPLEMENTARY INFORMATION: Important mission requirements of the Department of Homeland Security (''DHS'') include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation's national security. Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109–367, § 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Congress defined ''operational control'' as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. *Id.* Consistent with that mandate from Congress, the President's Executive Order on Border Security and Immigration Enforcement Improvements directed executive departments and agencies to deploy all lawful means to secure the southern border. Executive Order 13767, § 1. In order to achieve that end, the President directed, among other things, that I take immediate steps to prevent all unlawful entries into the United States, including the immediate construction of physical infrastructure to prevent illegal entry. Executive Order 13767, § 4(a).

Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS's border security mission. One of those authorities is found at section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (''IIRIRA''). Public Law 104–208, Div. C, 110 Stat. 3009–546, 3009–554 (Sept. 30, 1996) (8 U.S.C. 1103 note), as amended by the REAL ID Act of 2005, Public Law 109–13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109–367, § 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, Div. E, Title V, § 564, 121 Stat. 2090 (Dec. 26, 2007). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

Determination and Waiver

Section 1

The United States Border Patrol's Rio Grande Valley Sector is an area of high illegal entry. For the last several years, the Rio Grande Valley Sector has seen more apprehensions of illegal aliens than any other sector of the United States Border Patrol (''Border Patrol''). For example, in fiscal year 2017 alone, Border Patrol apprehended over 137,000 illegal aliens. In that same year Border Patrol seized approximately 260,000 pounds of marijuana and approximately 1,200 pounds of cocaine.

In order to satisfy the need for additional border infrastructure in the Rio Grande Valley Sector, DHS will take action to construct barriers and roads. DHS will construct mechanical gates and roads within gaps of existing barriers in the vicinity of the United States border in the Rio Grande Valley Sector. The segments of the border within which such construction will occur are referred to herein as the ''project area'' and are more specifically described in Section 2 below.

Section 2

I determine that the following areas in the vicinity of the United States border, located in Cameron County in the State of Texas, within the United States Border Patrol's Rio Grande Valley Sector, are areas of high illegal entry (the ''project area''):

- Starting approximately three-tenths (0.3) of a mile west of a gap in the existing levee wall commonly referred to as the Anacua gate location, which is situated at the intersection of Wichita Street and the International Boundary and Water Commission (IBWC) levee approximately one and one-half (1.5) miles south of the intersection of Wichita Street with US Route 281, and extending to approximately three-tenths (0.3) of a mile east of the Anacua gate location.
- Starting approximately three-tenths (0.3) of a mile west of a gap in the existing levee wall commonly referred to as the Webber Road gate location, which is situated at the intersection of Webber Road and the IBWC levee located approximately eight-tenths (0.8) of a mile southwest of the intersection of Webber Road with US Route 281, and extending approximately three-tenths (0.3) of a mile east of the Webber Road gate location.
- Starting approximately three-tenths (0.3) of a mile southwest of a gap in the existing levee wall commonly referred to as the Cantu Road gate location, which is situated at the intersection of Avilia Road and the IBWC levee located approximately eight-tenths of a mile south of the intersection of Avilia Road with US Route 281, and extending approximately three-tenths (0.3) of a mile northeast of the Cantu Road gate location.
- Starting approximately three-tenths (0.3) of a mile west of a gap in the existing levee wall commonly referred to as the Garza Sandpit Road gate location, which is situated at the intersection of the County Road 677 and the IBWC levee located approximately two-tenths (0.2) of a mile southwest of the intersection of County Road 677 with US Route 281, and extending approximately three-tenths (0.3) of a mile northeast of the Garza Sandpit Road gate location.
- Starting approximately three-tenths (0.3) of a mile northwest of a gap in the existing levee wall commonly referred to as the Pool Road gate location, which is situated at the intersection of Domanski Drive with the IBWC levee located approximately one (1) mile south of the intersection of Domanski Drive and US Route 281, and extending approximately three-tenths (0.3) of a mile southeast of the Pool Road gate location.
- Starting approximately three-tenths (0.3) of a mile northwest of a gap in the existing levee wall commonly referred to as the Flor De Mayo gate location, which is situated at the intersection of Flor De Mayo Road and the IBWC levee located approximately seven-tenths (0.7) of a mile southwest of the intersection of Flor De Mayo Road with US Route 281, and extending approximately three-tenths (0.3) of a mile southeast of the Flor De Mayo Road gate location.
- Starting approximately three-tenths (0.3) of a mile northwest of a gap in the existing levee wall commonly referred to as the Impala Road gate location, which is situated at the intersection of

an unnamed road and the IBWC levee (said unnamed road is approximately 250 feet long from its point of intersection with the IBWC levee and a point located approximately 100 feet northwest of the intersection of Impala Drive and Gazelle Avenue) located approximately one (1) mile east of the Brownsville/Veterans Port of Entry, and extending approximately three-tenths (0.3) of a mile southeast of the Impala Road gate location.

- Starting approximately three-tenths (0.3) of a mile west of a gap in the existing levee wall commonly referred to as the South Point Road gate location, which is situated at the intersection of South Point Road and the IBWC levee located approximately seven-tenths (0.7) of a mile south of the intersection of South Point Road with Southmost Boulevard, and extending approximately three-tenths (0.3) of a mile northeast of the South Point Road gate location.
- Starting approximately three-tenths (0.3) of a mile south of a gap in the existing levee wall commonly referred to as the Loops Sandpit gate location, which is situated at the intersection of an unnamed road and the IBWC levee located approximately 65 feet east of the intersection of Alaska Road with S. Oklahoma Drive, and extending approximately three-tenths (0.3) of a mile north of the Loops Sandpit gate location.
- Starting approximately three-tenths (0.3) of a mile south of a gap in the existing levee wall commonly referred to as the Implement Shed gate location, which is situated at the intersection of County Road 142 and the IBWC levee located approximately 675 feet east of the intersection of Oklahoma Avenue with County Road 142, and extending approximately three-tenths (0.3) of a mile north of the Implement Shed gate location.
- Starting approximately three-tenths (0.3) of a mile south of a gap in the existing levee wall commonly referred to as the Florida Road gate location, which is situated at the intersection of Florida Road and the IBWC levee located approximately 600 feet east of the intersection of Oklahoma Avenue with Florida Road, and extending approximately three-tenths (0.3) of a mile north of the Florida Road gate location.

There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project area. In order to ensure the expeditious construction of the barriers and roads in the project area, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the project area, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project area, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended: The National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*)); the Endangered Species Act (Pub. L. 93–205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 *et seq.*)); the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 *et seq.*)); the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Pub. L. 113–287 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 *et seq.,* now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 *et seq.*)); the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*); the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*); the Clean Air Act (42 U.S.C. 7401 *et seq.*); the Archeological Resources Protection Act (Pub. L. 96–95 (16 U.S.C. 470aa *et seq.*)); the Paleontological Resources Preservation Act (16 U.S.C. 470aaa *et seq.*); the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301 *et seq.*); the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); the Noise Control Act (42 U.S.C. 4901 *et seq.*); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*); the Archaeological and Historic Preservation Act (Pub. L. 86–523, as amended, repealed, or replaced by Pub. L. 113–287 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 469 *et seq.,* now codified at 54 U.S.C. 312502 *et seq.*)); the Antiquities Act (formerly codified at 16 U.S.C. 431 *et seq.,* now codified 54 U.S.C. 320301 *et seq.*); the Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 *et seq.,* now codified at 54 U.S.C. 3201–320303 & 320101–320106); the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*); the Coastal Zone Management Act (Pub. L. 92–583 (16 U.S.C. 1451, *et seq.*)); the Federal Land Policy and Management Act (Pub. L. 94–579 (43 U.S.C. 1701 *et seq.*)); the National Wildlife Refuge System Administration Act (Pub. L. 89–669, 16 U.S.C. 668dd–668ee); National Fish and Wildlife Act of 1956 (Pub. L. 84–1024 (16 U.S.C. 742a, *et seq.*)); the Fish and Wildlife Coordination Act (Pub. L. 73–121 (16 U.S.C. 661 *et seq.*)); the Administrative Procedure Act (5 U.S.C. 551 *et seq.*); the River and Harbors Act of 1899 (33 U.S.C. 403)); the Eagle Protection Act (16 U.S.C. 668 *et seq.*); the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*); and the American Indian Religious Freedom Act (42 U.S.C. 1996).

This waiver does not revoke or supersede the previous waiver published in the **Federal Register** on April 8, 2008 (73 FR 19078), which shall remain in full force and effect in accordance with its terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

Dated: October 2, 2018.

Kirstjen M. Nielsen,

Secretary of Homeland Security.

[FR Doc. 2018–21930 Filed 10–9–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2018–N094; FXES11130200000–189–FF02ENEH00]

U.S. Endangered Species; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct activities intended to recover and enhance endangered species survival. With some exceptions, the Endangered Species Act of 1973, as amended (ESA), prohibits certain activities that may impact endangered species unless a Federal permit allows such activity. The ESA also requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please send your written comments by November 9, 2018.

ADDRESSES: *Document availability:* Request documents by phone or email: Susan Jacobsen, 505–248–6641, *susan_jacobsen@fws.gov.*

Comment submission: Submit comments by U.S. mail to Susan Jacobsen, Classification and Recovery Division, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103. Please specify the permit you are interested in by number (*e.g.,* Permit No. TE–123456).

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Classification and Restoration Division, 505–248–6641.

SUPPLEMENTARY INFORMATION:

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing but also such activities as pursuing, harassing, trapping, capturing, or collecting.

The ESA and our implementing regulations in the Code of Federal Regulations (CFR) title 50, part 17, provide for issuing such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit we issue under the ESA, section 10(a)(1)(A), authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or enhance the species' propagation or survival. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Documents and other information submitted with these applications are available for review by any party who submits a request as specified in **ADDRESSES**. Releasing documents is subject to the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552) requirements.

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. We invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Please refer to the application number when submitting comments.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE–93531C	Stewart, Justin; Austin, Texas.	Golden-cheeked Warbler (*Setophaga chrysoparia*).	Texas	Presence/absence surveys	Harm, harass	New.
TE–85341C	Ward, William A.; Oklahoma City, Oklahoma.	American Burying Beetle (*Nicrophorus americanus*).	Oklahoma	Presence/absence surveys, habitat surveys.	Capture, injury, death	New.
TE–85337C	Barnes, Bradley W.; Moore, Oklahoma.	American Burying Beetle (*Nicrophorus americanus*).	Oklahoma	Presence/absence surveys, habitat surveys.	Capture, injury, death	New.
TE–85444C	Chickasaw Nation; Ada, Oklahoma.	American Burying Beetle (*Nicrophorus americanus*).	Oklahoma, Texas	Presence/absence surveys	Capture, injury, death	New.
TE–038055	University of New Mexico, Dr. Turner; Albuquerque, New Mexico.	Rio Grande Silvery Minnow (*Hybognathus amarus*), Spikedace (*Meda fulgida*), Loach Minnow (*Tiaroga cobitis*).	New Mexico, Arizona	Aquatic sampling/surveying (electrofishing, seines, dip-nets, block nets, and kick seines, others methods as approved), collect fin-clips.	Capture, injury, death, collect.	Renew.
TE–023159B	Southwestern Ornithological Research and Adventures (SORA), Albuquerque, New Mexico.	Western Yellow-billed Cuckoo (*Coccyzus americanus*), Lesser Prairie-Chicken (*Tympanuchus pallidicinctus*), Mexican Spotted Owl (*Strix occidentalis lucida*), Northern Aplomado Falcon (*Falco femoralis septentrionalis*), Southwestern Willow Flycatcher (*Empidonax traillii extimus*).	New Mexico, Texas	Ground surveys, presence/absence surveys, breeding surveys.	Harm, harass, injury, death.	Renew.
TE–082492	Hancock, Charles Dean; Youngsville, New Mexico.	Southwestern Willow Flycatcher (*Empidonax traillii extimus*), Mexican Spotted Owl (*Strix occidentalis lucida*), Western Yellow-billed Cuckoo (*Coccyzus americanus*), Jemez Mountain Salamander (*Plethodon neomexicanus*).	New Mexico	Presence/absence surveys, mist-netting, nest boxes, hand capture.	Capture, collect, harm, harass, injury, death.	Renew.
TE–85591C	Jarrell, Jared M.; Tulsa, Oklahoma.	American Burying Beetle (*Nicrophorus americanus*).	Oklahoma	Presence/absence surveys	Capture, injury, death	New.
TE–001623	American Southwest Ichthyological Researchers (ASIR), Dr. Dudley; Albuquerque, New Mexico.	Arkansas River Shiner (*Notropis girardi*), Colorado Pikeminnow (*Ptychocheilus lucius*), Razorback Sucker (*Xyrauchen texanus*), Humpback Chub (*Gila cypha*), Gila Chub (*Gila intermedia*), Rio Grande Silvery Minnow (*Hybognathus amarus*), Spikedace (*Meda fulgida*), Loach Minnow (*Tiaroga cobitis*).	Arizona, Colorado, New Mexico, Utah.	Population monitoring, spawning activities, downstream transport studies, surveys, collection, fin clips, salvage, seines, dip nets, electrofishing.	Capture, collect, injury, death.	Renewal.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE–837751	U.S Bureau of Reclamation; Glendale, Arizona.	Southwestern Willow Flycatcher (*Empidonax traillii extimus*), Western Yellow-billed Cuckoo (*Coccyzus americanus*), Northern Mexican gartersnake (*Thamnophis eques megalops*), Narrow-headed gartersnake (*Thamnophis rufipunctatus*), Chiricahua Leopard Frog (*Lithobates chiricahuensis*), Pima Pineapple Cactus (*Coryphantha scheeri var. robustispina*), Yuma Clapper Rail (*Rallus obsoletus yumanensis*), Desert Pupfish (*Cyprinodon macularius*), Gila Topminnow (*Poeciliopsis occidentalis*), Colorado Pikeminnow (*Ptychocheilus lucius*), Spikedace (*Meda fulgida*), Loach Minnow (*Tiaroga cobitis*), Razorback Sucker (*Xyrauchen texanus*), Woundfin (*Plagopterus argentissimus*).	Arizona	Surveys, Trapping, Capture, Electrofishing.	Collect, harass, injury, death.	Amend.
TE–88641C	Perkins, Steve; Farmington, New Mexico.	Knowlton's Cactus (*Pediocacurs knowltonii*), Kuenzler Hedgehog Cactus (*Echinocereus fendleri var. kuenzleri*), Lee Pincushion Cactus (*Escobaria sneedii var. leei*), Mesa Verde Cactus (*Sclerocactus mesaeverdae*), Sneed Pincushion Cactus (Escobaria sneedii var. sneedii), Zuni Fleabane (*Erigeron rhizomatus*), Holy Ghost Ipomopsis (*Ipomopsis sancti-spiritus*), Mancos Milkvetch (*Astragalus humillimus*), Todsen's Pennyroyal (*Hedeoma todsenii*), Sacramento Prickly Poppy (*Argemone pleiacantha ssp. pinnatisecta*), Pecos Sunflower (*Helianthus paradoxus*), Sacramento Mountains Thistle (*Cirsium vinaceum*), Gypsum Wild-Buckwheat (*Eriogonum gossypinum)*.	New Mexico	Presense/absence surveys	N/A	New.
TE–819458	National Park Service, Organ Pipe Cactus National Monument); Ajo, Arizona.	Sonoyta Mud Turtle (*Kinosternon sonoriense longifemorale*).	Arizona	Population surveys, trapping.	Trap, injury, death	Amend.
TE–00974A	McLean, Jesse M.; Dallas Texas.	Golden-cheeked Warbler (*Setophaga chrysoparia*).	Texas	Presence/absence surveys	Harass, injury, death	Renew.
TE–85338C	McCoy, Chad B.; Oklahoma City, Oklahoma.	American Burying Beetle (*Nicrophorus americanus*).	Oklahoma	Presence/absence surveys, habitat surveys.	Capture, injury, death	New.
TE–041875	University of Arizona, Dr. Koprowski; Tucson, Arizona.	Sonoran Tiger Salamander (*Ambystoma tigrinum stebbinsi*), Mount Graham Red Squirrel (*Tamiasciurus hudsonicus grahamensis*).	Arizona	Trap, tissue sample, radio-collar, mark, release, monitor, recapture.	Capture, collect, injury, death.	Renew.
TE–64710A	Jackson, Jacob T.; Austin, Texas.	Houston Toad (*Bufo Houstontoadensis*).	Texas	Surveys, capture, relocation/salvage.	Capture, collect, injury, death.	Renew.
TE–90005C	Patterson, Rande; Houston, Texas.	American Burying Beetle (*Nicrophorus americanus*).	Oklahoma, Texas	Presence/absence surveys	Capture, injury, death	New.
TE–93537C	Turtle Island Restoration Network; Galveston, Texas.	Kemp's Ridley Sea Turtle (*Lepidochelys kempii*), Green Sea Turtle (*Chelonia mydas*), Loggerhead Sea Turtle (*Caretta caretta*), Hawksbill Sea Turtle (*Eretmochelys imbricata*), Leatherback Sea Turtle (*Dermochelys coriacea*).	Texas	Nesting surveys, capture, relocation and release, sample collection.	Capture, collect, injury, death.	New.
TE–053109	Stefferud, Sally E.; Phoenix, Arizona.	Desert Pupfish (*Cyprinodon macularius*), Gila Topminnow (*Poeciliopsis occidentalis*).	Arizona	Surveys, Trapping, Capture, Electrofishing.	Collect, harass, injury, death.	Renew.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE–79697C	Clark, Barrett R.; Kyle, Texas.	Coffin Cave mold beetle (*Batrisodes texanus*), Helotes mold beetle (*B. venyivi*), Robber Baron Cave meshweaver (*Cicurina baronia*), Madla Cave meshweaver (*C. madla*), Bracken Bat Cave meshweaver (*C. venii*), Government Canyon Bat Cave spider (*Neoleptoneta microps*), Tooth Cave spider (*N. myopica*), ground beetle (*Rhadine exilis*), ground beetle (*R. infernalis*), Kretschmarr Cave mold beetle (*Tartarocregris texana*), Cokendolpher Cave harvestman (*Texella cokendolpheri*), Bee Creek Cave harvestman (T. *reddelli*), Bone Cave harvestman (*T. reyesi*), diminutive amphipod (*Gammarus hyalleloides*), Pecos amphipod (*G. pecos*), Comal Springs riffle beetle (*Heterlmis comalensis*), Peck's Cave amphipod (*Stygobromus pecki*), Comal Springs dryopid beetle (*S. comalensis*).	Texas	Presence/absence surveys	Harm and harass	New.
TE–833851	City of Austin; Austin, Texas.	Barton Springs salamander (*Eurycea sosorum*), Austin blind salamander (*E. waterlooensis*), Jollyville Plateau salamander (E. tonkawae), San Marcos salamander, (*E. nana*).	Texas	Surveys, Marking, Tail-clipping.	Collect, harass, injury, death.	Renew.
TE–069320	Groundwater and Environmental Services, Inc.; Lewisville, Texas.	Interior least tern (*Sterna antillarum athalassos*), piping plover (*Charadrius melodus*), red-cockaded woodpecker (*Picoides borealis*), American Burying Beetle (*Nicrophorus americanus*), fountain darter (*Etheostoma fonticola*).	Arkansas, Kansas, Louisiana, Oklahoma, South Dakota, Texas.	Presence/absence surveys	Harm and Harass	Renew.
TE–00975A	Osage Nation; Pawhuska, Oklahoma.	American Burying Beetle (*Nicrophorus americanus*).	Oklahoma	Presence/absence surveys	Capture, injury, death	Renew.
TE–800611	SWCA; Austin, Texas	Whooping Crane (*Grus americana*), Karst Invertebrates, Red-Cockaded Woodpecker (*Leuconotopicus borealis*), American Burying Beetle (*Nicrophorus americanus*), Louisiana Pine Snake (*Pituophis ruthveni*), Texas Hornshell (*Popenaias popeii*), Golden-cheeked Warbler (*Setophaga chrysoparia*), Interior Least Tern (*Sterna antillarum athalassos*), Houston Toad (*Bufo houstonensis*).	Arkansas, Kansas, Massachusetts, Michigan, Missouri, Nebraska, Ohio, Oklahoma, Rhode Island, South Dakota, Texas.	Presence/absence surveys, habitat assessments.	Capture, collect, injury, death.	Amend.
TE–08832A	Utah State University; Logan, Utah.	Rio Grande Silvery Minnow (*Hybognathus amarus*).	New Mexico	Surveys, Trapping, Capture, Electrofishing.	Collect, harass, injury, death.	Renew.
TE–86070C	Cincinnati Zoo; Cincinnati, Ohio.	Todsen's Pennyroyal (*Hedeoma todsenii).*	New Mexico	Presence/absence surveys	N/A	New.
TE–169770	NMOSE/ISC; Los Lunas, New Mexico.	Rio Grande Silvery Minnow (*Hybognathus amarus*).	New Mexico	Captive propagation, culture, holding and research.	Injury, death	Renew.

Public Availability of Comments

All comments and materials we receive in response to these requests will be available for public inspection, by appointment, during normal business hours at the address listed in **ADDRESSES.**

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

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*).

Dated: July 19, 2018.

Amy Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2018–21968 Filed 10–9–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS01000.L58530000.EQ0000.241A; N–95369; 12–08807; MO# 45001213053; TAS:15X5232]

Notice of Realty Action: Classification for Lease and/or Conveyance for Recreation and Public Purposes of Public Lands for an Elementary School in the Southwest Portion of the Las Vegas Valley, Clark County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM), Las Vegas Field Office, has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Taylor Grazing Act and the Recreation and Public Purposes Act, (R&PP) as amended, approximately 15 acres of public land in the Las Vegas Valley, Clark County, Nevada. The Clark County School District proposes to use the land for an Elementary School that will help meet future expanding educational needs in the southwestern part of the Las Vegas Valley.

DATES: Submit written comments regarding this proposed classification on or before November 26, 2018. In the absence of any adverse comments, the classification will become effective on December 10, 2018. The lands will not be offered for conveyance until after the classification becomes effective.

ADDRESSES: Mail or hand deliver written comments to the BLM Las Vegas Field Office, Attn: S. (Quien) May, Realty Specialist, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130; or fax to 702–515–5010. The BLM will not consider comments received by telephone calls or email. Detailed information, including but not limited to a proposed development and management plan and documentation relating to compliance with applicable environmental and cultural resource laws, is available for review during business hours, 8:00 a.m. to 4:30 p.m. Pacific Time, Monday through Friday, except Federal holidays, at the BLM Las Vegas Field Office.

FOR FURTHER INFORMATION CONTACT: S. (Quien) May, Realty Specialist at the above address or by telephone at 702–515–5196. Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to leave a message or question for the above individual. The FRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands examined and identified as suitable for lease or conveyance under the R&PP Act are legally described as: Mount Diablo Meridian, Nevada, T. 22 S., R. 61 E., sec. 20, NE¼SW¼SW¼ and E½NW¼SW¼SW¼. The area described contains 15 acres in Clark County, Nevada. The lands are not needed for any Federal purposes at this time.

Lease or conveyance of the lands for recreational or public purposes use is consistent with the BLM's Las Vegas Resource Management Plan dated October 5, 1998, and would be in the public interest.

All interested parties will receive a copy of this Notice once it is published in the **Federal Register**. A copy of the **Federal Register** Notice with information about this proposed realty action will be published in a newspaper of local circulation once a week for three consecutive weeks. The regulations at 43 CFR subpart 2741 addressing requirements and procedures for conveyances under the R&PP Act do not require a public meeting.

Upon publication of this Notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including locations under the mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

The lease or conveyance of the land, when issued, will be subject to the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

3. All mineral deposits in the land so patented, and the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations as established by the Secretary of the Interior are reserved to the United States, together with all necessary access and exit rights.

4. Lease or conveyance of the parcel is subject to valid existing rights.

5. An appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or occupations on the leased/patented lands.

6. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Subject to limitations prescribed by law and regulation, prior to patent issuance, the holder of any right-of-way grant within the lease area may be given the opportunity to amend the right-of-way grant for conversion to a new term, including perpetuity, if applicable.

Classification Comments: Interested persons may submit comments involving the suitability of the land for development of an elementary school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and Federal programs.

Application Comments: Interested persons may submit comments regarding the specific use proposed in the application and plan of development and management, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for an elementary school.

Any adverse comments will be reviewed by the BLM State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective on December 10, 2018. The lands will not be offered for conveyance until after the classification becomes effective.

Before including your address, phone number, email address, or other personal identifying information in any comment, be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you can ask the BLM in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2741.5.

Gayle Marrs-Smith,

Field Manager, Las Vegas Field Office.

[FR Doc. 2018–22026 Filed 10–9–18; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA930000 L19200000.ET0000 LRORB1621000; CACA 007551–01]

Public Land Order No. 7869; Partial Revocation of Withdrawal Established by Secretarial Orders, Klamath River Project, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order (PLO).

SUMMARY: This PLO partially revokes 18.67 acres of public land from a withdrawal created by two Secretarial Orders dated July 19, 1904, and January 28, 1905, which withdrew land for the Bureau of Reclamation's (BOR) Klamath River Project. The land will remain closed to surface entry and mining under the public land laws including the United States mining laws due to an overlapping withdrawal for the Tule Lake Segregation Center, World War II Valor of the Pacific National Monument created by Presidential Proclamation No. 8327, dated December 5, 2008.

DATES: This PLO takes effect on October 10, 2018.

FOR FURTHER INFORMATION CONTACT: Deanne Kidd, California State Office (CA–930), BLM, 916–978–4337. 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. The FRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BOR has determined that the lands are no longer needed for BOR purposes. The lands are located within the boundary of the Tule Lake Segregation Center, World War II Valor in the Pacific National Monument designated by Presidential Proclamation No. 8327, dated December 5, 2008. The National Park Service manages the land, which is withdrawn from all forms of entry, location, selection, sale, leasing, or other disposition under the public land laws, including, but not limited to, withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

Order

By the virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows;

1. The withdrawal created by Secretarial Orders dated July 19, 1904, and January 28, 1905, which withdrew public lands for use by the Bureau of Reclamation for the Klamath River Project, is hereby partially revoked insofar as they affect the following described land:

Mount Diablo Meridian

T. 47 N, R. 5 E,

Sec 26, lots 52 & 53, except those portions of lots 52 and 53, shown on the BLM Supplemental Plat accepted January 14, 1959, lying northeasterly of the following described line:

Commencing at the westernmost corner of said lot 52, from which the West ¼ section corner of section 26 bears South 12°37′32″ W, at a distance of 647.91 feet; thence northeasterly along the northwesterly boundary of said lot 52 to a point at a distance of 149.30 feet to the True Point of Beginning; thence southeasterly on a line parallel to the southwesterly lines of lots 52 and 53 at an offset distance of 149.28 feet northeasterly of said lines, to the intersection point with the southeasterly line of lot 53, said point being the point of terminus.

The area described contains 18.67 acres in Modoc County.

2. The land remains withdrawn under Presidential Proclamation No. 8327 dated December 5, 2008, which established the Tule Lake Segregation Center, which is part of the World War II Valor of the Pacific National Monument.

Joseph R. Balash,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2018–22032 Filed 10–9–18; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK940000.L14100000.BX 0000.19X.LXSS001L0100]

Filing of Plats of Survey: Alaska; correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing; correction.

SUMMARY: This notice corrects a previous notice of official filing that was published in the **Federal Register** on Sept. 12, 2018 (83 FR 46188), which excluded the location information for U.S. Survey No. 14495, Alaska. The plats of survey of lands described in this notice are scheduled to be officially filed in the Bureau of Land Management (BLM), Alaska State Office, Anchorage, Alaska. The survey, which was executed at the request of the U.S. Fish and Wildlife Service, is necessary for the management of these lands.

DATES: The BLM must receive protests by November 9, 2018.

ADDRESSES: You may obtain a copy of the plats from the Alaska Public Information Center at the BLM Alaska State Office, 222 W 7th Avenue, Anchorage, AK 99513, upon required payment, 8 a.m. to 4 p.m. business days. You may view the plats at this location at no cost. Please use this address when filing written protests.

FOR FURTHER INFORMATION CONTACT: Douglas N. Haywood, Chief, Branch of Cadastral Survey, Alaska State Office, Bureau of Land Management, 222 W 7th Avenue, Anchorage, AK 99513; 907–271–5481; *dhaywood@blm.gov.* People who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A notice of official filing that was published in the **Federal Register** on Sept. 12, 2018 (83 FR 46188), excluded the location information for U.S. Survey No. 14495, Alaska. Page 46189, in the **SUPPLEMENTARY INFORMATION** section reads:

''U.S. Survey No. 14495, accepted August 30, 2018.''

The notice of official filing is hereby corrected to read:

U.S. Survey No. 14495, Alaska, accepted August 30, 2018, situated within:

Seward Meridian, Alaska

T. 56 S, R. 87 W, unsurveyed
T. 57 S, R. 87 W
T. 56 S, R. 88 W, unsurveyed
T. 57 S, R. 89 W, unsurveyed

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the State Director for the BLM in Alaska. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. You must file the notice of protest before the scheduled date of official filing for the plat(s) of survey being protested. The BLM will not consider any notice of protest filed after the scheduled date of official filing. A notice of protest is considered filed on the date it is received by the State Director for the BLM in Alaska during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not

filed with the notice of protest, must be filed with the State Director for the BLM in Alaska within 30 calendar days after the notice of protest is filed.

If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personally identifiable information in a notice of protest or statement of reasons, you should be aware that the documents you submit, including your personally identifiable information, may be made publicly available in their entirety at any time. While you can ask the BLM to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Douglas N. Haywood,

Chief Cadastral Surveyor, Alaska.

[FR Doc. 2018–21964 Filed 10–9–18; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR936000.L14400000.ET0000. 17XL1109AF.HAG17–0080.WAOR068905]

Notice To Reopen Comment Period on Withdrawal Application and of Public Meeting in Methow Valley, WA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: A Notice of Application for Withdrawal was published in the **Federal Register** on December 30, 2016, for approximately 340,079 acres of National Forest System lands located in the Methow Valley, Okanagan National Forest. The purpose of this Notice is to announce the date, time, and location of a public meeting to be held in connection with the withdrawal application submitted by the US Forest Service to the Secretary of the Interior and to reopen the public comment period.

DATES: The public comment period is reopened until November 13, 2018. A public meeting will be held at 6:00 p.m. on November 13, 2018, at the Red Barn, 51 North Highway 20, Winthrop, Washington.

ADDRESSES: The public may send written comments to the Bureau of Land Management, Oregon State Office, P.O. Box 2965, Portland, OR 97208–2965, or by email at *blm_or_wa_withdrawals@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Candice Polisky, USFS Pacific Northwest Region, 503–808–2479; Jacob Childers, BLM Oregon/Washington State Office, 503–808–6225. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact either of the above individuals. The FRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The **Federal Register** Notice that was published on December 30, 2016 (81 FR 96481), stated that an opportunity for public meeting would be afforded in connection with the proposed withdrawal. The public will have the opportunity to verbally comment or provide written comments at the public meeting. The publication of the **Federal Register** Notice on December 30, 2016, was the official start of a 90-day public comment period, which ended on March 30, 2017. This Notice reopens the comment period until November 13, 2018.

Before including your address, phone number, email address, or other personally identifiable information in your comments, please be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask the BLM in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

The meeting will be held in accordance with the regulations set forth in 43 CFR part 2310.3–1.

Lenore Heppler,

Chief, Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2018–22031 Filed 10–9–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT929000–18X–L14400000.BJ0000; MO# 4500125700]

Notice of Proposed Filing of Plats of Survey: Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed official filing.

SUMMARY: The plats of surveys for the lands described in this notice are scheduled to be officially filed 30 calendar days after the date of this publication in the BLM Montana State Office, Billings, Montana. The surveys, which were executed at the request of the BLM, are necessary for the management of these lands.

DATES: A person or party who wishes to protest this decision must file a notice of protest in time for it to be received in the BLM Montana State Office no later than 30 days after the date of this publication.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Josh Alexander, BLM Chief Cadastral Surveyor for Montana; telephone: (406) 896–5123; email: *jalexand@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTAL INFORMATION: The lands surveyed are: Principal Meridian, Montana, T. 1 S., R. 14 W., sec. 4., T. 1 S., R. 55 E., sec. 17., T. 6 N., R. 15 W., sec. 5.

A person or party who wishes to protest an official filing of a plat of survey identified above must file a written notice of protest with the BLM Chief Cadastral Surveyor for Montana at the address listed in the **ADDRESSES** section of this notice. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be received in the BLM Montana State Office no later than the scheduled date of the proposed official filing for the plat(s) of survey being protested; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of the protest, if not filed with the notice of protest, must be filed with the BLM Chief Cadastral Surveyor for Montana within 30 calendar days after the notice of protest is received.

If a notice of protest of the plat(s) of survey is received prior to the scheduled date of official filing or during the 10 calendar day grace period provided in 43 CFR 4.401(a) and the delay in filing is waived, the official filing of the plat(s) of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day after all timely protests have been dismissed or otherwise resolved.

If a notice of protest is received after the scheduled date of official filing and the 10 calendar day grace period provided in 43 CFR 4.401(a), the notice of protest will be untimely, may not be considered, and may be dismissed.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chapter 3.

Joshua F. Alexander,

Chief Cadastral Surveyor for Montana.

[FR Doc. 2018–22027 Filed 10–9–18; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–HAFE–25439; PS.SHAFE0001.01.1]

Minor Boundary Revision at Harpers Ferry National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Notification of boundary revision.

SUMMARY: The boundary of Harpers Ferry National Historical Park is modified to include approximately 12.97 acres of land with all improvements thereon, situate in Harpers Ferry District, Jefferson County, West Virginia lying on the south side of U.S. Route 340, on the east side of the relocation of Route 27 and on the west side of Old Route 27, more particularly bounded and described in a plat of survey made by Appalachian Survey, Inc., dated June 6, 1981, and recorded with a deed dated August 28, 1981 in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Deed Book 490, at Page 384. The property will be donated to the United States by the American Battlefield Trust formerly known as the Civil War Preservation Trust.

DATES: The applicable date of this boundary revision is October 10, 2018.

ADDRESSES: The map depicting this boundary revision is available for inspection at the following locations: National Park Service, National Trails System Program Center, 216 B Viking Way, Martinsburg, West Virginia 25401, telephone (304) 263–4943.

FOR FURTHER INFORMATION CONTACT: National Park Service, Donald King, Realty Officer, National Trails System Program Center, 216 B Viking Way, Martinsburg, West Virginia 25401, telephone (304) 263–4943.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 54 U.S.C. 100506(c), the boundary of Harpers Ferry National Historical Park is modified to include 12.97 acres of land with all improvements. The boundary revision is depicted on the Harpers Ferry National Historical Park Proposed Minor Boundary Revision map numbered 385/133094 and dated June 2016.

Specifically, 54 U.S.C. 100506(c) provides that, after consultation with the governing body of the county, city, town, or other jurisdiction or jurisdictions having taxing authority over the land or interest to be acquired as to the impact of the proposed action, and subsequent notification of the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, the Secretary of the Interior is authorized to make this boundary revision upon publication of notice in the **Federal Register**. The relevant governing bodies have been consulted and the Committees have been notified of this boundary revision. This boundary revision and subsequent donation will ensure preservation and protection of the Park's historic and natural resources.

Once this property is included within the park boundary and acquired by the United States, it is the intention of the National Park Service to manage the property for public purposes.

Dated: August 6, 2018.

Peter May,

Acting Regional Director, National Capital Region.

[FR Doc. 2018–21896 Filed 10–9–18; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1110 (Second Review)]

Sodium Hexametaphosphate From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on sodium hexametaphosphate from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: September 4, 2018.

FOR FURTHER INFORMATION CONTACT: Christopher Couper 202–708–1440, 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 this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 4, 2018, the Commission determined that the domestic interested party group response to its notice of institution (83 FR 25488, June 1, 2018) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

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).

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on October 5, 2018, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution, and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before October 10, 2018 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by October 10, 2018. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's website at *https://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (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.

Determination.—The Commission has determined this review is 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: This review is 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: October 3, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–21943 Filed 10–9–18; 8:45 am]

BILLING CODE 7020–02–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Board of Directors and its six committees will meet October 18–20, 2018. On Thursday, October 18, the first meeting will commence at 1:00 p.m., Eastern Daylight Time (EDT), with the meeting thereafter commencing promptly upon adjournment of the immediately preceding meeting. On Friday, October 19, the first meeting will commence at 3:30 p.m., EDT, with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Saturday, October 20, the first meeting will commence at 8:30 a.m., EDT and will be followed by the closed session meeting of the Board of Directors that will commence promptly upon adjournment of the prior meeting.

LOCATION: The Omni Severin Hotel, 40 W Jackson Place, Indianapolis, IN 46225.

PUBLIC OBSERVATION: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation. Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- Once connected to the call, your telephone line will be *automatically* ''MUTED''.
- To participate in the meeting during public comment press #6 to ''UNMUTE'' your telephone line, once you have concluded your comments please press *6 to ''MUTE'' your line.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

MEETING SCHEDULE

	Time *
Thursday, October 18, 2018	
1. Operations & Regulations Committee.	1:00 p.m.
2. Governance and Performance Review Committee.	
3. Institutional Advancement Committee.	
4. Communications Subcommittee of the Institutional Advancement Committee.	
5. Delivery of Legal Services Committee.	
Friday, October 19, 2018	
1. Finance Committee	3:30 p.m.
2. Audit Committee.	
Saturday, October 20, 2018	
1. Board of Directors	8:30 a.m.

* Please note that all times in this notice are in *Eastern Daylight Time.*

Status of Meeting: Open, except as noted below.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to hear briefings by management and LSC's Inspector General, and to consider and act on the General Counsel's report on potential and pending litigation involving LSC, and on a list of prospective Leaders Council invitees. **

Institutional Advancement Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to consider and act on recommendation of new Leaders Council invitees and to receive a briefing on future projects for support with private funding.**

Audit Committee—Open, except that the meeting may be closed to the public to hear a briefing on the Office of Compliance and Enforcement's active enforcement matters.**

Finance Committee—Open, except that the meeting may be closed to the public to hear a briefing from management.**

A verbatim written transcript will be made of the closed session of the Board, Institutional Advancement Committee, Audit Committee, and Finance Committee meetings. The transcript of

** Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552(b) (a)(2) and (b). *See also* 45 C.F.R. 1622.2 & 1622.3.

any portions of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) and (10), will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

October 18, 2018

Operations & Regulations Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of July 25, 2018
3. Update on Conducting a Grantee Survey Regarding the 2014 Revisions to 45 CFR part 1614—Private Attorney Involvement
   - Stefanie Davis, Assistant General Counsel
4. Update on Proposed Rulemaking to Revise 45 CFR part 1607—Governing Bodies
   - Ron Flagg, General Counsel and Vice President for Legal Affairs
   - Stefanie Davis, Assistant General Counsel
5. Briefing on the Draft Proposal for Public Engagement in Rulemaking from the Administrative Conference of the United States
   - Ron Flagg, General Counsel and Vice President for Legal Affairs
   - Stefanie Davis, Assistant General Counsel
6. Public comment
7. Consider and act on other business
8. Consider and act on adjournment of meeting

October 18, 2018

Governance and Performance Review Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on July 25, 2018
3. Report on foundation grants and LSC's research agenda
   - Jim Sandman, President
4. Report on 2018 Board and Committee Evaluations
   - Carol Bergman, Vice President for Government Relations & Public Affairs
5. Report on transition Planning
   - Carol Bergman, Vice President for Government Relations & Public Affairs
   - Ron Flagg, Vice President for Legal Affairs, General Counsel and Corporate Secretary
6. Consider and act on other business
7. Public comment
8. Consider and act on adjournment of meeting

October 18, 2018

Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of July 25, 2018
3. Update on Leaders Council
   - John G. Levi, Chairman of the Board
4. Consider and act on *Resolution #2018–XXX,* Establishing an Emerging Leaders Council
5. Development report
   - Nadia Elguindy, Director of Institutional Advancement
6. Public Comment
7. Consider and act on other business
8. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

9. Approval of minutes of the Committee's Closed Session meeting of July 25, 2018
10. Development activities report
    - Jim Sandman, President
    - Nadia Elguindy, Director of Institutional Advancement
11. Consider and act on future projects for support with private funding
    - Jim Sandman, President
12. Consider and act on motion to approve Leaders Councils invitees
13. Consider and act on other business
14. Consider and act on motion to adjourn the meeting

October 18, 2018

Communications Subcommittee of the Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Subcommittee's Open Session meeting of July 25, 2018
3. Communications analytics update
   - Carl Rauscher, Director of Communications and Media Relations
4. Public comment
5. Consider and act on other business
6. Consider and act on motion to adjourn the meeting

October 18, 2018

Delivery of Legal Services Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on July 26, 2018
3. Update on revisions to LSC Performance Criteria
   - Lynn Jennings, Vice President for Grants Management
4. Panel presentation on effective uses of data
   - Craige Harrison, Chief Information Officer, Utah Legal Services
   - Joanne Labrusciano, Director of Grant Initiatives and Reporting, Legal Services of the Hudson Valley
   - Greg Landry, Executive Director, Acadiana Legal Services
   - Kristin Verrill, Director of Grants and Innovation, Atlanta Legal Aid Society
   - Moderator: Lynn Jennings, Vice President for Grants Management
5. Public comment
6. Consider and act on other business
7. Consider and act on motion to adjourn the meeting

October 19, 2018

Finance Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session telephonic meeting on July 12, 2018
3. Approval of minutes of the Committee's Open Session meeting of July 26, 2018
4. Presentation of LSC's Financial Reports for the eleven-month period ending August 31, 2018
   - Jim Sandman, President
5. Report on status of FY 2018 appropriations process
   - Carol Bergman, Vice President for Government Relations & Public Affairs
6. Consider and act on *Resolution #2018–XXX,* Temporary Operating Budget for FY 2019
   - Jim Sandman, President
7. Report on status of FY 2020 appropriations request
   - Carol Bergman, Director of Government Relations & Public Affairs
8. Public comment
9. Consider and act on other business
10. Consider and act on motion to adjourn the open session meeting to proceed to a closed session

Closed Session

11. Report from management
    - Jim Sandman, President
12. Consider and act on adjournment of meeting

October 19, 2018

Audit Committee

Open Session

1. Approval of agenda

2. Approval of minutes of the Committee's Open Session meeting on July 25, 2018
3. Briefing of Office of Inspector General
   - Jeffrey Schanz, Inspector General
   - Roxanne Caruso, Assistant Inspector General for Audit
4. Pursuant to Section VIII (A)(3) and VIII (A)(4) of the Committee Charter, review and discuss with the OIG its audit responsibilities and performance, its audit plan for the Corporation and the risk assessment that drives its audit plan, the effectiveness of its audit plan and activities, and all significant matters relative to audits performed by the OIG, including any problems the OIG encountered while performing their audits
   - Jeffrey Schanz, Inspector General
   - Roxanne Caruso, Assistant Inspector General for Audit
5. Pursuant to Section VIII (A) (1) of the Committee Charter, review and discuss with the Office of Inspector General Management, and Castro and Company the contemplated scope and plan for LSC's required annual audit
   - Roxanne Caruso, Assistant Inspector General for Audit
   - Jim Sandman, President
6. Pursuant to Section VIII (C)(6) of the Committee Charter, review LSC's efforts, including training and education to help ensure that LSC employees and grantees act ethically and safeguard LSC funds
   - Ron Flagg, Vice President for Legal Affairs
   - Lynn Jennings, Vice President for Grant Management
   - Jeffrey Schanz, Inspector General
7. Management update regarding risk management
   - Ron Flagg, General Counsel and Vice President for Legal Affairs
8. Briefing about follow-up by the Office of Compliance and Enforcement on referrals by the Office of Inspector General regarding audit reports and annual Independent Public audits of grantees
   - Lora Rath, Director of Compliance and Enforcement
   - Roxanne Caruso, Assistant Inspector General for Audit
9. Public comment
10. Consider and act on other business
11. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

12. Approval of minutes of the Committee's Closed Session meeting of July 25, 2018
13. Briefing by the Office of Compliance and Enforcement on active enforcement matter(s) and follow-up to open investigation referrals from the Office of Inspector General
   - Lora Rath, Director of Compliance and Enforcement
14. Report on cybersecurity test results
   - Jim Sandman, President
15. Consider and act on adjournment of meeting

October 20, 2018

Board of Directors

Open Session

1. Pledge of Allegiance
2. Approval of agenda
3. Approval of minutes of the Board's Open Session meeting of July 26, 2018
4. Chairman's Report
5. Members' Reports
6. President's Report
7. Inspector General's Report
8. Consider and act on the report of the Operations and Regulations Committee
9. Consider and act on the report of the Governance and Performance Review Committee
10. Consider and act on the report of the Institutional Advancement Committee
11. Consider and act on the report of the Delivery of Legal Services Committee
12. Consider and act on the report of the Finance Committee
13. Consider and act on the report of the Audit Committee
14. Public comment
15. Consider and act on other business
16. Consider and act on whether to authorize a closed session of the Board to address items listed below

Closed Session

1. Approval of minutes of the Board's Closed Session meeting of July 26, 2018
2. Management briefing
3. Inspector General briefing
4. Consider and act on list of prospective Leaders Council invitees
5. Consider and act on General Counsel's report on potential and pending litigation involving LSC
6. Consider and act on motion to adjourn the meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *http://www.lsc.gov/board-directors/meetings/board-meeting-notices/non-confidential-materials-be-considered-open-session.*

Accessibility: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: October 5, 2018.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 2018–22190 Filed 10–5–18; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2019–001]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records they no longer need to conduct agency business. NARA invites public comments on such records schedules.

DATES: NARA must receive requests for copies in writing by November 9, 2018. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: NARA publishes notice in the **Federal Register** for records schedules they no longer need to conduct agency business. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Defense, National Security Agency (DAA–0457–2017–0003, 3 items, 2 temporary items). Records of the Office of Strategic Plans and Policy, including routine pre-publication review files for resumes and non-mission related information. Proposed for permanent retention are pre-publication review files for mission related materials or those defined as high-profile by established criteria.

2. Department of Labor, Office of Administrative Law Judges (DAA–0174–2018–0001, 4 items, 4 temporary items). Records related to the Alternative Dispute Resolution program including general program files, case records, and working files.

3. Department of State, Bureau of International Narcotics and Law Enforcement (DAA–0059–2015–0010, 11 items, 8 temporary items). Bureau-wide schedule including project files, working files, and copies of audit files. Proposed for permanent retention are records of the Bureau's senior leadership, program files, and high-profile project files

4. Department of the Treasury, Internal Revenue Service (DAA–0058–2018–0009, 2 items, 2 temporary items). Case files of taxpayer disputes related to double taxation and future tax transactions based on operational provisions outlined in tax treaties.

5. National Archives and Records Administration, Government-wide (DAA–GRS–2018–0002, 15 items, 15 temporary items). Revised General Records Schedule for employee relations records such as reasonable accommodation, alternative dispute resolution, administrative grievance, disciplinary action, adverse action, and harassment complaint case files; records of telework/alternative worksite, Equal Employment Opportunity, and displaced employee programs; labor management relations records; and agency records of cases settled through the Merit Systems Protection Board and Federal Labor Relations Authority.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2018–21996 Filed 10–9–18; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Credit Union Service Organizations (CUSOs)

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following renewal of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before December 10, 2018 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 5080, Alexandria, Virginia 22314; Fax

No. 703–519–8579; or Email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to the address above or telephone 703–548–2279.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0149.

Title: Credit Union Service Organizations (CUSOs), 12 CFR 712.

Type of Review: Revision of a currently approved collection.

Abstract: Part 712 of NCUA's rules and regulations regulates the relationship between federally insured credit unions (FICUs) and credit union service organizations (CUSOs). The rule requires that FICUs enter into a written agreement with a CUSO (prior to investing in or loaning money to) which stipulates the CUSO will follow general accepted accounting principles (GAAP); prepare quarterly financial statements; grant NCUA access to the CUSO books and records, and annually report directly to NCUA via a CUSO registry.

Affected Public: Private Sector: Not-for-profit institutions; Businesses or other for-profits.

Estimated No. of Respondents: 1,603 (FICUs and CUSOs).

Estimated Annual Frequency: 1.

Estimated Total Annual Responses: 1,603.

Estimated Total Annual Burden Hours: 2,666.

Reason for Change: The previous OMB submission contained information collection requirements which only needed to be completed one-time by all FICUs with an interest in a CUSO. Going forward, written agreement requirements will only apply to new CUSO investments. Since the previous submission, the NCUA has launched the web-based *CUSO Registry* system which has provided a better estimate of the number of CUSOs in existence. The total number of CUSOs is less than previously estimated, which has reduced the overall burden. Overall burden has been reduced by 8,893 hours from 11,559 hours to 2,666 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on October 4, 2018.

Dated: October 4, 2018.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2018–21994 Filed 10–9–18; 8:45 am]

BILLING CODE 7535–01–P

National Science Foundation

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on Awards and Facilities (A&F), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Tuesday, October 16, 2018 at 11:30 a.m.–12:30 p.m. EDT.

PLACE: This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. An audio link will be available for the public. Members of the public must contact the Board Office to request the public audio link by sending an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference.

STATUS: Open.

MATTERS TO BE CONSIDERED: Chair's opening remarks; Discussion of Revised Policy Document for the Information-Action Item Sequence.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Elise Lipkowitz, (*elipkowi@nsf.gov*), 703/292–7000.

Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.* Please refer to the National Science Board website *www.nsf.gov/nsb* for additional information.

Ann Bushmiller,

Senior Counsel, National Science Board.

[FR Doc. 2018–22135 Filed 10–5–18; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0118]

Information Collection: NRC Form 396, "Certification of Medical Examination by Facility Licensee"

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''NRC Form 396, 'Certification of Medical Examination by Facility Licensee.' ''

DATES: Submit comments by December 10, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID: NRC–2018–0118. Address questions about docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID: NRC–2018–0118 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID: NRC–2018–0118.
- *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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML18162A178. The supporting statement and NRC Form 396 are available in ADAMS under ML18162A188 and ML18166A087.
- *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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

Please include Docket ID: NRC–2018–0118 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 396, ''Certification of Medical Examination by Facility Licensee.
2. *OMB approval number:* 3150–0024.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 396.
5. *How often the collection is required or requested:* Upon application for an initial or upgrade license; every six years for the renewal of an operator or senior operator license, and notices of disability that occur during licensed tenure.
6. *Who will be required or asked to respond:* Facility licensees who are tasked with certifying the medical fitness or operator licensee.
7. *The estimated number of annual responses:* 1882.
8. *The estimated number of annual respondents:* 125.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 2196.25 hours (1757 Reporting hours plus 439.25 Recordkeeping hours).
10. *Abstract:* NRC Form 396 is used to transmit information to the NRC regarding the medical condition of applicants for initial operator licenses or renewal of operator licenses and for the maintenance of medical records for all licensed operators. The information is used to determine whether the physical condition and general health of applicants for operator licensees is such that the applicant would not be expected to cause operational errors and endanger public health and safety.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, on October 4, 2018.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2018–21976 Filed 10–9–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331; NRC–2018–0116]

NexEra Energy Duane Arnold, LLC; Duane Arnold Energy Center

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal by applicant.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of NextEra Energy Duane Arnold, LLC (NextEra) to withdraw its application dated December 15, 2017, for a proposed amendment to Duane Arnold Energy Center (DAEC), Renewed Facility Operating License No. DPR–49. The proposed change would have modified Technical Specifications (TS) 3.6.1.7, ''Suppression Chamber-to-Drywell Vacuum Breakers,'' by revising the required number of operable vacuum breakers for opening from six to five. Subsequently, by letter dated August 30, 2018, NextEra withdrew the amendment request.

DATES: The effective date of the withdrawal of the license amendment application is October 10, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0116 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–2018–0116. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual 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.

• *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: Mahesh Chawla, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8371: email: *Mahesh.Chawla@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has granted the request of NextEra to withdraw its December 15, 2017 (ADAMS Accession No. ML17352A335), application for proposed amendment to DAEC, Renewed Facility Operating License No. DPR–49, located in Linn County, Iowa.

The proposed change would have modified Technical Specifications (TS) 3.6.1.7, ''Suppression Chamber-to-Drywell Vacuum Breakers,'' by revising the required number of operable vacuum breakers for opening from six to five.

The Commission had previously issued a notice of consideration of issuance of amendment published in the **Federal Register** on July 3, 2018 (83 FR 31194). However, by letter dated August 30, 2018, the licensee withdrew the proposed change (ADAMS Accession No. ML18242A510).

For further details with respect to this action, see the application for amendment dated December 15, 2017, and the licensee's letter dated August 30, 2018, which withdrew the application for license amendment.

Dated at Rockville, Maryland, this 3rd day of October 2018.

For the Nuclear Regulatory Commission.

Mahesh L. Chawla,

Project Manager, Plant Licensing Branch Ill, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–21913 Filed 10–9–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0066]

Dry Storage and Transportation of High Burnup Spent Nuclear Fuel

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; reopening of comment period.

SUMMARY: On August 9, 2018, the U.S. Nuclear Regulatory Commission (NRC) solicited comments on draft NUREG entitled, NUREG–2224, ''Dry Storage and Transportation of High Burnup Spent Nuclear Fuel.'' The public comment period closed on September 24, 2018. The NRC has decided to reopen the public comment period to allow more time for members of the public to develop and submit their comments.

DATES: The comment period for the document published on August 9, 2018 (83 FR 39475) has been reopened. Submit comments on the draft NUREG–2224 by November 9, 2018. Comments received after this date will be considered, if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0066. Address any questions about NRC Docket IDs in *Regulations.gov* to Jennifer Borges; *telephone:* 301–287–9127; *email: Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* May Ma, Office of Administration, *Mail Stop:* TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Wendy Reed, Office of Nuclear Material Safety and Safeguards, *telephone:* 301–415–7213; *email: Wendy.Reed@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0066 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0066.

• *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.* Draft NUREG–2224, ''Dry Storage and Transportation of High Burnup Spent Nuclear Fuel'' is available in ADAMS under Accession No. ML18214A132.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0066 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

On August 9, 2018 (83 FR 39475), the NRC solicited comments on draft NUREG–2224, ''Dry Storage and Transportation of High Burnup Spent

Nuclear Fuel.'' The public comment period closed on September 24, 2018. The NRC has decided to reopen the public comment period on this document until November 9, 2018, to allow more time for members of the public to submit their comments.

Dated at Rockville, Maryland, on October 4, 2018.

For the Nuclear Regulatory Commission.

Aida E. Rivera-Varona,

Acting Deputy Director, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–21974 Filed 10–9–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of October 1, 8, 15, 22, 29, November 5, 2018.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 8, 2018

Thursday, October 11, 2018

9:00 a.m. Strategic Programmatic Overview of the Decommissioning and Low-Level Waste and Spent Fuel Storage and Transportation Business Lines (Public), (Contact: Matthew Meyer: 301–415–6198).

This meeting will be webcast live at the web address—*http://www.nrc.gov/.*

Week of October 15, 2018—Tentative

There are no meetings scheduled for the week of October 15, 2018.

Week of October 22, 2018—Tentative

Thursday, October 25, 2018

9:00 a.m. Briefing on Digital Instrumentation and Control (Public), (Contact: Jason Paige: 301–415–1474).

This meeting will be webcast live at the web address—*http://www.nrc.gov/.*

Week of October 29, 2018—Tentative

There are no meetings scheduled for the week of October 29, 2018.

Week of November 5, 2018—Tentative

There are no meetings scheduled for the week of November 5, 2018.

Week of November 12, 2018—Tentative

There are no meetings scheduled for the week of November 12, 2018.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or you may email *Patricia.Jimenez@nrc.gov* or *Wendy.Moore@nrc.gov.*

Dated at Rockville, Maryland, this 4th day of October 2018.

For the Nuclear Regulatory Commission.

Glenn Ellmers,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2018–22066 Filed 10–5–18; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271; NRC–2018–0226]

NorthStar Group Services, Inc. on Behalf of Entergy Nuclear Vermont Yankee, LLC; Vermont Yankee Nuclear Power 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 an exemption in response to a May 25, 2018, request from NorthStar Group Services, Inc. (NorthStar), on behalf of Entergy Nuclear Vermont Yankee, LLC (ENVY, to be known as NorthStar Vermont Yankee, LLC or NorthStar VY). The exemption would allow NorthStar VY to use up to $20 million in funds from the Vermont Yankee Nuclear Power Station (VY) nuclear decommissioning trust fund (NDT), on a revolving basis, for irradiated fuel management activities should the request for the direct and indirect transfer of the VY Facility License No. DPR–28 to NorthStar VY be approved by the NRC. The staff is issuing a final Environmental Assessment (EA) and final Finding of No Significant Impact (FONSI) associated with the proposed exemption.

DATES: The EA and FONSI referenced in this document is available on [October 10, 2018].

ADDRESSES: Please refer to Docket ID NRC–2018–0226 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–2018–0226. Address questions about Docket IDs 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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *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: Jack D. Parrott, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6634; email: *Jack.Parrott@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of an exemption from section 50.82(a)(8)(i)(A) of title 10 of the *Code of Federal Regulations* (10 CFR) for Facility Operating License No. DPR–28, currently issued to ENVY and Entergy Nuclear Operations, Inc. (ENOI), for VY, located in Windham County, Vermont. The exemption was requested by NorthStar, by letter dated May 25, 2018 (ADAMS Accession No. ML18150A315) pursuant to 10 CFR 50.12.

By letter dated January 12, 2015 (ADAMS Accession No. ML15013A426), ENOI informed the NRC that it had permanently ceased power operations at VY and that the VY reactor vessel had been permanently defueled. By letter dated February 9, 2017 (ADAMS Accession No. ML17045A140), ENOI, on behalf of itself and ENVY, and NorthStar Nuclear Decommissioning Company, LLC (NorthStar NDC) requested that the NRC consent to the proposed direct and indirect transfer of control of VY Facility License No. DPR–28, and the Vermont Yankee Independent Spent Fuel Storage Installation (ISFSI) general license. The proposed license transfer would involve the indirect transfer of control of ENVY's licenses to NorthStar Decommissioning Holdings, LLC, and its parent companies, NorthStar, LVI Parent Corp. and NorthStar Group Holdings, LLC.

The exemption would allow NorthStar VY to use up to $20 million of funds on a revolving basis such that at any one time, up to $20 million of the nuclear decommissioning trust fund (NDT) could be used for irradiated fuel management. This exemption would only apply following NRC approval of the license transfer application and closing of the underlying transaction.

Consistent with 10 CFR 51.21 the NRC has prepared this final EA to document its environmental review for the exemption request. Based on the results of the EA, which is provided in Section II below, and in accordance with 10 CFR 51.31(a), the NRC has determined it is not necessary to prepare an environmental impact statement and is therefore issuing this final FONSI.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would exempt NorthStar VY from the requirements set forth in 10 CFR 50.82(a)(8)(i)(A) restricting the use of decommissioning trust funds. Specifically, the proposed action would allow NorthStar VY to use up to $20 million from the VY NDT, on a revolving basis, for irradiated fuel management activities, not associated with radiological decommissioning. The proposed action is in accordance with the application dated May 25, 2018.

Need for the Proposed Action

NorthStar stated an exemption is needed should the license transfer request be approved in order for NorthStar VY to access up to $20 million of the NDT, in excess of those funds needed for radiological decommissioning, on a revolving basis, to fund irradiated fuel management activities, which are not associated with radiological decommissioning.

As required by 10 CFR 50.82(a)(8)(i)(A), decommissioning trust funds may be used by a licensee if the withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in 10 CFR 50.2. This definition addresses radiological decommissioning and does not include activities associated with irradiated fuel management. Therefore, NorthStar VY needs an exemption from 10 CFR 50.82(a)(8)(i)(A) to allow the use of funds from the NDT for irradiated fuel management activities.

NorthStar states that its cash flow analysis in Enclosure 1 of the application dated May 25, 2018, demonstrates that the NDT contains adequate funds to cover the estimated costs of radiological decommissioning and the additional funds for $20 million in irradiated fuel management activities that are covered by the exemption request. The adequacy of funds in the NDT to cover the costs of activities associated with radiological decommissioning and the additional funds for $20 million in irradiated fuel management activities through license termination is supported by NorthStar's revised Post-Shutdown Decommissioning Activity Report dated April 6, 2017 (ADAMS Accession No. ML17096A394). The applicant states that application of the 10 CFR 50.82(a)(8)(i)(A) requirement restricting use of the trust fund is not necessary to ensure that adequate funds will be available for the radiological decommissioning of VY. Therefore, the applicant states that an exemption is needed to avoid unnecessary and undue costs to cover irradiated fuel management expenses from other sources.

Environmental Impacts of the Proposed Action

The proposed action involves an exemption from the requirements related to use of the NDT that are of a financial nature and allow NorthStar VY to pay for irradiated fuel management activities with up to $20 million of the NDT on a revolving basis. This exemption does not authorize any additional regulatory or land-disturbing activities, but does allow NorthStar VY to finance irradiated fuel management activities, which support decommissioning.

In granting the exemptions, the NRC completed an evaluation and concluded that there was reasonable assurance that adequate funds are available in the NDT to complete all activities associated with decommissioning. There is no decrease in safety associated with the use of the NDT to fund activities associated with irradiated fuel management.

The proposed licensee will be required to maintain a comprehensive, regulation-based decommissioning funding oversight program to provide reasonable assurance that sufficient funding will be available for radiological decommissioning should the license transfer be approved. After submitting its site-specific Decommissioning Cost Estimate and until the licensee has completed its final radiation survey and demonstrated that residual radioactivity has been reduced to a level that permits termination of its license, 10 CFR 50.82(a)(8)(v) requires a licensee to annually submit a financial assurance status report. The report must include, among other things, amounts spent on decommissioning, remaining NDT balance, and estimated costs to complete radiological decommissioning. If the remaining balance, plus expected earnings, together with any other financial assurance method does not cover the estimated costs to complete the decommissioning, 10 CFR 50.82(a)(8)(vi) specifies that 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.

Additionally, in accordance with the VY Renewed Facility Operating License (ADAMS Accession No. ML18156A181), Condition 3.J.a.(iii), the decommissioning trust agreement must provide that no disbursements or payments from the trust, other than for ordinary administrative expenses, shall be made by the trustee until the trustee has first given thirty days prior written notice to the NRC. Article IV, Section 4.05 of the Master Decommissioning Trust Agreement (ADAMS Accession No. ML15111A086), by and between Entergy Nuclear Vermont Yankee, LLC, and The Bank of New York Mellon as Trustee, provides that no disbursements or payments shall be made by the

Trustee, other than administrative expenses, in accordance with Section 4.02 of the Master Trust Agreement, until the Trustee has first given the NRC 30 days prior written notice of payment; provided, however, that no disbursement or payment from the Trust shall be made if the Trustee receives prior written notice of objection from the Director of the Office of Nuclear Reactor Regulation. License condition 3.J.a.(iii) would still be in effect upon license transfer and NorthStar VY would remain subject to the disbursement notification condition in the license.

The environmental impacts of decommissioning have been generically evaluated by the NRC and documented in NUREG–0586, Supplement 1, NRC's Generic Environmental Impact Statement on Decommissioning of Nuclear Power Reactors (GEIS) (ADAMS Accession Nos. ML023470304, ML023470323, ML023500187, ML023500211, and ML023500223). NorthStar's revised Post-Shutdown Decommissioning Activity Report (ADAMS Accession No. ML17096A394) discusses that impacts from planned decommissioning activities at VY are less than and bounded by the impacts considered in the GEIS and NUREG–1496, NRC's Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities (ADAMS Accession Nos. ML042310492, ML042320379, and ML042330385). Based on its review, the NRC agrees with NorthStar's conclusion that VY decommissioning activities were bounded by previous analyses.

The exemption does not authorize NorthStar VY to perform new land-disturbing activities that could affect land use, soils and geology, water resources, ecological resources, or historic and cultural resources. The exemption does not authorize NorthStar VY to conduct additional regulatory activities, outside those already licensed by the NRC; therefore, there are no incremental effects to air quality, traffic and transportation, socioeconomics, environmental justice, or accidents. The exemption only changes the source of funds allowed for managing irradiated fuel activities. The exemption will not increase the probability or consequences of accidents. As a result of the exemption, there are no changes in the types or amounts of effluents that are, or may be, released offsite. NorthStar VY must continue to comply with all appropriate NRC regulations related to occupational and public radiation exposure and thus the exemptions will not result in an increase to occupational or public doses. Finally, NorthStar VY is required to maintain adequate funding for the radiological decommissioning of VY and to provide information regarding this funding to the NRC. Accordingly, the NRC concludes that there will be no potential incremental environmental impacts as a result of granting the exemption.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff could have denied NorthStar VY's exemption request. Denial of the exemption request would have resulted in NorthStar VY using funds from the trust only for radiological decommissioning and not also for irradiated fuel management activities as described in the exemption request. The environmental impacts of this alternative would be substantively the same as the environmental impacts for granting the exemption request because there are no potential incremental environmental impacts as a result of granting the exemption request.

Alternative Use of Resources

Since the environmental impacts of the alternative would be substantively the same as the environmental impacts for granting the exemption request there would be no difference in the use of resources for the alternative.

Agencies or Persons Consulted

On October 3, 2018, the NRC notified the State of Vermont of this EA and FONSI. The NRC staff has determined that the exemption would have no impact on historic and cultural resources or ecological resources and therefore no consultations are necessary under Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act, respectively.

III. Finding of No Significant Impact

NorthStar proposed an exemption from 10 CFR 50.82(a)(8)(i)(A) to allow the proposed VY licensee (NorthStar VY) to use $20 million from the NDT for irradiated fuel management activities on a revolving basis. The proposed action would not have a significant effect on the quality of the human environment because it involves an exemption from requirements that are of a financial nature and that do not have an impact on the environment. The exemption only changes the source of funds allowed for managing irradiated fuel activities. The exemption does not authorize NorthStar VY to conduct additional regulatory activities, outside those already licensed by the NRC; therefore, there are no incremental effects to air quality, traffic and transportation, socioeconomics, environmental justice, or accidents. As a result of the exemption, there are no changes in the types or amounts of effluents that are, or may be, released offsite. In addition, NorthStar VY must continue to comply with all appropriate NRC regulations related to occupational and public radiation exposure, and thus, the exemption will not result in an increase to occupational or public doses.

Consistent with 10 CFR 51.21, the NRC conducted the environmental assessment for the proposed action, which concluded that there are no environmental impacts as a result of the exemption. This FONSI incorporates by reference the EA included in Section II of this document. Therefore, the NRC concludes that the exemption does not, and will not, have significant effects on the quality of the human environment. Accordingly, the NRC has decided not to prepare an environmental impact statement for the proposed action.

The related environmental documents are NorthStar's application dated May 25, 2018; NUREG–0586, Supplement 1, NRC's Generic Environmental Impact Statement on Decommissioning of Nuclear Power Reactors (GEIS); NorthStar's revised Post-Shutdown Decommissioning Activity Report; and NUREG–1496, NRC's Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities. The finding and other related environmental documents are available for public inspection as indicated above.

IV. Availability of Documents

Date	Title	ADAMS accession no.
5/25/2018	Vermont Yankee Nuclear Power Station—Request for Exemption from 10 CFR 50.82(a)(8)(i)(A)	ML18150A315

Date	Title	ADAMS accession no.
1/12/2015	Vermont Yankee, Certifications of Permanent Cessation of Power Operations and Permanent Removal of Fuel from the Reactor Vessel.	ML15013A426
2/9/2017	Vermont Yankee—Application for Order Consenting to Direct and Indirect Transfers of Control of Licenses and Approving Conforming License Amendment and Notification of Amendment to Decommissioning Trust Agreement.	ML17045A140
8/15/2018	ISFSI Only Tech Spec Amendment Package	ML18156A181
7/31/2002	Master Decommissioning Trust Agreement for Vermont Yankee Nuclear Power Station	ML15111A086
11/30/2002	NUREG–0586, Supplement 1, Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities Regarding the Decommissioning of Nuclear Power Reactors.	ML023470304 ML023470323 ML023500187 ML023500211 ML023500223
4/6/2017	Vermont Yankee Nuclear Power Station—Notification of Revised Post-Shutdown Decommissioning Activities Report (Revised PSDAR).	ML17096A394
7/31/1997	NUREG–1496, Vols. 1–3, Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities.	ML042310492 ML042320379 ML042330385

Dated at Rockville, Maryland, this 3rd day of October 2018.

For the Nuclear Regulatory Commission.

Kimberly A. Conway,

Acting Chief, Reactor Decommissioning Branch Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–21914 Filed 10–9–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0161]

Information Collection: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The NRC invites public comment on the renewal of OMB approval for an existing collection of information. The information collection is entitled, ''10 CFR part 150 Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274 of the Atomic Energy Act of 1954.''

DATES: Submit comments by December 10, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0161. Address questions about docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–2 F43, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0161 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0161.
- *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 supporting statement is available in ADAMS under Accession No. ML18177A397.
- *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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2018–0161 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should

inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 150, Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274 of the Atomic Energy Act of 1954.
2. *OMB approval number:* 3150–0032.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* N/A.
5. *How often the collection is required or requested:* One-time or as-needed.
6. *Who will be required or asked to respond:* Thirty-seven Agreement States who have signed Section 274(b) Agreements with the NRC plus the States of Wyoming and Vermont who have provided applications to become Agreement States. In total, 39 states will be asked to respond.
7. *The estimated number of annual responses:* 8.
8. *The estimated number of annual respondents:* 8.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 190.
10. *Abstract:* The Nuclear Regulatory Commission (NRC) regulations in part 150 of Title 10 of the Code of Federal Regulations (10 CFR), provide certain exemptions to persons in Agreement States from the licensing requirements contained in Chapters 6, 7, and 8 of the Atomic Energy Act of 1954, as amended, and certain regulations of the Commission. The regulations in 10 CFR part 150 also define the Commission's continued regulatory authority over certain Agreement State activities.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, on October 4, 2018.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2018–21988 Filed 10–9–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0119]

Information Collection: NRC Form 398, "Personal Qualification Statement—Licensee."

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''NRC Form 398, 'Personal Qualification Statement—Licensee.'''

DATES: Submit comments by December 10, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID: NRC–2018–0119. Address questions about docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID: NRC–2018–0119 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID: NRC–2018–0119.
- *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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession: No. ML18166A095. The supporting statement and NRC Form 398 are available in ADAMS under ML18166A123 and ML18166A129.
- *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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

Please include Docket ID: NRC–2018–0119 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your

comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 398, ''Personal Qualification Statement—Licensee.''
2. *OMB approval number:* 3150–0090.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 398.
5. *How often the collection is required or requested:* Upon application for an initial or upgrade operator license and every six years for the renewal of operator or senior operator licenses.
6. *Who will be required or asked to respond:* Facility licensees who are tasked with certifying that the applicants and renewal operators are qualified to be licensed as reactor operators and senior reactor operators.
7. *The estimated number of annual responses:* 1,074.
8. *The estimated number of annual respondents:* 1,074.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 5,711
10. *Abstract:* NRC Form 398 is used to transmit detailed information required to be submitted to the NRC by a facility licensee on each applicant applying for new and upgraded licenses or license renewals to operate the controls at a nuclear reactor facility. This information is used to determine that each applicant or renewal operator seeking a license or renewal of a license is qualified to be issued a license and that the licensed operator would not be expected to cause operational errors and endanger public health and safety.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 4th day of October 2018.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2018–21993 Filed 10–9–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446; NRC–2018–0205]

Vistra Operations Company LLC; Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License Nos. NPF–87 and NPF–89, issued to Vistra Operations Company LLC (Vistra OpCo, the licensee), for operation of the Comanche Peak Nuclear Power Plant (CPNPP), Unit Nos. 1 and 2. The proposed exigent amendments would revise CPNPP Technical Specification (TS) 3.8.4, ''DC [Direct Current] Sources—Operating,'' by adding a new REQUIRED ACTION to CONDITION B and an extended COMPLETION TIME (CT), on a one-time basis, to repair two affected battery cells on the CPNPP Unit No. 1, Train B safety-related batteries. Specifically, the amendments would change the TS CT for each of the Unit No. 1, Train B safety-related batteries (BT1ED2 and BT1ED4) during Unit 1, Cycle 20, from 2 hours to 18 hours.

DATES: Submit comments by October 24, 2018. Requests for a hearing or petition for leave to intervene must be filed by December 10, 2018.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0205. Address questions about Docket IDs in regulations.gov to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Margaret O'Banion, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1233, email: *Margaret.O'Banion@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0205 or Docket Nos. 50–445 and 50–446 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0205.
- *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 license amendment request dated September 5, 2018, as supplemented by letters dated September 20 and October 3, 2018 are available in ADAMS under Accession Nos. ML18250A186, ML18267A059, and ML18277A207, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at

the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0205 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of amendments to Facility Operating License Nos. NPF–87 and NPF–89, issued to Vistra OpCo, for operation of the CPNPP Unit Nos. 1 and 2, located in Somervell County, Texas.

The proposed exigent amendments would revise CPNPP TS 3.8.4, ''DC Sources—Operating,'' by adding a new REQUIRED ACTION to CONDITION B and an extended CT, on a one-time basis, to repair two affected battery cells on the CPNPP Unit No. 1, Train B safety-related batteries. Specifically, the amendments would change the TS CT for each of the Unit No. 1, Train B safety-related batteries (BT1ED2 and BT1ED4) during Unit No. 1, Cycle 20, from 2 hours to 18 hours. The new REQUIRED ACTION B.2 would provide up to an 18 hour CT to replace cell 27 in battery BT1ED2 and up to an 18 hour CT to replace cell 41 in battery BT1ED4 (not at the same time). In addition, the amendments would place operational limits on Unit Nos. 1 and 2 during the extended CT as protective measures, as described in Attachment 2 of the letter dated September 20, 2018.

This notice is being reissued in its entirety due to the revised scope of the license amendment request resulting from the supplements dated September 20 and October 3, 2018.

On November 8, 2017, the licensee experienced cell jar cracking on cell 41 in battery BT1ED4. On July 2, 2018, the licensee experienced cell jar cracking on cell 27 in battery BT1ED2. Both affected battery cells have been jumpered out to restore operability of Unit No. 1, Train B batteries BT1ED4 and BT1ED2. The licensee stated that by replacing the affected battery cells, the licensee would regain margin on its safety-related batteries.

In accordance with the requirements of paragraph 50.91(a)(6) of title 10 of the *Code of Federal Regulations* (10 CFR), the licensee requested approval of the amendments under exigent circumstances. The licensee stated that exigent approval was needed to avoid a potential shutdown in the event of an unanticipated second battery cell failure on either of the CPNPP Unit No. 1, Train B batteries. In addition, the licensee stated that it had made a good faith effort to submit the license amendment request in a timely manner following the failure of one of the affected battery cells in July 2018. The NRC staff determined that if a second battery cell were to fail on either of the CPNPP Unit No. 1, Train B batteries, the licensee would be unable to restore the affected battery(ies) to OPERABLE status within 2 hours and would be required to shutdown. In addition, the NRC staff determined that if the licensee requested license amendments under emergency circumstances per 10 CFR 50.91(a)(5) to extend the CT during the 2-hour CT, the staff would not have enough time to process the emergency amendments within the 2-hour CT and the licensee would be required to shutdown. As a result, the NRC staff finds that exigent circumstances exist.

Before any issuance of the proposed license amendments, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

Pursuant to 10 CFR 50.91(a)(6), for amendments to be granted under exigent circumstances, the NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided a revised analysis of the issue of no significant hazards consideration in letter dated October 3, 2018, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes add provisions to increase the COMPLETION TIME (CT) from two hours to eighteen hours, on a one-time basis for Comanche Peak Nuclear Power Plant Class 1E Batteries BT1ED2 and BT1ED4. This one-time increase will only be used once per battery during Unit 1 Cycle 20 (not at the same time). An additional REQUIRED ACTION, new Note, and associated COMPLETION TIME is specified when batteries BT1ED2 and BT1ED4, associated with the plant Class 1 E Direct Current (DC) electrical power subsystem, are declared inoperable to replace a jumpered cell. Regulatory Commitment 5644411 includes conditions (preventive measures) for Unit 1 and Unit 2 to reduce site risk for the planned replacement of cell 27 in battery BT1ED2 and cell 41 in battery BT1ED4. The proposed changes do not physically alter any plant structures, systems, or components, and are not accident initiators: Therefore, there is no effect on the probability of accidents previously evaluated. As part of the single failure design feature, loss of any one DC electrical power subsystem does not prevent the minimum safety function from being performed. Also, the proposed changes do not affect the type or amounts of radionuclides release following an accident, or affect the initiation and duration of their release. Therefore, the consequences of accidents previously evaluated, which rely on the safety related Class 1E battery to mitigate, are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a change in design, configuration, or method of operation of the plant. The proposed changes will not alter the manner in which equipment is operated, nor will the functional demands on credited equipment be changed. The proposed changes do not impact the interaction of any systems whose failure or malfunction can initiate an accident.

There are no identified redundant components affected by these changes and thus there are no new common cause failures or any existing common cause failures that are affected by extending the CT. The proposed changes do not create any new failure modes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are based upon a deterministic evaluation. This evaluation is supplemented by risk information.

The deterministic evaluation concluded with one inoperable battery associated with the Class 1E DC electrical power subsystem, the redundant OPERABLE Class 1E DC electrical power subsystems will be able to perform the safety function as described in the accident analysis.

Supplemental risk information supporting this license amendment request concluded that the additional REQUIRED ACTION, new Note, associated COMPLETION TIME have a negligible impact on overall plant risk and is consistent with the NRC Safety Goal Policy statement and the thresholds in Regulatory Guide (RG) 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' and RG 1.177, ''An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications.''

The deterministic evaluation, supplemental risk information, and Regulatory Commitment 5644411 (conditions for Unit 1 and Unit 2) provide assurance that the plant Class 1E DC electrical power subsystem will be able to perform its design function with a longer COMPLETION TIME for inoperable batteries BT1ED2 and BT1ED4 during Unit 1 Cycle 20, and risk is not significantly impacted by the change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a no significant hazards consideration. In accordance with 10 CFR 50.91(a)(6), where the Commission finds that exigent circumstances exist, in that a licensee and the Commission must act quickly and that time does not permit the Commission to publish a **Federal Register** notice allowing 30 days for prior public comment, and it also determines that the amendment involves no significant hazards considerations, it will issue a **Federal Register** notice providing notice of an opportunity for hearing and allowing at least two weeks from the date of the notice for prior public comment. Therefore, in accordance with 10 CFR 50.91(a)(6)(i)(A), the NRC staff is providing a 14-day notice period for public comment.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 14-day notice period. However, if circumstances change during the notice period, such that failure to act in a timely way would result, for example, in shutdown of the facility, the Commission may issue the license amendments before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. If the Commission takes this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then

any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when

the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated September 5, 2018, as supplemented by letters dated September 20, and October 3, 2018.

Attorney for licensee: Timothy P. Matthews, Esq., Morgan, Lewis and Bockius, 1111 Pennsylvania Avenue NW, Washington, DC 20004.

NRC Branch Chief: Robert J. Pascarelli.

Dated at Rockville, Maryland, on October 4, 2018.

For the Nuclear Regulatory Commission.

Margaret W. O'Banion,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–22016 Filed 10–9–18; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Reinstatement of a Previously Approved Information Collection Without Change, Standard Form 2812, 2812–A, and OPM Form 1523

AGENCY: Office of Personnel Management.

ACTION: 30-Day Notice and request for Reinstatement.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) for Standard Form 2812, 2812–A and OPM Form 1523. The information collection was previously published in the **Federal Register** on February 21, 2018 at Volume # 83 FR 7504 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until November 9, 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, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the U.S. Office of Personnel Management, Chief Financial Office, Financial Services, 1900 E Street NW, Room 5478, Washington, DC 20415, Attention: Antoinette Cunningham, or sent by email to *Antoinette.Cunningham@opm.gov.*

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is providing an additional 30 days for public comments. OPM previously solicited comments for this collection, with a 60-day public comment period, at 83 FR 7504 (February 21, 2018). No comments were received. The *Middle Class Tax Relief and Job Creation Act of 2012* (Pub. L. 112–96, Section 5001), made two significant changes to the Federal Employees' Retirement System (FERS). First, beginning in 2013, new employees (as designated in the statute) will have to pay significantly higher employee contributions, an increase of 2.3 percent of salary. Second, new Members of Congress and Congressional employees, in addition to paying higher retirement contributions, will accrue retirement benefits at the same rate as regular employees. New employees affected by this law will be classified in a new retirement category; the Federal Employees' Retirement System—Revised Annuity Employees (FERS–RAE). The current Standard Form 2812, Standard Form 2812–A, and OPM Form 1523, have been changed to reflect this additional category.

Reinstatement will allow continued use of the collection and an additional 180 days to complete the full Paperwork Reduction Act approval process. The Office of Personnel Management is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Trust Fund Management of the Office of the Chief Financial Officer, Office of Personnel Management.

Title: (1) Report of Withholdings and Contributions for Health Benefits, Life Insurance and Retirement (Standard Form 2812); (2) Report of Withholdings and Contributions for Health Benefits by Enrollment Code (Standard Form 2812–A); (3) Supplemental Semiannual Headcount Report (OPM Form 1523).

OMB Number: 3206–0262.

Frequency: Semiannually for OPM Form 1523 and once-per-pay-period for Standard Form 2812 and Standard Form 2812–A.

Affected Public: Public Entities with Federal Employees and Retirees.

Number of Respondents: 100.

Estimated Time per Respondent: 30 Minutes.

Total Burden Hours: 2,700.

U.S. Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2018–21918 Filed 10–9–18; 8:45 am]

BILLING CODE 6325–23–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84357; File No. SR–MIAX–2018–25]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing of a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

October 3, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 18, 2018, Miami International Securities Exchange LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to modify certain of the Exchange's system connectivity fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Description of the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding connectivity to the Exchange. Specifically, the Exchange proposes to amend Sections 5(a) and (b) of the Fee Schedule to increase the network connectivity fees for the 1 Gigabit (''Gb'') fiber connection, the 10Gb fiber connection, and the 10Gb ultra-low latency (''ULL'') fiber connection, which are charged to both Members [3] and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to increase the network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster recovery facility. These proposed fee increases are collectively referred to herein as the ''Proposed Fee Increases.''

The Exchange initially filed the Proposed Fee Increases on July 31, 2018, designating the Proposed Fee Increases effective August 1, 2018.[4] The proposed rule change was published for comment in the **Federal Register** on August 13, 2018.[5] The Commission received one comment letter on the proposal.[6] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Suspension Order'') issued by the Commission.[7] The Suspension Order also instituted proceedings to determine whether to approve or disapprove the proposed rule change.[8]

The Healthy Markets Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal is consistent with the Act. Specifically, the Healthy Markets Letter objected to the Exchange's reliance on the fees of other exchanges to demonstrate that its fee increases are consistent with the Act. In addition, the Healthy Markets Letter argued that the Exchange did not offer any details to support its basis for asserting that the proposed fee increases are consistent with the Act. The Exchange is now re-filing the Proposed Fee Increases, and is also providing additional detail regarding the basis for the Proposed Fee Increases. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange, consisting of a 1Gb fiber connection, a 10Gb fiber connection, and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange currently assesses the following monthly network connectivity fees to both Members and non-Members for connectivity to the Exchange's primary/secondary facility: (a) $1,100 for the 1Gb connection; (b) $5,500 for the 10Gb connection; and (c) $8,500 for the 10Gb ULL connection. The Exchange also assesses to both Members and non-Members a monthly per connection network connectivity fee of $500 for each 1Gb connection to the disaster recovery facility and a monthly per connection network connectivity fee of $2,500 for each 10Gb connection to the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, MIAX PEARL, LLC (''MIAX PEARL''), via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange and MIAX PEARL via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

The Exchange proposes to increase the monthly network connectivity fees for such connections for both Members and non-Members. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be increased as follows: (a) From $1,100 to $1,400 for the 1Gb connection; (b) from $5,500 to $6,100 for the 10Gb

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] *See* Securities Exchange Act Release No. 83786 (August 7, 2018), 83 FR 40106 (August 13, 2018) (SR–MIAX–2018–19).

[5] *Id.*

[6] See Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated September 4, 2018 (''Healthy Markets Letter'').

[7] *See* Securities Exchange Act Release No. 34–84175 (September 17, 2018).

[8] *Id.*

connection; and (c) from $8,500 to $9,300 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be increased as follows: (a) From $500 to $550 for the 1Gb connection; and (b) from $2,500 to $2,750 for the 10Gb connection.

The Exchange believes that it is reasonable and appropriate to increase its fees charged for use of its connectivity to partially offset increased costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the US options industry. The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC (''Phlx''), NYSE Arca, Inc. (''Arca''), NYSE American LLC (''NYSE American'') and Nasdaq ISE, LLC (''ISE'') all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[9] The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities.[10] Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[11] The Exchange believes that it is reasonable and appropriate to increase its fees charged for use of its connectivity to partially offset increased costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the US options industry.

In particular, the Exchange's increased costs associated with supporting its network are due to several factors, including increased costs associated with maintaining and expanding a team of highly-skilled network engineers, increasing fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's R&D efforts. For example, the Exchange has had to hire additional network engineering staff in the last year, and plans to hire additional staff in the coming months. Further, the Exchange contracts with a third-party data center provider for its data center space. The Exchange does not operate its own data centers. Other exchange operators do operate their own data centers. Thus, they can better control data center costs. They also operate them as profit centers. Conversely, the Exchange is subject to fee increases from its data center provider, which the Exchange experienced in the last year. Further, the Exchange invests significant resources in network R&D to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. The costs associated with the maintenance and improvement of existing tools and the development of new tools resulted in increased cost to the Exchange. Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, the Exchange routinely conducts R&D projects to improve the performance of the network's hardware infrastructure. As an example, in the last year, the Exchange's R&D efforts resulted in a performance improvement in its network switches, requiring the purchase of new switching equipment, and thus resulting in increased costs. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the US options industry is a significant expense for the Exchange that continues to increase, and thus the Exchange believes that it is reasonable to offset some of those increased costs by increasing its network connectivity fees, as proposed herein. Overall, the Proposed Fee Increases are projected to offset only a portion of the Exchange's increased network connectivity costs.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(4) of the Act[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[14] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the fees assessed for connectivity allow the Exchange to cover the costs associated with providing and maintaining the necessary hardware and other infrastructure to support this technology. The Exchange believes that the proposal to increase the fees for connectivity alternatives is fair, equitable and not unreasonably discriminatory because the increased fees are assessed equally among all users of the applicable connections.

As discussed above, Phlx and ISE each offer different connections with respect to latency, and Arca and NYSE American both offer similar connectivity alternatives.[15] Despite this, Phlx, ISE, Arca and NYSE American charge a higher fee than the Exchange currently charges for similar connections to primary and secondary facilities.[16] Furthermore, the connectivity fees for the disaster recovery facilities of other exchanges are within the range of the proposed fees of the Exchange.[17] For these reasons, the

[9] *See* Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

[10] *Id.*

[11] *See* Nasdaq ISE Schedule of Fees, IX(D) (charging $3,000 for disaster recovery testing & relocation services); *see also* Cboe Exchange, Inc. (''Cboe'') Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of $2,000 for a 1Gb disaster recovery network access port and a monthly fee of $6,000 for a 10Gb disaster recovery network access port).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(5).

[15] *See supra* note 9.

[16] *Id.*

[17] *See supra* note 11.

Exchange believes the proposed increase in the fees for the fiber connectivity to the Exchange is reasonable and not unfairly discriminatory.

The Exchange believes that the proposal to increase the fees for connectivity alternatives is fair, equitable and not unreasonably discriminatory because the increased fees will only partially offset the Exchange's increased costs associated with maintaining its network infrastructure. In particular, the Exchange's increased costs associated with supporting its network are due to several factors, including increased costs associated with maintaining and expanding a team of highly-skilled network engineers, increasing fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's R&D efforts. For example, the Exchange has had to hire additional network engineering staff in the last year, and plans to hire additional staff in the coming months. Further, the Exchange contracts with a third-party data center provider for its data center space. The Exchange does not operate its own data centers. Other exchange operators do operate their own data centers. Thus, they can better control data center costs. They also operate their data centers as profit centers. Conversely, the Exchange is subject to fee increases from its data center provider, which the Exchange experienced in the last year. Further, the Exchange invests significant resources in network R&D to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. The costs associated with the maintenance and improvement of existing tools and the development of new tools resulted in increased cost to the Exchange. Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, the Exchange routinely conducts R&D projects to improve the performance of the network's hardware infrastructure. As an example, in the last year, the Exchange's R&D efforts resulted in a performance improvement in its network switches, requiring the purchase of new switching equipment, and thus resulting in increased costs. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the US options industry is a significant expense for the Exchange that continues to increase, and thus the Exchange believes that it is fair, equitable, and not unreasonably discriminatory to offset some of those increased costs by increasing its network connectivity fees, as proposed herein. Overall, the Proposed Fee Increases are projected to offset only a portion of the Exchange's increased network connectivity costs.

The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act [18] because all MIAX Options participants have the opportunity to subscribe to the Exchange's connections. There is also no differentiation among MIAX Options participants with regard to the fees charged for these services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that the proposed changes should increase both intermarket and intramarket competition. Specifically, the Exchange believes that the changes will promote competition by increasing the connectivity fees to become more within the range of comparable fees assessed by other competing exchanges.[19]

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[20] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[21] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

Identical fee increases to those proposed herein were originally filed on July 31, 2018, and designated effective August 1, 2018.[22] That proposal, MIAX–2018–19, was published for comment in the **Federal Register** on August 13, 2018.[23] The Commission received one comment letter on that proposal.[24] On September 17, 2018, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposal.[25] The instant filing proposes identical fees and raises similar concerns as to whether they are consistent with the Act.[26]

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder

[18] 15 U.S.C. 78f(b)(5).

[19] *See supra* note 9.

[20] 15 U.S.C. 78s(b)(3)(C).

[21] 15 U.S.C. 78s(b)(1).

[22] *See supra* note 4, and accompanying text.

[23] *See supra* note 5, and accompanying text.

[24] *See supra* note 6.

[25] *See* Securities Exchange Act Release No. 84175, 83 FR 47955 (September 21, 2018).

[26] *See id.*

applicable to the exchange.[27] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [28]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [29] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [30] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[31]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether increasing certain connectivity fees to the Exchange is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[32]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule changes.[33]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C) [34] and 19(b)(2)(B) of the Act [35] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[36] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,'' [37]
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to perfect the operation of a free and open market and a national market system'' and ''protect investors and the public interest,'' and not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers,'' [38] and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [39]

As noted above, the proposal increases connectivity fees for physical connections to the Exchange. The Exchange states that this fee increase would partially offset costs associated with providing and maintaining this technology.[40] In the instant filing the Exchange states that its increased costs relate to maintaining and expanding a team of highly-skilled network engineers, increasing fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability.[41]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [42] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[43] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[44]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory; or not impose an unnecessary or inappropriate burden on competition.[45]

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by October 31, 2018. Rebuttal comments should be submitted by November 14, 2018. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[46]

[27] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[28] *Id.*

[29] 15 U.S.C. 78f(b)(4).

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78f(b)(8).

[32] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[33] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[35] 15 U.S.C. 78s(b)(2)(B).

[36] 15 U.S.C. 78s(b)(2)(B).

[37] 15 U.S.C. 78f(b)(4).

[38] 15 U.S.C. 78f(b)(5).

[39] 15 U.S.C. 78f(b)(8).

[40] *See supra* Section II.A.1.

[41] *See id.*

[42] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[43] *See id.*

[44] *See id.*

[45] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[46] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate

Continued

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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–MIAX–2018–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2018–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2018–25 and should be submitted on or before October 31, 2018. Rebuttal comments should be submitted by November 14, 2018.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[47] that File Number SR–MIAX–2018–25 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Eduardo A. Aleman,

Assitant Secretary.

[FR Doc. 2018–21921 Filed 10–9–18; 8:45 am]

BILLING CODE 8011–01–P

for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[47] 15 U.S.C. 78s(b)(3)(C).

[48] 17 CFR 200.30–3(a)(57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84351; File No. SR–NYSE–2018–30]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change To Provide for the Listing of Exchange Traded Products With No Component NMS Stock Listed on the Exchange, Delete Obsolete Listing Rules for Exchange Traded Products and Amend Rules Regarding Unlisted Trading Privileges

October 3, 2018.

I. Introduction

On June 15, 2018, the New York Stock Exchange LLC (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing of exchange traded products (''ETPs'') that do not have any component NMS Stock[3] listed on the Exchange, delete obsolete listing rules for ETPs, and amend rules regarding unlisted trading privileges (''UTP''). The proposed rule change was published for comment in the **Federal Register** on July 6, 2018.[4] On July 24, 2018, the Exchange submitted partial Amendment No. 1 to the proposed rule change. On August 16, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On August 23, 2018, the Exchange submitted Amendment No. 2 to the proposed rule change.[6] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

As described in more detail in the Notice,[7] the Exchange proposes to: (1) Provide for the listing of certain ETPs, provided that an ETP meets the applicable requirements of NYSE Rules 5P and 8P and does not have any component NMS Stock that is listed on the Exchange or is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange;[8] (2) delete a sentence in NYSE Rule 5.1(a)(1) that is no longer relevant given the Exchange's addition of Section 303A to the Listed Company Manual,[9] which requires all NYSE-listed companies, including any ETPs listed on the Exchange, to comply with Section 303A of the Listed Company Manual; (3) delete certain listing rules that would be superseded by the ETP listing and trading requirements proposed in NYSE Rules 5P and 8P; (4) delete all references in NYSE Rules 5P and 8P that imply

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NMS Stock is defined in Rule 600 of Regulation NMS, 17 CFR 242.600(b)(47).

[4] *See* Securities Exchange Act Release No. 83560 (June 29, 2018), 83 FR 31585 (''Notice'').

[5] *See* Securities Exchange Act Release No. 83860, 83 FR 42534 (August 22, 2018).

[6] Amendment No. 2 replaced and superseded the original filing, as modified by partial Amendment No. 1, in its entirety. In Amendment No. 2, the Exchange: (i) Provided background information regarding its Pillar platform and clarified that it would not be listing ETPs on its Pillar platform at this time but that it would announce via trader update when it plans to do so; (ii) designated as ''Reserve'' certain sections of the Listed Company Manual which rules are being deleted by this proposal; (iii) represented that the Commission approved Exchange listing rules that are substantially identical to those on NYSE Arca, Inc. (''NYSE Arca'') for certain ETPs; and (iv) made technical changes to the rule text and proposal. Because Amendment No. 2 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues under the Act, it is not subject to notice and comment. Amendment No. 2 is available at: *https://www.sec.gov/comments/sr-nyse-2018-30/nyse201830-4274809-173136.pdf.*

[7] *See* Notice, *supra* note 4.

[8] The Exchange represents that its proposed rules for the qualification, listing, and trading of these products are substantially identical (other than certain non-substantive and technical amendments) as the rules of NYSE Arca and the Exchange's other affiliates, including NYSE American LLC (''NYSE American'').

[9] Section 303A implements the requirements of Rules 10A–3 and 10C–1 under the Act.

that the initial and continued listing standards contained in those rules may apply to the trading pursuant to UTP of such ETPs, and make related changes; and (5) amend NYSE Rule 5.1(a)(2) relating to ETPs trading pursuant to UTP to delete the requirement that the Exchange file with the Commission a Form 19b–4(e) with respect to each ETP it trades by UTP, and to make clear that the Exchange would halt trading in an ETP trading pursuant to UTP as provided for in NYSE Rule 7.18.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's proposed listing standards for ETPs [13] do not raise any novel issues, as they are consistent with the rules of other national securities exchanges. The proposed rules for the qualification, listing, and trading of ETPs are substantially identical (other than certain non-substantive and technical changes) to the rules of NYSE Arca and NYSE American. Moreover, the Exchange's proposal to make clear that the initial and continued listing standards in Rules 5P and 8P do not apply to the trading pursuant to UTP of such ETPs conforms NYSE's rules to the corresponding provisions of the rules of NYSE National, Inc. (''NYSE National'').[14]

Additionally, the Commission believes that the deletion of listing rules that would be superseded by the proposed rule change, the proposed amendments to NYSE Rules 5.1(a), and technical conforming changes are appropriate and consistent with Section 6(b)(5) of the Act. These changes would eliminate language that is no longer relevant and modify the Exchange rules to be more precise, thereby leading to greater clarity for Exchange members, regulators, investors, and the general public.

In approving the proposed rule change, the Commission also relies upon the Exchange's representation that: (1) Listed ETPs would be subject to the existing trading surveillances administered by the Exchange for ETPs trading UTP, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, and (2) the initial and continued listing reviews of ETPs listed on the Exchange will be conducted in the same manner as they are on NYSE's affiliated exchange, NYSE Arca.[15] Further, the Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in ETPs, as well as certain other securities and financial instruments underlying such ETPs, with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''). The Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in ETPs and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in ETPs, as well as certain other securities and financial instruments underlying such ETPs from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[16]

The Commission therefore finds that the proposed rule change, as modified by Amendment No. 2, is consistent with, and furthers the objectives of, Section 6(b)(5) of the Act.[17]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSE–2018–30), as modified by Amendment No. 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21907 Filed 10–9–18; 8:45 am]

BILLING CODE 8011–01–P

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] The proposed listing standards of Rules 5P and 8P: (1) Provide for the listing of certain ETPs, provided that an ETP meets the applicable requirements of NYSE Rules 5P and 8P and does not have any component NMS Stock that is listed on the Exchange or is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange; (2) delete a sentence in NYSE Rule 5.1(a)(1) that is no longer relevant given the Exchange's addition of Section 303A to the Listed Company Manual; and (3) delete all references in NYSE Rules 5P and 8P that imply that the initial and continued listing standards contained in those rules may apply to the trading pursuant to UTP of such ETPs.

[14] In addition, the Commission believes that the proposed changes to NYSE Rule 5.1(a)(2) would further harmonize the Exchange's rules applicable to ETPs traded on a UTP basis with the rules of NYSE National.

[15] *See* Notice, *supra* note 4, at 31587–31588.

[16] *See id.* at 31587.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84352; File No. SR–Phlx–2018–61]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend, Reorganize and Enhance Membership, Registration and Qualification Rules and To Make Conforming Changes to Certain Other Rules

October 3, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2018, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend, reorganize and enhance its membership, registration and qualification rules and to make conforming changes to certain other rules.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted registration requirements to ensure that associated persons of member organizations attain and maintain specified levels of competence and knowledge pertinent to their function. In general, the current rules require that persons engaged in a member organization's investment banking or securities business who are to function as representatives or principals register with the Exchange in the category of registration appropriate to their functions by passing one or more qualification examinations [3] and exempt specified associated persons from the registration requirements.[4] They also prescribe ongoing continuing education requirements for registered persons.[5] The Exchange now proposes to amend, reorganize and enhance its rules regarding registration, qualification examinations and continuing education, as described below.[6]

Recently, the Commission approved a Financial Industry Regulatory Authority (''FINRA'') proposed rule change adopting rules relating to qualification and registration requirements in the Consolidated FINRA Rulebook,[7] restructuring the FINRA representative-level qualification examinations, creating a general knowledge examination and specialized knowledge examinations, allowing permissive registration, establishing an exam waiver process for persons working for a financial services affiliate of a member, and amending certain Continuing Education (''CE'') requirements (collectively, the ''FINRA Rule Changes'').[8] The FINRA Rule Changes will become effective on October 1, 2018.

The Exchange now proposes to amend, reorganize and enhance its own membership, registration and qualification rules in part in response to the FINRA Rule Changes, and also in order to conform the Exchange's rules more closely to those of its affiliated exchanges in the interest of uniformity and to facilitate compliance with membership, registration and qualification regulatory requirements by members of multiple Nasdaq-affiliated exchanges including Phlx. Last, the Exchange proposes to enhance its registration rules by adding a new registration requirement applicable to developers of algorithmic trading systems similar to a requirement adopted by FINRA pursuant to a 2016 FINRA proposed rule change.[9]

As part of this proposed rule change, current Rules 53, Liability for Dues Until Transfer or Military Service; 611, Principal Registration Requirements; 612, Categories of Principal Registration; 613, Representative Registration; 614, Persons Exempt from Registration; 615, Waiver of Requirements; 616, Electronic Filing Requirements for Uniform Forms; 623, Fingerprinting; and 640, Continuing Education for Registered Persons, are proposed to be deleted. Rule 620, Trading Floor Registration, is proposed to be renumbered and amended.[10]

In place of the deleted rules and rule sections the Exchange proposes to adopt a new 1200 Series of rules captioned Registration, Qualification and Continuing Education generally conforming to and based upon FINRA's new 1200 Series of rules resulting from the FINRA Rule Changes, but with a number of Exchange-specific variations.[11] The proposed new 1200 Series is also being proposed for adoption by Phlx's affiliated exchanges in order to facilitate compliance with membership, registration and qualification requirements by members of two or more of those affiliated exchanges.[12] In the new 1200 Series of

[3] *See* Phlx Rules 611, Principal Registration Requirements, and 613, Representative Registration.

[4] *See* Phlx Rule 614, Persons Exempt from Registration.

[5] *See* Phlx Rule 640, Continuing Education for Registered Persons.

[6] The Exchange's rules governing these matters were extensively updated and amended in 2012. *See* Securities Exchange Act Release No. 66840 (April 20, 2012), 77 FR 25003 (April 26, 2012) (SR–Phlx–2012–23).

[7] The current FINRA rulebook consists of: (1) FINRA rules; (2) NASD rules; and (3) rules incorporated from the New York Stock Exchange (''NYSE'') (the ''Incorporated NYSE rules''). While the NASD rules generally apply to all FINRA members, the Incorporated NYSE rules apply only to those members of FINRA that are also members of the NYSE.

[8] *See* Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (Order Approving File No. SR–FINRA–2017–007). *See also* FINRA Regulatory Notice 17–30 (SEC Approves Consolidated FINRA Registration Rules, Restructured Representative-Level Qualification Examinations and Changes to Continuing Education Requirements) (October 2017). FINRA articulated its belief that the proposed rule change would streamline, and bring consistency and uniformity to, its registration rules, which would, in turn, assist FINRA members and their associated persons in complying with the rules and improve regulatory efficiency. FINRA also determined to enhance the overall efficiency of its representative-level examinations program by eliminating redundancy of subject matter content across examinations, retiring several outdated representative-level registrations, and introducing a general knowledge examination that could be taken by all potential representative-level registrants and the general public. FINRA amended certain aspects of its continuing education rule, including by codifying existing guidance regarding the effect of failing to complete the Regulatory Element on a registered person's activities and compensation.

[9] *See* Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR–FINRA–2016–007). In its proposed rule change FINRA addressed the increasing significance of algorithmic trading strategies by amending its rules to require registration, as Securities Traders, of associated persons primarily responsible for the design, development or significant modification of algorithmic trading strategies, or who are responsible for the day-to-day supervision or direction of such activities.

[10] The Exchange also proposes conforming amendments to Rules 1, Definitions; 1024, Conduct of Accounts for Options Trading; 1090, Clerks; 3202, Application of Other Rules of the Exchange; 9630, Appeal; Equity Floor Procedure Advice A–7, Failure to Timely Submit Amendments to Form U4, Form U5 and Form BD; Options Floor Procedure Advice F–34, Failure to Timely Submit Amendments to Form U4, Form U5 and Form BD; and Section VII.C., FINRA Fees, of the Exchange's Pricing Schedule, and the addition of new Rule 2040, Nonregistered Foreign Finders. The Exchange is also proposing to amend the two Floor Procedure Advices to delete references to the ''Department of Market Regulation,'' which refer to FINRA's former Department of Market Regulation. FINRA amended its rules recently to reflect an internal reorganization of its Enforcement Operations. *See* Securities Exchange Act Release No. 83781 (August 6, 2018), 83 FR 39802 (August 10, 2018). In July 2017, FINRA announced its plan to consolidate its existing enforcement functions into a unified Department of Enforcement. FINRA's recent rule change makes technical and other non-substantive changes to FINRA Rules 9000 Series Code of Procedure to reflect the single Department of Enforcement, which the Exchange is mirroring in the two Floor Procedure Advices which will now refer only to FINRA's Department of Enforcement.

[11] The proposed Phlx 1200 Series of Rules would consist of Rule 1210, Registration Requirements; Rule 1220, Registration Categories; Rule 1230, Associated Persons Exempt from Registration; Rule 1240, Continuing Education Requirements; Rule 1250, Electronic Filing Requirements for Uniform Forms; and Rule 1260, Trading Floor Registration.

[12] The Exchange's five affiliated exchanges, The Nasdaq Stock Market LLC (''Nasdaq''), Nasdaq BX, Inc. (''BX''); Nasdaq ISE, LLC (''ISE''); Nasdaq GEMX, LLC (''GEMX''); and Nasdaq MRX, LLC (''MRX'') (together with Phlx, the ''Nasdaq Affiliated Exchanges'') are also submitting proposed rule changes to adopt the 1200 Series of rules. *See* SR–NASDAQ–2018–078, SR–BX–2018–047, SR–ISE–2018–82, SR–GEMX–2018–33 and SR–MRX–2018–31. The Exchange recently added a shell structure to its rulebook with the purpose of

rules the Exchange would, among other things, recognize additional associated person registration categories, recognize a new general knowledge examination, permit the maintenance of permissive registrations, and require Securities Trader registration of developers of algorithmic trading strategies consistent with a comparable, existing FINRA registration requirement.[13]

The proposed rule change would become operative October 1, 2018 with the exception of the new registration requirement for developers of algorithmic trading strategies which would become operative April 1, 2019.

Proposed Rules

A. Registration Requirements (Proposed Rule 1210)

Exchange Rules 613(a) and 611(a) currently require that persons engaged, or to be engaged, in the investment banking or securities business of a member who are to function as representatives or principals register with the Exchange in the category of registration appropriate to their functions as specified in Exchange Rules 613 and 612.[14] The Exchange is proposing to consolidate and streamline provisions of Exchange Rules 613(a) and 611(a) and to adopt them as Exchange Rule 1210, subject to several changes.[15]

Proposed Rule 1210 provides that each person engaged in the securities business of a member must register with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in proposed Rule 1220, unless exempt from registration pursuant to proposed Rule 1230. Unlike current Rules 613(a) and 611(a), proposed Rule 1210 would not require persons engaged in the investment banking business of a member to register with the Exchange since a member's investment banking business is not the primary concern of the Exchange or the focus of its operations.[16] Proposed Rule 1210 also provides that such person is not qualified to function in any registered capacity other than that for which the person is registered, unless otherwise stated in the rules.

B. Minimum Number of Registered Principals (Proposed Rule 1210.01)

Existing Rule 611(e), Requirement of Two Registered Principals, at section (i) requires members other than sole proprietorships to have at least two officers or partners who are registered as principals with respect to each aspect of the member organization's investment banking and securities business pursuant to the applicable provisions of Rule 611; provided, however, that a proprietary trading firm with 25 or fewer registered representatives is only required to have one officer or partner who is registered as a principal.[17] Under Rule 611(e)(ii) the Exchange may waive the provisions of paragraph (e)(i) in situations that indicate conclusively that only one person should be required to register as a principal. Additionally, Rule 611(e)(iii) requires an applicant for membership to have at least one person qualified for registration as a Limited Principal—Financial and Operations, pursuant to Rule 612(b)(i).[18]

The Exchange is proposing to delete these requirements and in their place to adopt new Rule 1210.01. The new rule would provide firms that limit the scope of their business with flexibility in satisfying the two-principal requirement. In particular, proposed Rule 1210.01 requires that a member have a minimum of two General Securities Principals, provided that a member that is limited in the scope of its activities may instead have two officers or partners who are registered in a principal category that corresponds to the scope of the member's activities.[19] For instance, if a firm's business is limited to securities trading, the firm may have two Securities Trader Principals, instead of two General Securities Principals. Additionally, Exchange Rule 1210.01 provides that any member with only one associated person is excluded from the two principal requirement. Proposed Rule 1210.01 would provide that existing members as well as new applicants may request a waiver of the two-principal requirement, consistent with current Exchange Rule 611(e)(ii). Finally, the Exchange is proposing to retain the existing rule's provision permitting a proprietary trading firm with 25 or fewer registered representatives to have just one registered principal. The FINRA Rule Changes do not include this provision.[20] The Financial and

improving efficiency and readability and to align its rules closer to those of the other Nasdaq Affiliated Exchanges. *See* Securities Exchange Act Release No. 82169 (November 29, 2017), 82 FR 57508 (December 5, 2017) (SR–Phlx–2017–97). Ultimately, the Exchange intends to submit another proposed rule change to transfer the Exchange's 1200 Series of rules into the new shell structure. The Phlx 1200 Series of rules would differ slightly from the 1200 Series of the other Nasdaq Affiliated Exchanges given Phlx's trading floor and its unique membership structure which features the concept of a ''member organization.'' The Phlx 1200 Series would therefore include a Rule 1260, Trading Floor Registration. Additionally, each of the new Phlx 1200 Series of rules (except Rule 1260) would contain a statement that references to a ''member'' in that rule shall be deemed to be references to a ''member organization.''

[13] *See* Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (order approving SR–FINRA–2016–007). In its proposed rule change to adopt this registration requirement, FINRA addressed the increasing significance of algorithmic trading strategies by proposing to require registration, as Securities Traders, of associated persons primarily responsible for the design, development or significant modification of algorithmic trading strategies, or who are responsible for the day-to-day supervision or direction of such activities.

[14] Section (a) of Rule 613 includes an exception for members whose activities are limited to the Exchange's options trading floor and who are registered pursuant to Rule 620(a), as well as for associated persons whose activities are limited to the Exchange's options trading floor and are registered pursuant to Rule 620(b). As discussed below, the Exchange proposes to preserve this exception as new section (c) of proposed Rule 1260.

[15] In general the 1200 Series would conform the Exchange's rules to FINRA's rules as revised in the FINRA Rule Changes, with modifications tailored to the business of the Exchange and of the other Nasdaq Affiliated Exchanges. However, the Exchange also proposes to adopt Rule 1210, Supplementary Material .12, which is not based upon a FINRA rule but instead on current Nasdaq Rule 1031(c), (d) and (e), which Nasdaq is proposing in SR-Nasdaq-2018–078 to relocate to Rule 1210, Supplementary Material .12 in the Nasdaq rulebook. These provisions govern the process for applying for registration and amending the registration application, as well as for notifying the Exchange of termination of the member's association with a person registered with the Exchange. The Exchange proposes to adopt Rule 1210, Supplemental Material .12, in order to have uniform processes and requirements in this area across the Nasdaq Affiliated Exchanges.

[16] Miami International Securities Exchange LLC (''MIAX'') Rule 203(a) and current ISE Rule 313(a)(1) likewise require registration of associated persons of members engaged in the member's securities business, but do not require registration with the exchanges of associated persons of members who engage in the member's investment banking business. Because the Exchange's proposed registration rules focus solely on securities trading activity, the proposed rules differ from the FINRA Rule Changes by omitting references to investment banking in proposed Rules 1210, 1210.03, 1210.10, 1220(a)(1), 1220(a)(2)(B), 1220(b), and 1240(b)(1), and also by omitting as unnecessary from Rule 1220(a)(10) a limitation on the qualification of a General Securities Sales Supervisor to supervise the origination and structuring of an underwriting.

[17] Rule 611(e)(i)(A)–(D) defines the term ''proprietary trading firm''. Because the Exchange is proposing to delete Rule 611 in its entirety, Rule 611(e)(i) (A)–(D) would be reworded and relocated to Rule 1, Definitions, Section (kk) as a defined term.

[18] The Exchange's rules currently refer to various categories of limited principal registration as ''Limited Principal—'' followed by the name of the registration category. In this proposed rule change, the Exchange will no longer employ the term ''Limited Principal—'' in discussing various principal registration categories. No substantive change is intended; shortening the names of the various principals simply improves readability of the rules.

[19] The principal registration categories are described in greater detail below.

[20] The Exchange is not proposing provisions conforming to the new FINRA Rule 1210.01 requirements that all FINRA members are required to have a Principal Financial Officer and a Principal Operations Officer, because it believes that its proposed Rule 1220(a)(4), Financial and Operations

Continued

Operations Principal requirement of current Rules 611(e)(i) and 612(b)(i), which it references, would be revised and relocated to proposed Rule 1220(a)(4)(A).

C. Permissive Registrations (Proposed Rule 1210.02)

Current Rule 611(a) prohibits member organizations from maintaining a principal registration with the Exchange for any person (A) who is no longer active in the member organization's investment banking or securities business, (B) who is no longer functioning as a principal, or (C) where the sole purpose is to avoid the examination requirement of the rule. A member organization may not make application for the registration of any person as principal where there is no intent to employ such person in the member organization's investment banking or securities business. However, a member organization may maintain or make application for the registration as a principal of a person who performs legal, compliance, internal audit, back-office operations, or similar duties for the member organization or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member organization. Exchange Rule 613(b) is a parallel provision applicable to representatives.

The Exchange is proposing to replace these provisions with new Rule 1210.02. The Exchange is also proposing to expand the scope of permissive registrations and to clarify a member's obligations regarding individuals who are maintaining such registrations.

Specifically, proposed Rule 1210.02 allows any associated person to obtain and maintain any registration permitted by the member. For instance, an associated person of a member working solely in a clerical or ministerial capacity, such as in an administrative capacity, would be able to obtain and maintain a General Securities Representative registration with the member. As another example, an associated person of a member who is registered, and functioning solely, as a General Securities Representative would be able to obtain and maintain a General Securities Principal registration with the member. Further, proposed Rule 1210.02 allows an individual engaged in the securities business of a foreign securities affiliate or subsidiary of a member to obtain and maintain any registration permitted by the member.

The Exchange is proposing to permit the registration of such individuals for several reasons. First, a member may foresee a need to move a former representative or principal who has not been registered for two or more years back into a position that would require such person to be registered. Currently, such persons are required to requalify (or obtain a waiver of the applicable qualification examinations) and reapply for registration. Second, the proposed rule change would allow members to develop a depth of associated persons with registrations in the event of unanticipated personnel changes. Third, allowing registration in additional categories encourages greater regulatory understanding. Finally, the proposed rule change would eliminate an inconsistency in the current rules, which permit some associated persons of a member to obtain permissive registrations, but not others who equally are engaged in the member's business.

Individuals maintaining a permissive registration under the proposed rule change would be considered registered persons and subject to all Exchange rules, to the extent relevant to their activities. For instance, an individual working solely in an administrative capacity would be able to maintain a General Securities Representative registration and would be considered a registered person for purposes of rules relating to borrowing from or lending to customers, but the rule would have no practical application to his or her conduct because he or she would not have any customers.

Consistent with the Exchange's supervision rules, members would be required to have adequate supervisory systems and procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned functions.[21] With respect to an individual who solely maintains a permissive registration, such as an individual working exclusively in an administrative capacity, the individual's day-to-day supervisor may be a nonregistered person. Members would be required to assign a registered supervisor to this person who would be responsible for periodically contacting such individual's day-to-day supervisor to verify that the individual is not acting outside the scope of his or her assigned functions. If such individual is permissively registered as a representative, the registered supervisor must be registered as a representative or principal. If the individual is permissively registered as a principal, the registered supervisor must be registered as a principal.[22]

D. Qualification Examinations and Waivers of Examinations (Proposed Rule 1210.03)

Current Rule 611(a) provides that before a registration can become effective, persons who are to function as principals must pass a qualification examination for principals appropriate to the category of registration as specified in the rule. Rule 613(d) provides that no member organization shall permit any member or person associated with it to engage in the investment banking or securities business unless the member organization determines that such person satisfies the qualification requirements established by the Board and is not subject to statutory disqualification as defined in Section 3(a)(39)[23] of the Act. The Exchange is proposing to replace these provisions with new Rule 1210.03.

In addition, as part of the FINRA Rule Changes FINRA has adopted a restructured representative-level qualification examination program whereby representative-level registrants would be required to take a general knowledge examination (the Securities Industry Essentials Exam or ''SIE'') and a specialized knowledge examination appropriate to their job functions at the firm with which they are associating. Therefore, proposed Rule 1210.03 provides that before the registration of a person as a representative can become effective under proposed Rule 1210, such person must pass the SIE and an appropriate representative-level qualification examination as specified in proposed Rule 1220. Proposed Rule 1210.03 also provides that before the registration of a person as a principal

Principal, which requires member firms operating pursuant to certain provisions of SEC rules to designate at least one Financial and Operations Principal, is sufficient. Further, the Exchange is not adopting the FINRA Rule 1210.01 requirements that (1) a member engaged in investment banking activities have an Investment Banking Principal, (2) a member engaged in research activities have a Research Principal, or (3) a member engaged in options activities with the public have a Registered Options Principal. The Exchange does not recognize the Investment Banking Principal or the Research Principal registration categories, and the Registered Options Principal registration requirement is set forth in Rule 1210.08 and its inclusion is therefore unnecessary in Rule 1210.01.

[21] The FINRA Proposed Rules at Rule 1210.02 cite FINRA's own supervision rule, by number. Because the 1200 Series of rules is intended to apply to the Exchange as well as to its affiliates which have different supervision rules, proposed Rule 1210.02 refers generally to the supervision rules rather than identifying them by number.

[22] In either case, the registered supervisor of an individual who solely maintains a permissive registration would not be required to be registered in the same representative or principal registration category as the permissively-registered individual.

[23] 15 U.S.C. 78c(a)(39).

can become effective under proposed Rule 1210, such person must pass an appropriate principal-level qualification examination as specified in proposed Rule 1220.

Further, proposed 1210.03 provides that if the job functions of a registered representative other than an individual registered as an Order Processing Assistant Representative, change and he or she needs to become registered in another representative-level category, he or she would not need to pass the SIE again. Rather, the registered person would need to pass only the appropriate representative-level qualification examination.[24] Thus under the proposed rule change, individuals seeking registration in two or more representative-level categories would experience a net decrease in the total number of exam questions they would be required to answer because the SIE content would be tested only once.

The proposed rule change solely impacts the representative-level qualification requirements. The proposed rule change does not change the scope of the activities permitted under the existing representative categories. For instance, after the operative date of the proposed rule change, a previously unregistered individual registering as a Securities Trader for the first time would be required to pass the SIE and an appropriate specialized knowledge examination. However, such individual may engage only in those activities in which a current Securities Trader may engage under current Exchange Rules.

Individuals who are registered on the operative date of the proposed rule change would be eligible to maintain those registrations without being subject to any additional requirements. Individuals who had been registered within the past two years prior to the operative date of the proposed rule change would also be eligible to maintain those registrations without being subject to any additional requirements, provided that they reregister with the Exchange within two years from the date of their last registration.

Further, registered representatives other than an individual registered as an Order Processing Assistant Representative, would be considered to have passed the SIE in the CRD system, and thus if they wish to register in any other representative category after the operative date of the proposed rule change, they could do so by taking only the appropriate specialized knowledge examination.[25] However, with respect to an individual who is not registered on the operative date of the proposed rule change but was registered within the past two years prior to the operative date of the proposed rule change, the individual's SIE status in the CRD system would be administratively terminated if such individual does not register within four years from the date of the individual's last registration.[26]

In addition, individuals, with the exception of Order Processing Assistant Representatives, who had been registered as representatives two or more years, but less than four years, prior to the operative date of the proposed rule change would also be considered to have passed the SIE and designated as such in the CRD system. Moreover, if such individuals re-register with a firm after the operative date of the proposed rule change and within four years of having been previously registered, they would only need to pass the specialized knowledge examination associated with that registration position. However, if they do not register within four years from the date of their last registration, their SIE status in the CRD system would be administratively terminated. Similar to the current process for registration, firms would continue to use the CRD system to request registrations for representatives. An individual would be able to schedule both the SIE and specialized knowledge examinations for the same day, provided the individual is able to reserve space at one of FINRA's designated testing centers.

Finally, under current Rule 615, the Exchange may, in exceptional cases and where good cause is shown, waive the applicable qualification examination and accept other standards as evidence of an applicant's qualifications for registration. The Exchange is proposing to replace Rule 615 with proposed Rule 1210.03 with changes that track FINRA Rule 1210.03. The proposed rule provides that the Exchange will only consider examination waiver requests submitted by a firm for individuals associated with the firm who are seeking registration in a representative- or principal-level registration category. Moreover, proposed Rule 1210.03 states that the Exchange will consider waivers of the SIE alone or the SIE and the representative- and principal-level examination(s) for such individuals.

E. Requirements for Registered Persons Functioning as Principals for a Limited Period (Proposed Rule 1210.04)

Current Rule 611(d) provides that any person associated with a member organization as a registered representative whose duties are changed by the member organization so as to require registration in any principal classification is allowed a period of 90 calendar days following the change in his or her duties during which to pass the appropriate qualification examination for principals. It further provides that any person not presently associated with a member organization as registered representative seeking registration as a principal shall submit the appropriate application for registration and any required registration and examination fees. Such person shall be allowed a period of 90 days after all applicable prerequisites are fulfilled to pass the appropriate qualification examination for principals. A person who has never been registered does not qualify for this exception. This provision specifically applies to a person associated with a member organization of another registered national securities exchange or association who is required to register in a principal classification under

[24] The exception for Order Processing Assistant Representatives and Foreign Associates was adopted by FINRA in FINRA Rule 1210.03, and is included in proposed Exchange Rule 1210.03 without the reference to Foreign Associates which is a registration category the Nasdaq Affiliated Exchanges do not recognize. FINRA has stated that the SIE would assess basic product knowledge; the structure and function of the securities industry markets, regulatory agencies and their functions; and regulated and prohibited practices. Proposed Rule 1210.03 provides that all associated persons, such as associated persons whose functions are solely and exclusively clerical or ministerial, are eligible to take the SIE. Proposed Rule 1210.03 also provides that individuals who are not associated persons of firms, such as members of the general public, are eligible to take the SIE. FINRA has stated its belief that expanding the pool of individuals who are eligible to take the SIE would enable prospective securities industry professionals to demonstrate to prospective employers a basic level of knowledge prior to submitting a job application. Further, this approach would allow for more flexibility and career mobility within the securities industry. While all associated persons of firms as well as individuals who are not associated persons would be eligible to take the SIE pursuant to proposed Rule 1210.03, passing the SIE alone would not qualify them for registration with the Exchange. Rather, to be eligible for registration with the Exchange, an individual would be required to pass an applicable representative or principal qualification examination and complete the other requirements of the registration process.

[25] Under the proposed rule change, only individuals who have passed an appropriate representative-level examination would be considered to have passed the SIE. Registered principals who do not hold an appropriate representative-level registration would not be considered to have passed the SIE. For example, an individual who is registered solely as a Financial and Operations Principal (Series 27) today would have to take the Series 7 to become registered as a General Securities Representative. Under the proposed rule change, in the future, this individual would have to pass the SIE and the specialized Series 7 examination to obtain registration as a General Securities Representative.

[26] As discussed below, the Exchange is proposing a four-year expiration period for the SIE.

Exchange rules but who is not required to be so registered under the rules of the other exchange or association, as well as to a person associated with a member organization who was not required to register with the Exchange as a principal prior to the adoption of Exchange Rule 611.

The Exchange is proposing to adopt these requirements of Rule 611(d) as new Rule 1210.04, subject to certain changes. Proposed Rule 1210.04 states that a member may designate any person currently registered, or who becomes registered, with the member as a representative to function as a principal for a limited period, provided that such person has at least 18 months of experience functioning as a registered representative within the five-year period immediately preceding the designation and has fulfilled all prerequisite registration, fee and examination requirements prior to designation as principal. These requirements apply to any principal category, including those categories that are not subject to a prerequisite representative-level registration requirement, such as the Financial and Operations Principal registration category.[27] This change is intended to ensure that representatives designated to function as principals for the limited period under the proposed rule have an appropriate level of registered representative experience. The proposed rule clarifies that the requirements of the rule apply to any principal category, including those categories that are not subject to a prerequisite representative-level registration requirement, such as the Financial and Operations Principal registration category. Similarly, the rule would permit a member to designate any person currently registered, or who becomes registered, with the member as a principal to function in another principal category for a period of 120 calendar days prior to passing an appropriate qualification examination as specified under Rule 1220. Proposed Rule 1210.04 would increase the existing rule's 90 day period to 120 days, to provide additional flexibility for representatives functioning as principals for a limited period of time.

The Exchange is not conserving in new Rule 1210.04 the language in existing Rule 611 that the provisions apply to a person associated with a member organization of another registered national securities exchange or association who is required to register in a principal classification under Exchange rules but who is not required to be so registered under the rules of the other exchange or association, as well as to a person associated with a member organization who was not required to register with the Exchange as a Principal prior to the adoption of Exchange Rule 611. The Exchange believes this language to be superfluous as the applicability to various individuals of proposed Rule 1210.04 speaks for itself and requires no elaboration.[28]

F. Rules of Conduct for Taking Examinations and Confidentiality of Examinations (Proposed Rule 1210.05)

Before taking an examination, FINRA currently requires each candidate to agree to the Rules of Conduct for taking a qualification examination. Among other things, the examination Rules of Conduct require each candidate to attest that he or she is in fact the person who is taking the examination. These Rules of Conduct also require that each candidate agree that the examination content is the intellectual property of FINRA and that the content cannot be copied or redistributed by any means. If FINRA discovers that a candidate has violated the Rules of Conduct for taking a qualification examination, the candidate may forfeit the results of the examination and may be subject to disciplinary action by FINRA. For instance, for cheating on a qualification examination, FINRA's Sanction Guidelines recommend a bar.[29]

Effective October 1, 2018, FINRA has codified the requirements relating to the Rules of Conduct for examinations under FINRA Rule 1210.05. FINRA also adopted Rules of Conduct for taking the SIE for associated persons and non-associated persons who take the SIE.

The Exchange proposes to adopt its own version of Rule 1210.05, which would provide that associated persons taking the SIE are subject to the SIE Rules of Conduct, and that associated persons taking any representative or principal examination are subject to the Rules of Conduct for representative and principal examinations. Under the proposed rule, a violation of the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations by an associated person would be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade, such as Exchange Rule 707.[30] Further, if the Exchange determines that an associated person has violated the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations, the associated person may forfeit the results of the examination and may be subject to disciplinary action by the Exchange.

Proposed Rule 1210.05 also states that the Exchange considers all of the qualification examinations' content to be highly confidential. The removal of examination content from an examination center, reproduction, disclosure, receipt from or passing to any person, or use for study purposes of any portion of such qualification examination or any other use that would compromise the effectiveness of the examinations and the use in any manner and at any time of the questions or answers to the examinations would be prohibited and would be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade. Finally, proposed Rule 1210.05 would prohibit an applicant from receiving assistance while taking the examination, and require the applicant to certify that no assistance was given to or received by him or her during the examination.[31]

G. Waiting Periods for Retaking a Failed Examination (Proposed Rule 1210.06)

The Exchange proposes to adopt new Rule 1210.06, which provides that a person who fails an examination may retake that examination after 30 calendar days from the date of the person's last attempt to pass that examination.[32] Proposed Rule 1210.06 further provides that if a person fails an examination three or more times in succession within a two-year period, the person is prohibited from retaking that examination until 180 calendar days from the date of the person's last attempt to pass it. These waiting periods would apply to the SIE and the representative- and principal-level examinations.[33]

[27] In this regard, the Exchange notes that qualifying as a registered representative is currently a prerequisite to qualifying as a principal on the Exchange except with respect to the Financial and Operations Principal registration category.

[28] Proposed Rule 1210.04 omits FINRA Rule 1210.04's reference to Foreign Associates, which is a registration category not recognized by the Nasdaq Affiliated Exchanges, but otherwise tracks the language of FINRA Rule 1210.04.

[29] *See* SR–FINRA–2017–007, pp. 26–27.

[30] Exchange Rule 707 prohibits members, member organizations or persons associated with or employed by a member or member organization from engaging in acts or practices inconsistent with just and equitable principles of trade. FINRA Rule 1210.05 cites FINRA Rule 2010, which is a comparable rule.

[31] The Exchange is not adopting portions of FINRA's Rule 1210.05 which apply to non-associated persons, over whom the Exchange would in any event have no jurisdiction.

[32] Proposed Rule 1210.06 has no counterpart in existing Exchange rules.

[33] FINRA Rule 1210.06 requires individuals taking the SIE who are not associated persons to agree to be subject to the same waiting periods for retaking the SIE. The Exchange is not including this

H. CE Requirements (Proposed Rule 1210.07)

Pursuant to current Exchange Rule 640, no member organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of paragraph (a) of Rule 640. Under the rule the CE requirements applicable to registered persons consist of a Regulatory Element [34] and a Firm Element.[35] The Regulatory Element applies to registered persons and must be completed within prescribed time frames.[36] For purposes of the Regulatory Element, a ''registered person'' is defined in current Rule 640 as any member, registered representative or other person registered or required to be registered under Exchange Rules, but does not include such person whose activities are limited solely to the transaction of business on the Exchange's trading floor, with members or registered broker-dealers.[37] The Firm Element consists of annual, member-developed and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered by the member. For purposes of the Firm Element, the term ''covered registered persons'' is defined as any registered person who has direct contact with customers in the conduct of the member organization's securities sales, trading or investment banking activities, and to the immediate supervisors of such persons.[38]

The Exchange proposes to delete current Rule 640. The CE requirements set forth in Rule 640 are proposed to be reorganized and renumbered, and to be adopted as new Rule 1240. The Exchange believes that all persons registered pursuant to Rule 1210, regardless of their activities, should be subject to the Regulatory Element of the CE requirements so that they can keep their knowledge of the securities industry current.[39] Therefore, the Exchange is proposing Rule 1210.07, to clarify that all ''covered persons'' as defined in Rule 1240(a)(5), including those who solely maintain a permissive registration, are required to satisfy the Regulatory Element, as specified in proposed new Rule 1240, discussed below.[40] Individuals who have passed the SIE but not a representative or principal-level examination and do not hold a registered position would not be subject to any CE requirements. Consistent with current practice, proposed Rule 1210.07 would also provide that a registered person of a member who becomes CE inactive would not be permitted to be registered in another registration category with that member or be registered in any registration category with another member, until the person has satisfied the Regulatory Element.

Individuals whose activities are limited solely to the transaction of business on the Exchange's trading floor, with members or registered broker-dealers, would continue to be excluded from the CE requirement.[41] Pursuant to proposed Rule 1260, Section (c), members whose activities are limited to the Exchange's options trading floor and who are registered pursuant to proposed Rule 1260(a) as well as associated persons whose activities are limited to the Exchange's options trading floor and who are registered pursuant to proposed Rule 1260(b) would be exempt from the representative registration requirements of proposed Rules 1210 and 1220. The CE requirements of proposed Rule 1240 would apply only to ''covered persons,'' defined in turn in proposed Rule 1240 as persons registered pursuant to Rule 1210.

I. Lapse of Registration and Expiration of SIE (Proposed Rule 1210.08)

Existing Rule 611(c) states that any person whose registration has been revoked by the Exchange as a disciplinary sanction or whose most recent registration as principal has been terminated for two or more years immediately preceding the date of receipt by the Exchange of a new application is required to pass a qualification examination for Principals appropriate to the category of registration as specified in Rule 611. The two year period is calculated from the termination date to the date the Exchange receives a new application for registration. A comparable provision applicable to representatives is found in Rule 613(c). The Exchange is proposing to delete existing Rules 611(c) and 613(c), and to replace them with Rule 1210.08, Lapse of Registration and Expiration of SIE.

Proposed Rule 1210.08 contains language comparable to that of existing Rules 611(c) and 613(c) but also clarifies that, for purposes of the proposed rule, an application would not be considered to have been received by the Exchange if that application does not result in a registration. Proposed Rule 1210.08 also sets forth the expiration period of the SIE. Based on the content covered on the SIE, the Exchange is proposing that a passing result on the SIE be valid for four years. Therefore, under the proposed rule change, an individual who passes the SIE and is an associated person of a firm at the time would have up to four years from the date he or she passes the SIE to pass a representative-level examination to register as a representative with that firm, or a subsequent firm, without having to retake the SIE. In addition, an individual who passes the SIE and is not an associated person at the time would have up to four years from the date he or she passes the SIE to become an associated person of a firm, pass a representative-level examination and register as a representative without having to retake the SIE.

Moreover, an individual holding a representative-level registration who leaves the industry after the operative date of the proposed rule change would have up to four years to re-associate with a firm and register as a representative without having to retake the SIE. However, the four-year expiration period in the proposed rule change extends only to the SIE, and not the representative- and principal-level

language in proposed Rule 1210.06, as the Exchange will not apply the 1200 Series of rules in any event to individuals who are not associated persons of members.

[34] *See* Rule 640(a).

[35] *See* Rule 640(b).

[36] Pursuant to Rule 640(a), each registered person is required to complete the Regulatory Element on the occurrence of their second registration anniversary date(s), and every three years thereafter or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date.

[37] *See* Rule 640, Commentary .01.

[38] *See* Rule 640(b)(1).

[39] The Exchange notes that Rule 625 also may require individuals who are not required to register pursuant to Rule 1210 to complete mandatory training. The rule provides that all members and persons employed by or associated with such member or a member organization shall successfully complete mandatory training, as required by the Exchange. Training topics include, but are not limited to, training related to that person's function at the Exchange, changes in existing automated systems or any new technology that is utilized by the Exchange, compliance with Exchange Rules and federal securities laws, and issues related to conduct, health and safety on the trading floor. In addition, floor members shall complete mandatory training programs, on at least a semi-annual basis, that address compliance with the federal securities laws and the Exchange's Rules in place to prevent and deter unlawful trading by floor members.

[40] Current Rule 640 would be deleted, replaced by proposed Rule 1240. Rule 1240(a)(5) would define the term ''covered person'' as any person registered with the Exchange pursuant to Rule 1210, including any person who is permissively registered pursuant to Rule 1210.02, and any person who is designated as eligible for a waiver pursuant to Rule 1210.09.

[41] *See* existing Rule 640, Commentary .01, which excludes such individuals from the term ''registered person'' as it is used in Rule 640.

registrations. The representative- and principal-level registrations would continue to be subject to a two year expiration period as is the case today.

J. Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member (Proposed Rule 1210.09)

The Exchange is proposing Rule 1210.09 to provide a new process whereby individuals who would be working for a financial services industry affiliate of a member [42] would terminate their registrations with the member and would be granted a waiver of their requalification requirements upon re-registering with a member, provided the firm that is requesting the waiver and the individual satisfy the criteria for a Financial Services Affiliate (''FSA'') waiver.[43] The purpose of the FSA waiver is to provide a firm greater flexibility to move personnel, including senior and middle management, between the firm and its financial services affiliate(s) so that they may gain organizational skills and better knowledge of products developed by the affiliate(s) without the individuals having to requalify by examination each time they returned to the firm.

Under the proposed waiver process, the first time a registered person is designated as eligible for a waiver based on the FSA criteria, the member with which the individual is registered would notify the Exchange of the FSA designation. The member would concurrently file a full Form U5 terminating the individual's registration with the firm, which would also terminate the individual's other SRO and state registrations.

To be eligible for initial designation as an FSA-eligible person by a member, an individual must have been registered for a total of five years within the most recent 10-year period prior to the designation, including for the most recent year with that member.[44] An individual would have to satisfy these preconditions only for purposes of his or her initial designation as an FSA-eligible person, and not for any subsequent FSA designation(s). Thereafter, the individual would be eligible for a waiver for up to seven years from the date of initial designation [45] provided that the other conditions of the waiver, as described below, have been satisfied. Consequently, a member other than the member that initially designated an individual as an FSA-eligible person may request a waiver for the individual and more than one member may request a waiver for the individual during the seven-year period.[46]

An individual designated as an FSA-eligible person would be subject to the Regulatory Element of CE while working for a financial services industry affiliate of a member. The individual would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and CE would be based on the same cycle had the individual remained registered. If the individual fails to complete the prescribed Regulatory Element during the 120-day window for taking the session, he or she would lose FSA eligibility (*i.e.,* the individual would have the standard two-year period after termination to re-register without having to retake an examination). The Exchange is making corresponding changes to Rule 640, Continuing Education (proposed to be renumbered as Rule 1240).

Upon registering an FSA-eligible person, a firm would file a Form U4 and request the appropriate registration(s) for the individual. The firm would also submit an examination waiver request to the Exchange,[47] similar to the process used today for waiver requests, and it would represent that the individual is eligible for an FSA waiver based on the conditions set forth below. The Exchange would review the waiver request and make a determination of whether to grant the request within 30 calendar days of receiving the request. The Exchange would summarily grant the request if the following conditions are met:

(1) Prior to the individual's initial designation as an FSA-eligible person, the individual was registered for a total of five years within the most recent 10-year period, including for the most recent year with the member that initially designated the individual as an FSA-eligible person;

(2) The waiver request is made within seven years of the individual's initial designation as an FSA-eligible person by a member;

(3) The initial designation and any subsequent designation(s) were made concurrently with the filing of the individual's related Form U5;

(4) The individual continuously worked for the financial services affiliate(s) of a member since the last Form U5 filing;

(5) The individual has complied with the Regulatory Element of CE; and

(6) The individual does not have any pending or adverse regulatory matters, or terminations, that are reportable on the Form U4, and has not otherwise been subject to a statutory disqualification while the individual was designated as an FSA-eligible person with a member.

Following the Form U5 filing, an individual could move between the financial services affiliates of a member so long as the individual is continuously working for an affiliate. Further, a member could submit multiple waiver requests for the individual, provided that the waiver requests are made during the course of the seven-year period.[48] An individual

[42] Proposed Rule 1210.09 defines a ''financial services industry affiliate of a member'' as a legal entity that controls, is controlled by or is under common control with a member and is regulated by the SEC, Commodity Futures Trading Commission (''CFTC''), state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

[43] There is no counterpart to proposed Rule 1210.09 in the Exchange's existing rules. FINRA Rule 1210.09 was recently adopted as a new waiver process for FINRA registrants, as part of the FINRA Rule Changes.

[44] For purposes of this requirement, a five year period of registration with the Exchange, with FINRA or with another self-regulatory organization would be sufficient.

[45] Individuals would be eligible for a single, fixed seven-year period from the date of initial designation, and the period would not be tolled or renewed.

[46] The following examples illustrate this point:

Example 1. Firm A designates an individual as an FSA-eligible person by notifying the Exchange and files a Form U5. The individual joins Firm A's financial services affiliate. Firm A does not submit a waiver request for the individual. After working for Firm A's financial services affiliate for three years, the individual directly joins Firm B's financial services affiliate for three years. Firm B then submits a waiver request to register the individual.

Example 2. Same as Example 1, but the individual directly joins Firm B after working for Firm A's financial services affiliate, and Firm B submits a waiver request to register the individual at that point in time.

Example 3. Firm A designates an individual as an FSA-eligible person by notifying the Exchange and files a Form U5. The individual joins Firm A's financial services affiliate for three years. Firm A then submits a waiver request to reregister the individual. After working for Firm A in a registered capacity for six months, Firm A re-designates the individual as an FSA-eligible person by notifying FINRA and files a Form U5. The individual rejoins Firm A's financial services affiliate for two years, after which the individual directly joins Firm B's financial services affiliate for one year. Firm B then submits a waiver request to register the individual.

Example 4. Same as Example 3, but the individual directly joins Firm B after the second period of working for Firm A's financial services affiliate, and Firm B submits a waiver request to register the individual at that point in time.

[47] The Exchange would consider a waiver of the representative-level qualification examination(s), the principal-level qualification examination(s) and the SIE, as applicable.

[48] For example, if a member submits a waiver request for an FSA-eligible person who has been working for a financial services affiliate of the member for three years and re-registers the individual, the member could subsequently file a Form U5 and re-designate the individual as an FSA-

who has been designated as an FSA-eligible person by a member would not be able to take additional examinations to gain additional registrations while working for a financial services affiliate of a member.

K. Status of Persons Serving in the Armed Forces of the United States (Proposed Rule 1210.10)

Current Rule 53, Inactive Status of Currently Registered Persons, provides specific relief to registered persons serving in the Armed Forces of the United States. Among other things, the rule permits a registered person of a member or member organization who volunteers for or is called into active duty in the Armed Forces of the United States to be placed, after proper notification to the Exchange, upon inactive status and remain eligible to receive ongoing transaction-related compensation. The rule also includes specific provisions regarding the deferment of the lapse of registration requirements in Rules 611, 613 and 3228 for formerly registered person serving in the Armed Forces of the United States.

The Exchange is proposing to adopt Rule 53 as Rule 1210.10 with certain changes. To enhance the efficiency of the current notification process for registered persons serving in the Armed Forces, proposed Rule 1210.10 requires that the member with which such person is registered promptly notify the Exchange of such person's return to employment with the member. A sole proprietor must similarly notify the Exchange of his or her return to participation in the securities business. Further, proposed Rule 1210.10 provides that the Exchange would also defer the lapse of the SIE for formerly registered persons serving in the Armed Forces of the United States.[49]

L. Impermissible Registrations (Proposed Rule 1210.11)

Existing Rule 611(a) and 613(a) prohibit a member organization from maintaining a principal or representative registration with the Exchange for any person who is no longer active in the member organization's investment banking or securities business, who is no longer functioning in the registered capacity, or where the sole purpose is to avoid an examination requirement. The rules also prohibit a member organization from applying for the registration of a person as representative or principal where the member organization does not intend to employ the person in its investment banking or securities business. These prohibitions do not apply to the current permissive registration categories identified in Rules 611(a) and 613(a).[50]

In light of proposed Rule 1210.02, Permissive Registrations, discussed above the Exchange is proposing to delete these provisions of Rule 611(a) and 613(a) and instead adopt Rule 1210.11 prohibiting a member from registering or maintaining the registration of a person unless the registration is consistent with the requirements of proposed Rule 1210.[51]

M. Registration Categories (Proposed Rule 1220)

The Exchange is proposing to adopt new and revised registration category rules and related definitions in proposed Rule 1220, Registration Categories.[52]

1. Definition of Principal (Proposed Rule 1220(a)(1))

Current Rule 611(b) defines ''principal'' to include sole proprietors, officers, partners, managers of offices of supervisory jurisdiction and directors who are actively engaged in the management of the member organization's investment banking or securities business, such as supervision, solicitation, conduct of business or the training of persons associated with a member organization for any of these functions. The Exchange is proposing to streamline and adopt Rule 611(b) as Rule 1220(a)(1).

For the reason discussed above in connection with proposed Rule 1210, proposed Rule 1220(a)(1) would not apply to individuals who are not engaged in the management of the member's securities business even if they are engaged in the management of the member's investment banking business. Proposed Rule 1220(a)(1) clarifies that a member's chief executive officer (''CEO'') and chief financial officer (''CFO'') (or equivalent officers) are considered principals based solely on their status. The proposed rule further clarifies that the term ''principal'' includes any other associated person who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under Exchange rules. In addition, the proposed rule provides that the phrase ''actively engaged in the management of the member's securities business'' includes the management of, and the implementation of corporate policies related to, such business as well as managerial decision-making authority with respect to the member's securities business and management-level responsibilities for supervising any aspect of such business, such as serving as a voting member of the member's executive, management or operations committees.

2. General Securities Principal (Proposed Rule 1220(a)(2))

Current Rule 612(a) currently requires that an associated person who meets the definition of ''principal'' under Rule 611 and each person designated as Chief Compliance Officer (''CCO'') on Schedule A of the member's Form BD (Uniform Application for Broker-Dealer Registration) register as a General Securities Principal. A person registering as a General Securities Principal must pass the General Securities Principal examination. The rule, however, provides that such person is not required to register as a General Securities Principal if the person's activities are so limited as to qualify such person for one or more of the limited principal categories specified in Rules 611(b)–(e). Further, the rule does not preclude individuals registered in a limited principal category from registering as General Securities Principals. Rule 612(a) also

eligible person. Moreover, if the individual works with a financial services affiliate of the member for another three years, the member could submit a second waiver request and re-register the individual upon returning to the member.

[49] Proposed Rule 1210.10 tracks FINRA Rule 1210.10 except for the statement that inactive registered persons are not to be included within the definition of ''Personnel'' for purposes of dues or assessments as provided in Article VI of the FINRA By-Laws. Instead, proposed Rule 1210.10 incorporates language from existing Nasdaq and BX IM–1002–2, stating that inactive persons under the rule are not included within the scope of fees, if any, charged by the Exchange with respect to registered persons.

[50] Rules 611(a) allows for permissive principal registration of individuals who perform legal, compliance, internal audit, back-office operations, or similar duties for the member organization or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member organization. Rule 613(a) permits permissive registration as a representative of an individual who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the member organization, or a person who performs administrative support functions for registered personnel, or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member organization.

[51] As discussed above, the Exchange is also proposing Rule 1210, Supplementary Material .12, Application for Registration and Jurisdiction, which is not included in FINRA Rule 1210. Proposed Exchange Rule 1210, Supplementary Material .12, is based upon portions of existing Nasdaq Rule 1031.

[52] For ease of reference, the Exchange proposes to adopt as Rule 1220, Supplementary Material .07, in chart form, a Summary of Qualification Requirements in chart form for each of the Exchange's permitted registration categories discussed below.

includes transitioning and grandfathering provisions for CCO's.

Rule 612(a) requires individuals seeking to register and qualify as a General Securities Principal, prior to or concurrent with such registration, to become registered as a General Securities Representative. It also includes a grandfathering provision for persons who were registered as principals before the adoption of the General Securities Principal registration category. Finally, it provides that an associated person registered solely as a General Securities Principal is not qualified to function as a Limited Principal—Financial and Operations, Limited Principal—General Securities Sales Supervisor or Securities Trader Principal.

The Exchange is proposing to more clearly set forth the obligation to register as a General Securities Principal. Specifically, proposed Rule 1220(a)(2)(A) states that each principal as defined in proposed Rule 1220(a)(1) is required to register with the Exchange as a General Securities Principal, except that if a principal's activities are limited to the functions of a Compliance Official, a Financial and Operations Principal, a Securities Trader Principal, a Securities Trader Compliance Officer, or a Registered Options Principal, then the principal shall appropriately register in one or more of these categories.[53] Proposed Rule 1220(a)(2)(A) further provides that if a principal's activities are limited solely to the functions of a General Securities Sales Supervisor, then the principal may appropriately register in that category in lieu of registering as a General Securities Principal, provided that if the principal is engaged in options sales activities he or she would be required to register as a General Securities Sales Supervisor or as a Registered Options Principal.[54]

Proposed Rule 1220(a)(2)(B) requires that an individual registering as a General Securities Principal satisfy the General Securities Representative prerequisite registration and pass the General Securities Principal qualification examination.

In conjunction with the elimination of the Corporate Securities Representative registration category by FINRA, the Exchange is proposing that Rule 1220(a)(2)(B) provide that, subject to the lapse of registration provisions in proposed Rule 1210.08, General Securities Principals who obtained the Corporate Securities Representative prerequisite registration on the Exchange in lieu of the General Securities Representative prerequisite registration and individuals who had been registered as such within the past two years prior to the operative date of the proposed rule change, may continue to supervise corporate securities activities as currently permitted.[55] Proposed Rule 1220(a)(2)(B) requires all other individuals registering as General Securities Principals after October 1, 2018, to first become registered as a General Securities Representative pursuant to Rule 1220(b)(2).[56]

The Exchange is also proposing to eliminate the grandfathering provision for individuals who were registered as principals prior to the adoption of the General Securities Principal registration category because it no longer has any practical application. Finally, the Exchange is proposing to delete the provision that persons eligible for registration in other principal categories are not precluded from registering as General Securities Principals because it is superfluous.[57]

3. Compliance Official (Proposed Rule 1220(a)(3))

Current Rule 612(a) provides that each person designated as a Chief Compliance Officer on Schedule A of Form BD of a member organization to which Rule 611 applies, be required to register with the Exchange as a General Securities Principal and shall pass the Series 24 examination before such registration may become effective, unless such person's activities are so limited as to qualify such person for one or more of the limited categories of principal registration specified Rule 612(b)–(e).[58] The Exchange proposes to delete this provision.

In its place, the Exchange proposes to adopt Rule 1220(a)(3) providing that each person designated as a Chief Compliance Officer on Schedule A of Form BD shall be required to register with the Exchange as a General Securities Principal, provided that such person may instead register as a Compliance Official if his or her duties do not include supervision of trading. All individuals registering as Compliance Official would be required, prior to or concurrent with such registration, to pass the Compliance Official qualification examination. An individual designated as a Chief Compliance Officer on Schedule A of Form BD of a member that is engaged in limited securities business could also be registered in a principal category under Rule 1220(a) that corresponds to the limited scope of the member's business.

Additionally, Rule 1220(a)(3) would provide that an individual designated as a Chief Compliance Officer on Schedule A of Form BD may register and qualify as a Securities Trader Compliance Officer if, with respect to transactions in equity, preferred or convertible debt securities, or options such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities other than a person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the SEC pursuant to the Investment Company Act and that controls, is controlled by, or is under common control with a member. All individuals registering as Securities Trader Compliance Officers would be required to first become registered

[53] The Exchange is proposing to recognize the Compliance Official and Securities Trader Compliance Officer registration categories for the first time as a result of this proposed rule change.

[54] The Exchange's proposed Rule 1220(a)(2)(A) deviates somewhat from the counterpart FINRA rule in that it does not offer various limited registration categories provided for in FINRA's new Rule 1220(a)(2)(A). It therefore proposes to reserve Rules 1220(a)(2)(A)(ii) and (iv).

[55] The Exchange itself does not recognize the Corporate Securities Representative registration category, but understands that FINRA and Nasdaq currently accept Corporate Securities Representative registration as a prerequisite to General Securities Principal registration.

[56] The Exchange is not adopting the FINRA Rule 1220(a)(2)(B) language permitting an individual registering as a General Securities Principal after October 1, 2018 to register as a General Securities Sales Supervisor and to pass the General Securities Principal Sales Supervisor Module qualification examination. The Exchange believes that individuals registering as General Securities Principals should be required to demonstrate their competence for that role by passing the General Securities Principal qualification examination.

[57] Proposed Rule 1220(a)(2) generally tracks FINRA Rule 1220(a)(2), except that it omits references to a number of registration categories which FINRA recognizes but that the Exchange does not, and it includes a reference to the Securities Trader Compliance Officer category which the Exchange proposes to recognize, but which FINRA does not. Additionally, proposed Rule 1220(a)(2)(A)(i) extends that provision's exception to the General Securities Principal registration requirement to certain principals whose activities are ''limited to'' (rather than ''include'') the functions of a more limited principal. The Exchange believes that activities ''limited to'' expresses the intent of that exception more accurately than activities that ''include.'' Finally, proposed Rule 1220(a)(2)(B) specifies that registration as a Corporate Securities Representative must be with the Exchange in order to fulfill the Corporate Securities Representative registration prerequisite for General Securities Principal registration pursuant to that rule.

[58] The limited registration categories identified in Rule 612(b)–(e) are Limited Principal—Financial and Operations, Limited Principal—General Securities Sales Supervisor, Limited Principal—Registered Options Principal, and Securities Trader Principal.

pursuant to paragraph (b)(4) as a Securities Trader, and to pass the Compliance Official qualification exam.[59]

4. Financial and Operations Principal (Proposed Rule 1220(a)(4))

Existing Rule 612(b) provides that every member organization to which Rule 611 applies and that is operating pursuant to the provisions of SEC Rule 15c3–1(a)(1)(ii), (a)(2)(i) or (a)(8) shall designate as Limited Principal—Financial and Operations those persons associated with it, at least one of whom shall be its chief financial officer, who perform the duties described in Rule 612(b)(ii).[60] It requires each person associated with a member organization who performs such duties to be registered as a Limited Principal—Financial and Operations with the Exchange and to pass the Series 27 examination before such registration may become effective.

The Exchange is proposing to delete Rule 612(b) and to adopt in its place Rule 1220(a)(4), substituting the word ''and'' for the current word ''or'' found in Rule 612(b)(ii)(F) in order to conform to FINRA Rule 1220(a)(4)(A) in describing the duties of a Financial and Operations Principal.[61]

5. Investment Banking Principal (Proposed Rule 1220(a)(5))

The Exchange does not recognize the Investment Banking Principal registration category and is reserving Rule 1220(a)(5), retaining the caption solely to facilitate comparison with FINRA's rules.

6. Research Principal (Proposed Rule 1220(a)(6))

The Exchange does not recognize the Research Principal registration category and is reserving Rule 1220(a)(6), retaining the caption solely to facilitate comparison with FINRA's rules.

7. Securities Trader Principal (Proposed Rule 1220(a)(7))

Existing Rule 612(e) provides that each person associated with a member who is included within the definition of principal in Rule 611(b) and who will have supervisory responsibility over the securities trading activities described in Rule 613(f) shall become qualified and registered as a Securities Trader Principal. To qualify for registration as a Securities Trader Principal, such person must become qualified and registered as a Securities Trader under Rule 613(f) and pass the General Securities Principal qualification examination. A person who is qualified and registered as a Securities Trader Principal under this provision may only have supervisory responsibility over the Securities Trader activities specified in Rule 613(f), unless such person is separately qualified and registered in another appropriate principal registration category, such as the General Securities Principal registration category. Conversely, a person who is registered as a General Securities Principal is not qualified to supervise the trading activities described in Rule 613(f), unless such person has also become qualified and registered as a Securities Trader under Rule 613(f) by passing the Securities Trader qualification examination and become registered as a Securities Trader Principal.

The Exchange is proposing to delete Rule 612(e) and to adopt in its place Rule 1220(a)(7), Securities Trader Principal. Proposed Rule 1220(a)(7) requires that a principal responsible for supervising the securities trading activities specified in proposed Rule 1220(b)(4)[62] register as a Securities Trader Principal. The proposed rule requires individuals registering as Securities Trader Principals to be registered as Securities Traders and to pass the General Securities Principal qualification examination.

8. Registered Options Principal (Proposed Rules 1220(a)(8))

Rule 612(d) provides that each person associated with a member organization to which Rule 611 applies and who is included in the definition of principal in Rule 611 may register with the Exchange as a Limited Principal—Registered Options Principal if: (A) His or her supervisory responsibilities in the investment banking and securities business are limited exclusively to the options activities of a member organization, (B) he or she is registered pursuant to Exchange rules as a General Securities Representative, and (C) he or she is qualified to be so registered by passing the Series 4 examination. It also provides that a person registered in this category solely on the basis of having passed the Series 4 examination for Limited Principal—Registered Options Principal shall not be qualified to function in a principal capacity with responsibility over any area of business activity not described in paragraph (d)(i)(A).

The Exchange is proposing to delete Rule 612(d) and to adopt Rule 1220(a)(8)(A), Registered Options Principal, which would require under its section (a)(8)(A) that each member that is engaged in transactions in options with the public to have at least one Registered Options Principal.[63]

In addition, each principal as defined in paragraph (a)(1) of the rule who is responsible for supervising a member's options sales practices with the public would be required to register with the Exchange as a Registered Options Principal, subject to the following exception. If a principal's options activities are limited solely to those activities that may be supervised by a General Securities Sales Supervisor, then such person may register as a General Securities Sales Supervisor pursuant to paragraph (a)(10) of the Rule in lieu of registering as a Registered Options Principal.[64]

[59] Proposed Rule 1220(a)(3) differs from FINRA Rule 1220(a)(3), Compliance Officer. The Exchange does not recognize the Compliance Officer registration category. Similarly, FINRA does not recognize the Compliance Official or the Securities Trader Compliance Officer registration categories which the Exchange proposes to recognize. However, FINRA Rule 1220(a)(3), like proposed Rule 1220(a)(3), offers an exception pursuant to which a Chief Compliance Officer designated on Schedule A of Form BD may register in a principal category that corresponds to the limited scope of the member's business.

[60] Those duties include (A) final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body; (B) final preparation of such reports; (C) supervision of individuals who assist in the preparation of such reports; (D) supervision of and responsibility for individuals who are involved in the actual maintenance of the member organization's books and records from which such reports are derived; (E) supervision and/or performance of the member organization's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act; (F) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member organization's back office operations; or (G) any other matter involving the financial and operational management of the member organization. A person registered solely as a Limited Principal—Financial and Operations shall not be qualified to function in a Principal capacity with responsibility over any other area of business activity.

[61] FINRA Rule 1220(a)(4) differs from proposed Rule 1220(a)(4) in that it includes an Introducing Broker-Dealer Financial and Operations Principal registration requirement. Additionally, proposed Rule 1220(a)(4) contains a requirement, which the FINRA rule does not, that each person associated with a member who performs the duties of a Financial and Operations Principal must register as such with the Exchange. Further, as discussed above, the Exchange is not adopting a Principal Financial Officer or Principal Operations Officer requirement like FINRA Rule 1220(a)(4)(B), as it believes the Financial and Operations Principal requirement is sufficient. Finally, proposed Rule 1220(a)(4)(B)(v) and (vi) contain minor wording variations from the FINRA rule.

[62] Proposed Rule 1220(b)(4), discussed below, provides for registration in the representative-level ''Securities Trader'' category.

[63] Proposed Rule 1220(a)(8) differs from FINRA Rule 1220(a)(8) in that it omits certain references to other specific FINRA rules.

[64] Current Exchange Rule 1024, Conduct of Accounts for Options Trading, provides that

Continued

Pursuant to proposed Rule 1220(a)(8)(B), subject to the lapse of registration provisions in Rule 1210.08, each person registered as a Registered Options Principal on October 1, 2018 and each person who was registered as a Registered Options Principal within two years prior to October 1, 2018 would be qualified to register as a Registered Options Principal without passing any additional qualification examinations. All other individuals registering as Registered Options Principals after October 1, 2018 would, prior to or concurrent with such registration, be required to become registered pursuant to paragraph Rule 1220(b)(2) of the Rule as a General Securities Representative and pass the Registered Options Principal qualification examination.[65]

9. Government Securities Principal. [sic] (Rule 1220(a)(9))

The Exchange does not recognize the Government Securities Principal registration category and is reserving Rule 1220(a)(9), retaining the caption solely to facilitate comparison with FINRA's rules.

10. General Securities Sales Supervisor (Proposed Rules 1220(a)(10) and 1220.04)

Current Rule 612(c) provides that each person associated with a member organization to which Rule 611 applies and who is included in the definition of Principal in Rule 611 may register with the Exchange as a Limited Principal—General Securities Sales Supervisor if: (A) His or her supervisory responsibilities in the investment banking and securities business are limited to the securities sales activities of a member organization, including the training of sales and sales supervisory personnel and the maintenance of records of original entry and/or ledger accounts of the member organization required to be maintained in branch offices by SEC record keeping rules; (B) he or she is registered pursuant to Exchange Rules as a General Securities Representative; and (C) he or she is qualified to be so registered by passing the Series 9 or Series 10 examination. Under the rule a person registered in this category solely on the basis of having passed the Series 9 or Series 10 examination for Limited Principal—General Securities Sales Supervisor is not qualified to: (A) Function in a Principal capacity with responsibility over any area of business activity not described in paragraph (c)(i)(A); (B) be included for purposes of the Principal numerical requirements of Rule 611(e); or (C) perform for a member organization any or all of the following activities: (1) Supervision of the origination and structuring of underwritings; (2) supervision of market making commitments; (3) final approval of advertisements as these are defined in Rule 605; (4) supervision of the custody of firm or customer funds and/or securities for purposes of SEC Rule 15c3–3; or (5) supervision of overall compliance with financial responsibility rules for broker/dealers promulgated pursuant to the provisions of the Act. Rule 612(c)(iii) explains the purpose of the General Securities Sales Supervisor registration category.

The Exchange is proposing to adopt Rule 612(c)(i) and (ii) and Rule 612(c)(iii), with changes, as Rules 1220(a)(10) and 1220.04, respectively.[66] Rule 1220(a)(10), however, omits the current Rule 1022(g) prohibition against supervision of the origination and structuring of underwritings, as that activity does not fall within the new, more limited scope of ''securities trading'' covered by the new 1200 Series of rules.

Each person seeking to register as a General Securities Sales Supervisor would be required, prior to or concurrent with such registration, to become registered pursuant to Rule 1220(b)(2) of the rule as a General Securities Representative and pass the General Securities Sales Supervisor qualification examinations.

11. Investment Company and Variable Contracts Products Principal and Direct Participation Programs Principal (Rules 1220(a)(11) and (a)(12))

The Exchange does not recognize the Investment Company and Variable Contracts Products Principal and the Direct Participation Programs Principal registration categories and is reserving Rule 1220(a)(11) and (a)(12), retaining the captions solely to facilitate comparison with FINRA's rules.

12. Private Securities Offerings Principal (Rule 1220(a)(13))

The Exchange does not recognize the Private Securities Offerings Principal registration category and is reserving Rule 1220(a)(13), retaining the caption solely to facilitate comparison with FINRA's rules.

members, member organizations and individuals associated with member organizations shall not be approved to transact options business with the public until such persons, who are designated as Options Principals, have been approved by and registered with the Exchange. Further, persons engaged in the supervision of options sales practice or a person to whom the designated general partner or executive officer (pursuant to Rule 1025) or another Registered Options Principal delegates the authority to supervise options sales practices shall be designated as options principals. Rule 1024, Commentary .06 provides that individuals engaged in the supervision of options sales practices and designated as Options Principals are required to qualify as an Options Principal by passing the Registered Options Principal Qualification Examination (Series 4) or the Sales Supervisor Qualification Examination (Series 9/10), and is proposed to be deleted in view of new Rule 1220(a)(8)(a). Under Rule 1024.07, individuals who are delegated responsibility pursuant to Rule 1025 for the acceptance of discretionary accounts, for approving exceptions to a member's criteria or standards for uncovered options accounts, and for approval of communications, shall be designated as Options Principals and are required to qualify as an Options Principal by passing the Registered Options Principal Qualification Examination (Series 4). Further, Exchange Rule 1024.08 states that a person accepting orders from non-member customers (unless such customer is a broker-dealer registered with the Securities and Exchange Commission) is required to register with the Exchange and to be qualified by passing the General Securities Registered Representative Examination (Series 7). Except for Rule 1024, Commentary .06, the foregoing provisions of Rule 1024 are specific to conducting an options business with the public and are not proposed to be amended in this proposed rule change. However, Rule 1024(a) also contains provisions regarding submission of Forms U4 and U5 to WebCRD that are duplicative of the proposed 1200 Series of rules, in particular proposed Rules 1210.12, Application for Registration and Jurisdiction, and 1250, Electronic Filing Requirements for Electronic Forms, and are therefore proposed to be deleted.

[65] The Exchange is also proposing to adopt Rule 1220, Supplementary Material .02, which provides that each person who is registered with the Exchange as a Registered Options Principal (or as a General Securities Representative, Options Representative, or General Securities Sales Supervisor) shall be eligible to engage in security futures activities as a principal provided that such individual completes a Firm Element program as set forth in proposed Rule 1240 that addresses security futures products before such person engages in security futures activities. Unlike FINRA Rule 1220.02, proposed Exchange Rule 1220.02 omits references to United Kingdom Securities Representatives and Canada Securities Representatives, which are registration categories the Exchange does not recognize. In any event, the Exchange does not currently offer security futures products for trading. In addition, the Exchange is also proposing to adopt Rule 1220, Supplementary Material .03 which requires notification to the Exchange in the event such person is terminated, resigns, becomes incapacitated or is otherwise unable to perform the duties of a Registered Options Principal, and imposes certain restrictions on the member's options business in that event.

[66] The Exchange is not proposing to carry over into proposed Rule 1220(a)(10) the current Rule 612(c)(ii)(C)(3) prohibition against final approval of advertisements by General Securities Sales Supervisors. The Exchange notes that FINRA removed this prohibition several years ago from NASD Rule 1022(g) (Limited Principal—General Securities Sales Supervisor) and NASD IM–1022–2 (Limited Principal—General Securities Sales Supervisor). *See* Securities Exchange Act Release No. 68918 (February 13, 2013), 78 FR 11925 (February 20, 2013) (SR–FINRA–2013–014). Also, unlike FINRA Rule 1220.04, proposed Exchange Rule 1220.04 refers to ''multiple exchanges'' rather than listing the various exchanges where a sales principal might be required to qualify in the absence of the General Securities Sales Supervisor registration category. It also omits FINRA internal cross-references.

13. Supervisory Analyst (Rule 1220(a)(14))

The Exchange does not recognize the Supervisory Analyst registration category and is reserving Rule 1220(a)(14), retaining the caption solely to facilitate comparison with FINRA's rules.

14. Definition of Representative (Proposed Rule 1220(b)(1))

Current Rule 1(a)(ee) defines ''Representative'' as a member or an associated person of a registered broker or dealer, including assistant officers other than principals, who is engaged in the investment banking or securities business for the member organization including the functions of supervision, solicitation or conduct of business in securities or who is engaged in the training of persons associated with a broker or dealer for any of these functions.

The Exchange now proposes to amend Exchange Rule 1(a)(ee) to incorporate by reference a new definition of ''representative'' in proposed Rule 1220(b)(1). Proposed 1220(b)(1) would define the term representative as any person associated with a member, including assistant officers other than principals, who is engaged in the member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a member for any of these functions.

15. General Securities Representative (Proposed Rule 1220(b)(2))

Under Rule 613(a), except for members whose activities are limited to the Exchange's options trading floor and who are registered pursuant to Rule 620(a) as well as associated persons whose activities are limited to the Exchange's options trading floor and who are registered pursuant to Rule 620(b), all persons engaged or to be engaged in the investment banking or securities business of a member organization who are to function as representatives shall be registered as such with the Exchange through WebCRD under PHLX in the category of registration appropriate to the function to be performed as specified in paragraph (e),[67] Categories of Representative Registration—General Securities Representative or (f), Securities Trader.

The Exchange proposes to delete those provisions of Rule 613(a) and to adopt new Rule 1220(b)(2), General Securities Representative. Proposed Rule 1220(b)(2)(A) states that each representative as defined in proposed Rule 1220(b)(1) is required to register with the Exchange as a General Securities Representative, subject to the exception that if a representative's activities include the functions of a Securities Trader, as specified in Rule 1220(b)(2), then such person shall appropriately register as a Securities Trader.

Further, consistent with the proposed restructuring of the representative-level examinations, proposed Rule 1220(b)(2)(B) would require that individuals registering as General Securities Representatives pass the SIE and the General Securities Representative examination except that individuals registered as a General Securities Representatives within two years prior to October 1, 2018 would be qualified to register as General Securities Representatives without passing any additional qualification examinations.[68]

In addition, the Exchange is proposing to adopt Rule 1220.01 to provide individuals who are associated persons of firms and who hold foreign registrations an alternative, more flexible, process to obtain an Exchange representative-level registration. The Exchange believes that there is sufficient overlap between the SIE and these foreign qualification requirements to permit them to act as exemptions to the SIE. Under proposed Rule 1220.01, individuals who are in good standing as representatives with the Financial Conduct Authority in the United Kingdom or with a Canadian stock exchange or securities regulator would be exempt from the requirement to pass the SIE, and thus would be required only to pass a specialized knowledge examination to register with the Exchange as a representative. The proposed approach would provide individuals with a United Kingdom or Canadian qualification more flexibility to obtain an Exchange representative-level registration.

16. Operations Professional, Securities Trader, Investment Banking Representative, Research Analyst, Investment Company and Variable Contracts Products Representative, Direct Participation Programs Representative and Private Securities Offerings Representative (Rules 1220(b)(3), 1220(b)(4), 1220(b)(5), 1220(b)(6), 1220(b)(7), 1220(b)(8), 1220(b)(9) and 1220.05)

Operations Professional, Investment Banking Representative, Research Analyst, Investment Company and Variable Products Representative, Direct Participation Programs Representative and Private Securities Offerings Representative. The Exchange does not recognize these registration categories for its associated persons. The Exchange is therefore reserving Rules 1220(b)(3)—Operations Professional, and related Rule 1220.05, Scope of Operations Professional Requirement; 1220(b)(5)—Investment Banking Representative; 1220(b)(6)—Research Analyst; 1220(b)(7)—Investment Company and Variable Products Representative; 1220(b)(8)—Direct Participation Programs Representative; and 1220(b)(9)—Private Securities Offerings Representative, retaining the captions for each of them solely to facilitate comparison with FINRA's rules.

Securities Trader—Proposed Rule 1220(b)(4). Pursuant to current Exchange Rule 613(f)(1) and (2), associated persons must pass the qualification examination for Securities Trader (the Series 57 examination) and register with the Exchange as a Securities Trader if, with respect to transactions in equity, preferred or convertible debt securities, or foreign currency options on the Exchange, such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities, other than any person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by or is under common control, with the member.[69]

The Exchange now proposes to delete Exchange Rule 613(f) and to replace it with proposed Rule 1220(b)(4).[70] Rule

[67] Rule 613(e) provides that individuals required to register with the Exchange as a General Securities Representative under the rule must pass the Series 7 examination before such registration may become effective.

[68] Proposed Rule 1220(b)(2)(B) differs from FINRA Rule 1220(b)(2)(B) in that it omits references to various registration categories which FINRA recognizes but which the Exchange does not propose to recognize.

[69] Rule 613(f)(3) provides that a person registered as a Securities Trader is not qualified to function in any other registration category, unless he or she is also qualified and registered in such other registration category.

[70] Proposed Rule 1220(b)(4)(A) differs from FINRA Rule 1220(b)(4)(A) in that it applies to trading on the Exchange while the FINRA rule is

Continued

1220(b)(4) would require each representative as defined in Rule 1220(b)(1) of the rule to register with the Exchange as a Securities Trader if, with respect to transactions in equity, preferred or convertible debt securities, or options [71] such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities other than a person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the SEC pursuant to the Investment Company Act and that controls, is controlled by, or is under common control with a member. Rule 1220(b)(4) would require individuals registering as Securities Traders to pass the SIE as well as the Securities Trader qualification exam.

Additionally, proposed Rule 1220(b)(4)(A) would require each person associated with a member who is: (i) Primarily responsible for the design, development or significant modification of an algorithmic trading strategy relating to equity, preferred or convertible debt securities or options; or (ii) responsible for the day-to-day supervision or direction of such activities to register with the Exchange as a Securities Trader.[72]

For purposes of this proposed new registration requirement an ''algorithmic trading strategy'' is an automated system that generates or routes orders (or order-related messages) but does not include an automated system that solely routes orders received in their entirety to a market center. The proposed registration requirement applies to orders and order related messages whether ultimately routed or sent to be routed to an exchange or over the counter. An order router alone would not constitute an algorithmic trading strategy. However, an order router that performs any additional functions would be considered an algorithmic trading strategy. An algorithm that solely generates trading ideas or investment allocations—including an automated investment service that constructs portfolio recommendations—but that is not equipped to automatically generate orders and order-related messages to effectuate such trading ideas into the market—whether independently or via a linked router—would not constitute an algorithmic trading strategy.[73]

The associated persons covered by the expanded registration requirement would be required to pass the requisite qualification examination and be subject to the same continuing education requirements that are applicable to individual Securities Traders. The Exchange believes that potentially problematic conduct stemming from algorithmic trading strategies—such as failure to check for order accuracy, inappropriate levels of messaging traffic, and inadequate risk management controls—could be reduced or prevented, in part, through improved education regarding securities regulations for the specified individuals involved in the algorithm design and development process.

The proposal is intended to ensure the registration of one or more associated persons that possesses knowledge of, and responsibility for, both the design of the intended trading strategy and the technological implementation of the strategy, sufficient to evaluate whether the resulting product is designed to achieve regulatory compliance in addition to business objectives. For example, a lead developer who liaises with a head trader regarding the head trader's desired algorithmic trading strategy and is primarily responsible for the supervision of the development of the algorithm to meet such objectives must be registered under the proposal as the associated person primarily responsible for the development of the algorithmic trading strategy and supervising or directing the team of developers. Individuals under the lead developer's supervision would not be required to register under the proposal if they are not primarily responsible for the development of the algorithmic trading strategy or are not responsible for the day-to-day supervision or direction of others on the team. Under this scenario, the person on the business side that is primarily responsible for the design of the algorithmic trading strategy, as communicated to the lead developer, also would be required to register. In the event of a significant modification to the algorithm, members, likewise, would be required to ensure that the associated person primarily responsible for the significant modification (or the associated person supervising or directing such activity), is registered as a Securities Trader.

A member employing an algorithm is responsible for the algorithm's activities whether the algorithm is designed or developed in house or by a third-party. Thus, in all cases, robust supervisory procedures, both before and after deployment of an algorithmic trading strategy, are a key component in protecting against problematic behavior stemming from algorithmic trading. In addition, associated persons responsible for monitoring or reviewing the performance of an algorithmic trading strategy must be registered, and a member's trading activity must always be supervised by an appropriately registered person. Therefore, even where a firm purchases an algorithm off-the-shelf and does not significantly modify the algorithm, the associated person responsible for monitoring or reviewing the performance of the algorithm would be required to be registered.

Pursuant to proposed Rule 1220(b)(4)(B) each person registered as a Securities Trader on October 1, 2018 and each person who was registered as a Securities Trader within two years prior to October 1, 2018 would be qualified to register as a Securities Trader without passing any additional qualification examinations. All other individuals registering as Securities Traders after October 1, 2018 would be required, prior to or concurrent with such registration, to pass the SIE and the Securities Trader qualification examination.

17. Eliminated Registration Categories (Proposed Rule 1220.06)

Proposed Rule 1220.06 has no practical relevance to the Exchange, but is included because the Nasdaq Affiliated Exchanges are also proposing to adopt the new 1200 Series, on a uniform basis. Proposed Rule 1220.06 will be relevant to Nasdaq and BX which, unlike the Exchange, are proposing to eliminate a number of existing registration categories that are not currently recognized by the Exchange.[74]

Proposed Rule 1220.06 provides that, subject to the lapse of registration provisions in proposed Rule 1210.08, individuals who are registered with the Exchange in any capacity recognized by

limited to the specified trading which is ''effected otherwise than on a securities exchange.'' Additionally, the FINRA rule does not specifically extend to options trading.

[71] Current Rule 613(f) refers to transactions in foreign currency options. Proposed Rule 1220(b)(4) would instead refer to ''options'' generally, to clarify that equity options as well as foreign currency options are products with respect to which Securities Trader registration requirements would apply.

[72] As noted above, this new registration requirement was recently added to the FINRA rulebook. The Exchange has determined to add a parallel requirement to its own rules, but also to add options to the scope of products within the proposed rule's coverage. *See* Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR–FINRA–2016–007).

[73] *See* Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR–FINRA–2016–007).

[74] *See* SR–Nasdaq–2018–078.

the Exchange immediately prior to October 1, 2018, and each person who was registered with the Exchange in such categories within two years prior to October 1, 2018, shall be eligible to maintain such registrations with the Exchange. However, if individuals registered in such categories terminate their registration with the Exchange and the registration remains terminated for two or more years, they would not be able to re-register in that category. In addition, proposed Rule 1220.06 would include the current restrictions to which Order Processing Assistant Representatives are subject under Nasdaq rules.[75] As stated above, Rule 1220.06 would have no application to the Exchange as a practical matter.[76]

18. Grandfathering Provisions

In addition to the grandfathering provisions in proposed Rule 1220(a)(2) (relating to General Securities Principals) and proposed Rule 1220.06 (relating to the eliminated registration categories), the Exchange is proposing to include grandfathering provisions in proposed Rule 1220(a)(8) (Registered Options Principal), 1220(b)(2) (General Securities Representative), and 1220(b)(4) (Securities Trader). Specifically, the proposed grandfathering provisions provide that, subject to the lapse of registration provisions in proposed Rule 1210.08, individuals who are registered in specified registration categories on the operative date of the proposed rule change and individuals who had been registered in such categories within the past two years prior to the operative date of the proposed rule change would be qualified to register in the proposed corresponding registration categories without having to take any additional examinations.

N. Associated Persons Exempt From Registration (Proposed Rules 1230 and 1230.01)

Existing Rule 614 currently provides that the following persons associated with a member organization are not required to register:

(i) Persons associated with a member organization whose functions are solely and exclusively clerical or ministerial;

(ii) persons associated with a member organization who are not actively engaged in the investment banking or securities business;

(iii) persons associated with a member organization whose functions are related solely and exclusively to the member organization's need for nominal corporate officers or for capital participation; and

(iv) persons associated with a member organization whose functions are related solely and exclusively to effecting transactions on the floor of another national securities exchange and who are registered as floor members with such exchange; transactions in municipal securities; transactions in commodities; transactions in security futures, provided that any such person is registered with FINRA or a registered futures association; transactions in variable contracts and insurance premium funding programs and other contracts issued by an insurance company; transactions in direct participation programs; transactions in government securities; or effecting sales as part of a primary offering of securities not involving a public offering pursuant to Section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder.

The Exchange is proposing to adopt Rule 614 as Rule 1230 subject to certain changes. Rule 614 exempts from registration those associated persons who are not actively engaged in the securities business. It also exempts from registration those associated persons whose functions are related solely and exclusively to a member's need for nominal corporate officers or for capital participation.[77] The Exchange believes that the determination of whether an associated person is required to register must be based on an analysis of the person's activities and functions in the context of the various registration categories. The Exchange does not believe that categorical exemptions for associated persons who are not ''actively engaged'' in a member's securities business, associated persons whose functions are related only to a member's need for nominal corporate officers or associated persons whose functions are related only to a member's need for capital participation is consistent with this analytical framework. The Exchange therefore is proposing to delete these exemptions. Rule 614(a)(iv)(a) further exempts from registration associated persons whose functions are related solely and exclusively to effecting transactions on the floor of another national securities exchange as long as they are registered as floor members with such exchange. Because exchanges have registration categories other than the floor member category, proposed Rule 1230 clarifies that the exemption applies to associated persons solely and exclusively effecting transactions on the floor of another national securities exchange, provided they are appropriately registered with such exchange.[78] Additionally, the Exchange proposes to add Section 3 of Rule 1230, pursuant to which persons associated with a member that are not citizens, nationals, or residents of the United States or any of its territories or possessions, that will conduct all of their securities activities in areas outside the jurisdiction of the United States, and that will not engage in any securities activities with or for any citizen, national or resident of the United States need not register with the Exchange.[79]

The Exchange proposes to adopt Rule 1230.01 to clarify that the function of accepting customer orders is not considered a clerical or ministerial function and that associated persons who accept customer orders under any circumstances are required to be appropriately registered. However, the proposed rule provides that an associated person is not accepting a customer order where occasionally, when an appropriately registered person is unavailable, the associated person transcribes the order details and the registered person contacts the customer to confirm the order details before entering the order.

O. Changes to Continuing Education Requirements (Proposed Rule 1240)

As described above, existing Rule 640, Continuing Education for Registered Persons, includes a Regulatory Element and a Firm Element. The Regulatory Element applies to registered persons and consists of periodic computer-based training on regulatory, compliance, ethical, supervisory subjects and sales practice standards. The Firm Element consists of at least annual, member-developed and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered by the member. The CE requirements set forth in Rule 640 have been reorganized and renumbered,

[75] *See* Nasdaq Rule 1042.

[76] Proposed Exchange Rule 1220.06 omits references to a number of registration categories it does not propose to recognize, but which FINRA refers to in its own Rule 1220.06.

[77] These exemptions generally apply to associated persons who are corporate officers of a member in name only to meet specific corporate legal obligations or who only provide capital for a member, but have no other role in a member's business.

[78] Proposed Rule 1230 differs from FINRA Rule 1230 in that it includes a number of exemptions based upon current Nasdaq Rule 1060(a) which are not found in FINRA Rule 1230.

[79] Individuals described by Section 3 of Rule 1230 who are associated with FINRA members may be registered with FINRA as Foreign Associates pursuant to FINRA Rule 1220.06. FINRA is eliminating this registration category effective October 1, 2018, and the Exchange has never recognized it.

and are now proposed to be adopted with amendments as new Rule 1240.[80]

1. Regulatory Element

The Exchange is proposing to replace the term ''registered person'' in current Rule 640 with the term ''covered person'' and make conforming changes to proposed Rule 1240(a). For purposes of the Regulatory Element, the Exchange is proposing to define the term ''covered person'' in Rule 1240(a)(5) as any person registered pursuant to proposed Rule 1210, including any person who is permissively registered pursuant to proposed Rule 1210.02, and any person who is designated as eligible for an FSA waiver pursuant to proposed Rule 1210.09. The purpose of this change is to ensure that all registered persons, including those with permissive registrations, keep their knowledge of the securities industry current. The inclusion of persons designated as eligible for an FSA waiver under the term ''covered persons'' corresponds to the requirements of proposed Rule 1210.09. In addition, consistent with proposed Rule 1210.09, proposed Rule 1240(a) provides that an FSA-eligible person would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and CE would be based on the same cycle had the individual remained registered. The proposed rule also provides that if an FSA-eligible person fails to complete the Regulatory Element during the prescribed time frames, he or she would lose FSA eligibility.

Further, the Exchange is proposing to add a rule to address the impact of failing to complete the Regulatory Element on a registered person's activities and compensation. Specifically, proposed Rule 1240(a)(2) provides that any person whose registration has been deemed inactive under the rule may not accept or solicit business or receive any compensation for the purchase or sale of securities. However, like the FINRA rule, the proposed rule provides that such person may receive trail or residual commissions resulting from transactions completed before the inactive status, unless the member with which the person is associated has a policy prohibiting such trail or residual commissions.

2. Firm Element

The Exchange believes that training in ethics and professional responsibility should apply to all covered registered persons. Therefore, proposed Rule 1240(b)(2)(B), which provides that the Firm Element training programs must cover applicable regulatory requirements, would also require that a firm's training program cover training in ethics and professional responsibility.

P. Electronic Filing Rules

Existing Rule 616 states that forms required to be filed under the Rule 600 Series shall be filed electronically through WebCRD, including initial filings and amendments of Forms U4 and U5. It also provides for prompt filing of amendments, and that records of filed documents be retained for a period of not less than three years, the first two years in an easily accessible place, in accordance with Exchange Act Rule 17a–4. Electronic filing requirements are also found in a number of other rules.

The Exchange is proposing to delete existing Rule 616 and to replace it with new Rule 1250, Electronic Filing Requirements for Uniform Forms, which will consolidate Form U4 and U5 electronic filing requirements in a single location.[81] The new rule provides that all forms required to be filed under the Exchange's registration rules including the Rule 1200 series shall be filed through an electronic process or such other process as the Exchange may prescribe to the Central Registration Depository. It also would impose certain new requirements.

Under Rule 1250(b) members would be required to designate registered principal(s) or corporate officer(s) who are responsible for supervising a firm's electronic filings. The registered principal(s) or corporate officer(s) who has or have the responsibility to review and approve the forms filed pursuant to the rule would be required to acknowledge, electronically, that he is filing this information on behalf of the member and the member's associated persons. Under Rule 1250, Supplementary Material .01, the registered principal(s) or corporate officer(s) could delegate filing responsibilities to an associated person (who need not be registered) but could not delegate any of the supervision, review, and approval responsibilities mandated in Rule 1250(b). The registered principal(s) or corporate officer(s) would be required to take reasonable and appropriate action to ensure that all delegated electronic filing functions were properly executed and supervised.

Under Rule 1250(c)(1), initial and transfer electronic Form U4 filings and any amendments to the disclosure information on Form U4 must be based on a manually signed Form U4 provided to the member or applicant for membership by the person on whose behalf the Form U4 is being filed. As part of the member's recordkeeping requirements, it would be required to retain the person's manually signed Form U4 or amendments to the disclosure information on Form U4 in accordance with Rule 17a–4(e)(1) under the Act and make them available promptly upon regulatory request. An applicant for membership must also retain every manually signed Form U4 it receives during the application process and make them available promptly upon regulatory request. Rule 1250(c)(2) and Supplementary Material .03 and 04 provide for the electronic filing of Form U4 amendments without the individual's manual signature, subject to certain safeguards and procedures.

Rule 1250(d) provides that upon filing an electronic Form U4 on behalf of a person applying for registration, a member must promptly submit fingerprint information for that person and that the Exchange may make a registration effective pending receipt of the fingerprint information.[82] It further provides that if a member fails to submit the fingerprint information within 30 days after filing of an electronic Form U4, the person's registration will be deemed inactive, requiring the person to immediately cease all activities requiring registration or performing any duties and functioning in any capacity requiring registration. Under the rule the Exchange must administratively terminate a registration that is inactive for a period of two years. A person whose registration is administratively terminated could reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of proposed Exchange Rule 1220. Upon application and a showing of good cause, the Exchange could extend the 30-day period.

Rule 1250(e) would require initial filings and amendments of Form U5 to be submitted electronically. As part of the member's recordkeeping requirements, it would be required to retain such records for a period of not less than three years, the first two years

[80] Proposed Rule 1240 also differs slightly from FINRA Rule 1240 in that it omits references to certain registration categories which the Exchange does not recognize as well as an internal cross reference to FINRA Rule 4517.

[81] Proposed Rule 1250 is based upon current Nasdaq Rule 1140.

[82] Proposed Rule 1250(d) covers the same subject matter as current Rules 616, Electronic Filing Requirements for Uniform Forms, and 623, Fingerprinting, which would be deleted.

in an easily accessible place, in accordance with Rule 17a–4 under the Act, and to make such records available promptly upon regulatory request.

Finally, under proposed Rule 1250, Supplementary Material .02, a member could enter into an agreement with a third party pursuant to which the third party agrees to file the required forms electronically on behalf of the member and the member's associated persons. Notwithstanding the existence of such an agreement, the member would remain responsible for complying with the requirements of the Rule.

Q. Trading Floor Registration (Rule 1260)

Currently, Rules 620(a) and (b) govern trading floor member registration and non-member clerk registration. Rule 620(a) requires each Floor Broker, Specialist and Registered Options Trader on the Exchange trading floor to be registered as ''Member Exchange'' (''ME'') under ''PHLX'' on Form U4, and to successfully complete the appropriate floor trading examination(s), if prescribed by the Exchange, in addition to requirements imposed by other Exchange rules. Under the rule the Exchange may also require periodic examinations due to changes in trading rules, products or automated systems. Rule 620(b) requires all trading floor personnel, including clerks, interns, stock execution clerks and any other associated persons, of a member organization not required to register pursuant to Rule 620(a) to be registered as ''Floor Employee'' (''FE'') under ''PHLX'' on Form U4. Under the rule the Exchange may require these individuals to also successfully complete an examination, and may require periodic examinations due to changes in trading rules, products or automated systems. To consolidate these registration rules into the new Rule 1200 series, Rule 620 is being renumbered as Rule 1260.[83]

The Exchange proposes to adjust internal cross references as required by this proposed rule change, but not to make substantive changes to Rule 620(a) and (b). However, the Exchange proposes to adopt new section (c) to exempt certain individuals on the Exchange's trading floor from the representative registration requirements of proposed rules 1210 and 1220. Rule 1260(c) would provide that members[84] whose activities are limited to the Exchange's options trading floor and who are registered pursuant to Rule 1260(a), as well as associated persons whose activities are limited to the Exchange's options trading floor and are registered pursuant to Rule 1260(b) are exempt from the representative registration requirements (but not the principal registration requirements, including any prerequisite representative registration requirement) of Rules 1210 and 1220. Rule 1260(c) is intended to preserve the current exclusion of these individuals from the representative registration requirements of Rule 613.[85]

R. Other Rules

The Exchange is deleting Rule 614, Persons Exempt from Registration, as explained above. Rule 614(b), however, contains provisions dealing with Nonregistered Foreign ''Finders'' and is simply being relocated with nonsubstantive changes to new Rule 2040.[86] The remaining rules identified above under ''Overview'' which are to be amended in this proposed rule change simply update citations and/or make technical or nonsubstantive changes to the proposed new rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[87] in general, and furthers the objectives of Section 6(b)(5) of the Act,[88] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed rule change will streamline, and bring consistency and uniformity to, the registration rules, which will, in turn, assist members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule change will also improve the efficiency of the examination program, without compromising the qualification standards, by eliminating duplicative testing of general securities knowledge on examinations and by removing examinations that currently have limited utility. In addition, the proposed rule change will expand the scope of permissive registrations, which, among other things, will allow members to develop a depth of associated persons with registrations to respond to unanticipated personnel changes and will encourage greater regulatory understanding. Further, the proposed rule change will provide a more streamlined and effective waiver process for individuals working for a financial services industry affiliate of a member, and it will require such individuals to maintain specified levels of competence and knowledge while working in areas ancillary to the securities business. The proposed rule change will improve the supervisory structure of firms by imposing an experience requirement for representatives that are designated by firms to function as principals for a 120-day period before having to pass an appropriate principal qualification examination. The proposed rule change will also prohibit unregistered persons from accepting customer orders under any circumstances, which will enhance investor protection.

The Exchange believes that, with the introduction of the SIE and expansion of the pool of individuals who are eligible to take the SIE, the proposed rule change has the potential of enhancing the pool of prospective securities industry professionals by introducing them to securities laws, rules and regulations and appropriate conduct before they join the industry in a registered capacity.

The extension of the Securities Trader registration requirement to developers of algorithmic trading strategies requires associated persons primarily responsible for the design, development or significant modification of an algorithmic trading strategy or responsible for the day-to-day supervision or direction of such activities to register and meet a minimum standard of knowledge regarding the securities rules and regulations applicable to the member employing the algorithmic trading strategy. This minimum standard of knowledge is identical to the standard of knowledge currently applicable to traditional securities traders. The Exchange believes that improved

[83] Exhibit 5 simply reflects the proposed new rule number of current Rule 620 rather than the deletion of the entire rule and the subsequent reinsertion of the entire rule following Rule 1250. In the rulebook, Rule 1260 will appear immediately following Rule 1250.

[84] In Rule 1260, unlike the other 1200 Series of proposed rules, the word ''member'' is not used to mean ''member organization.''

[85] Current Rule 613(a) imposes representative registration requirements upon persons engaged or to be engaged in the investment banking or securities business of a member organization *except* members whose activities are limited to the Exchange's options trading floor and who are registered pursuant to Rule 620(a), as well as associated persons whose activities are limited to the Exchange's options trading floor and are registered pursuant to Rule 620(b).

[86] The FINRA counterpart to Rule 614(b) occupies a similar location in the FINRA rulebook. *See* FINRA Rule 2040(c), Nonregistered Foreign Finders.

[87] 15 U.S.C. 78f(b).

[88] 15 U.S.C. 78f(b)(5).

education of firm personnel may reduce the potential for problematic market conduct and manipulative trading activity.

Finally, the proposed rule change makes organizational changes to the Exchange's registration and qualification rules to align them with registration and qualification rules of the Nasdaq Affiliated Exchanges, in order to prevent unnecessary regulatory burdens and to promote efficient administration of the rules. The change also makes minor updates and corrections to the Exchange's rules which improve readability.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that all associated persons of members engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions, will be supervised, and can be identified by regulators. The proposed new 1200 Series of rules, which are similar in many respects to the registration-related requirements adopted by FINRA effective October 1, 2018, should enhance the ability of member firms to comply with the Exchange's rules as well as with the Federal securities laws. Additionally, as described above, the Exchange intends the amendments described herein to eliminate inconsistent registration-related requirements across the Nasdaq Affiliated Exchanges, thereby promoting uniformity of regulation across markets. The new 1200 Series should in fact remove administrative burdens that currently exist for members seeking to register associated persons on multiple Nasdaq Affiliated Exchanges featuring varying registration-related requirements. Additionally, all similarly-situated associated persons of members will be treated similarly under the new 1200 Series in terms of standards of training, experience and competence for persons associated with Exchange members.

With respect in particular to registration of developers of algorithmic trading strategies, the Exchange recognizes that the proposal would impose costs on member firms employing associated persons engaged in the activity subject to the registration requirement. Specifically, among other things, additional associated persons would be required to become registered under the proposal, and the firm would need to establish policies and procedures to monitor compliance with the proposed requirement on an ongoing basis. However, given the prevalence and importance of algorithmic trading strategies in today's markets, the Exchange believes that associated persons engaged in the activities covered by this proposal must meet a minimum standard of knowledge regarding the applicable securities rules and regulations. To mitigate the costs imposed on member firms, the proposed rule change limits the scope of registration requirement by excluding technological or development support personnel who are not primarily responsible for the covered activities. It also excludes supervisors who are not responsible for the ''day-to-day'' supervision or direction of the covered activities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [89] and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b–4(f)(6)(iii) [90] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative on October 1, 2018 to coincide with the effective date of FINRA's proposed rule change on which the proposal is based.[91] The waiver of the operative delay would make the Exchange's qualification requirements consistent with those of FINRA, as of October 1, 2018. Therefore, the Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposal operative on October 1, 2018.[92]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2018–61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2018–61. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official

[89] 15 U.S.C. 78s(b)(3)(A).

[90] 17 CFR 240.19b–4(f)(6)(iii).

[91] *See supra* note 7. As discussed above, the Exchange has stated that the new registration requirements for developers of algorithmic trading strategies would become operative on April 1, 2019.

[92] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2018–61 and should be submitted on or before October 31, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[93]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21902 Filed 10–9–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84353; File No. SR–BX–2018–047]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend, Reorganize and Enhance Membership, Registration and Qualification Rules, and To Make Conforming Changes to Certain Other Rules

October 3, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2018, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend, reorganize and enhance its membership, registration and qualification rules, and to make conforming changes to certain other rules.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Overview

The Exchange has adopted registration requirements to ensure that associated persons attain and maintain specified levels of competence and knowledge pertinent to their function. In general, the current rules require that persons engaged in a member's investment banking or securities business who are to function as representatives or principals register with the Exchange in each category of registration appropriate to their functions by passing one or more qualification examinations,[3] and exempt specified associated persons from the registration requirements.[4] They also prescribe ongoing continuing education requirements for registered persons.[5] The Exchange now proposes to amend, reorganize and enhance its rules regarding registration, qualification examinations and continuing education, as described below.

Recently, the Commission approved a FINRA proposed rule change consolidating and adopting NASD and Incorporated NYSE rules relating to qualification and registration requirements into the Consolidated FINRA Rulebook,[6] restructuring the FINRA representative-level qualification examinations, creating a general knowledge examination and specialized knowledge examinations, allowing permissive registration, establishing an examination waiver process for persons working for a financial services affiliate of a member, and amending certain continuing education (''CE'') requirements (collectively, the ''FINRA Rule Changes'').[7] The FINRA Rule Changes will become effective on October 1, 2018.

The Exchange now proposes to amend, reorganize and enhance certain of its corresponding membership, registration and qualification requirement rules in part in response to the FINRA Rule Changes, and also in order to conform the Exchange's rules more closely to those of its affiliated exchanges in the interest of uniformity and to facilitate compliance with membership, registration and qualification regulatory requirements by members of multiple Nasdaq-affiliated exchanges including BX. Last, the Exchange proposes to enhance its registration rules by adding a new registration requirement applicable to developers of algorithmic trading systems similar to a requirement adopted by FINRA pursuant to a 2016 FINRA proposed rule change.[8]

[93] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See, e.g.,* Exchange Rules 1021, Registration Requirements, 1022, Categories of Principal Registration, 1031, Registration Requirements, 1032, Categories of Representative Registration, and 1041, Registration Requirements for Assistant Representatives.

[4] *See* Rule 1060, Persons Exempt from Registration.

[5] *See* Rule 1120, Continuing Education Requirements.

[6] The current FINRA rulebook consists of: (1) FINRA rules; (2) NASD rules; and (3) rules incorporated from the New York Stock Exchange (''NYSE'') (the ''Incorporated NYSE rules''). While the NASD rules generally apply to all FINRA members, the Incorporated NYSE rules apply only to those members of FINRA that are also members of the NYSE.

[7] *See* Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (Order Approving File No. SR–FINRA–2017–007). *See also* FINRA Regulatory Notice 17–30 (SEC Approves Consolidated FINRA Registration Rules, Restructured Representative-Level Qualification Examinations and Changes to Continuing Education Requirements) (October 2017). FINRA articulated its belief that the proposed rule change would streamline, and bring consistency and uniformity to, its registration rules, which would, in turn, assist FINRA members and their associated persons in complying with the rules and improve regulatory efficiency. FINRA also determined to enhance the overall efficiency of its representative-level examinations program by eliminating redundancy of subject matter content across examinations, retiring several outdated representative-level registrations, and introducing a general knowledge examination that could be taken by all potential representative-level registrants and the general public. FINRA amended certain aspects of its continuing education rule, including by codifying existing guidance regarding the effect of failing to complete the Regulatory Element on a registered person's activities and compensation.

[8] *See* Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR–FINRA–2016–007). In its proposed rule change FINRA addressed the increasing significance of algorithmic trading strategies by amending its rules to require registration, as Securities Traders, of associated persons primarily responsible for the design, development or significant modification of

Continued

As part of this proposed rule change, current IM–1002–2, Status of Persons Serving in the Armed Forces of the United States; IM–1002–3, Failure to Register Personnel; 1021, Registration of Principals; 1022, Categories of Principal Registration; IM–1022–2, Limited Principal-General Securities Sales Supervisor; 1031, Registration Requirements, sections (a)–(e); 1032, Categories of Representative Registration; 1060, Persons Exempt from Registration;[9] 1070, Qualification Examinations and Waiver of Requirements; 1080, Confidentiality of Examinations; 1120, Continuing Education Requirements; and Chapter II, Section 2, Requirements for Options Participation, Subsections (g) and (h), are proposed to be deleted. Rule 1140, Electronic Filing Rules, is proposed to be amended and relocated. A number of other rules are proposed to be amended with conforming changes, or relocated in view of the foregoing amendments.[10]

In place of the deleted rules and rule sections, the Exchange proposes to adopt a new 1200 Series of rules captioned Registration, Qualification and Continuing Education, generally conforming to FINRA's new 1200 Series of rules resulting from the FINRA Rule Changes, but with a number of Exchange-specific variations.[11] The proposed new 1200 Series is also being proposed for adoption by BX's affiliated exchanges in order to facilitate compliance with membership, registration and qualification regulatory requirements by members of two or more of those affiliated exchanges.[12] In the new 1200 Series the Exchange would, among other things, recognize additional associated person registration categories, recognize a new general knowledge examination, permit the maintenance of permissive registrations, and require Securities Trader registration of developers of algorithmic trading strategies consistent with a comparable existing FINRA registration requirement.[13]

The proposed rule change would become operative October 1, 2018 with the exception of the new registration requirement for developers of algorithmic trading strategies which would become operative on April 1, 2019.

Proposed Rules

A. Registration Requirements (Proposed Rule 1210)

Exchange Rules 1021(a) and 1031(a) currently require that persons engaged, or to be engaged, in the investment banking or securities business of a member who are to function as representatives or principals register with the Exchange in the category of registration appropriate to their functions as specified in Exchange Rules 1022 and 1032.[14] The Exchange is proposing to consolidate and streamline provisions of Exchange Rules 1021(a) and 1031(a) and to adopt them as Exchange Rule 1210, subject to several changes.[15]

Proposed Rule 1210 provides that each person engaged in the securities business of a member must register with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in proposed Rule 1220, unless exempt from registration pursuant to proposed Rule 1230. Unlike current Rules 1021(a) and 1031(a), proposed Rule 1210 would not require persons engaged in the investment banking business of a member to register with the Exchange since a member's investment banking business is not the primary concern of the Exchange or the focus of its operations.[16] Proposed Exchange Rule 1210 also provides that such person is not qualified to function in any registered capacity other than that for which the person is registered, unless otherwise stated in the rules. This latter provision is a consolidation of similar provisions in the registration categories under the current Exchange rules.

Further, the Exchange is proposing to delete Exchange IM–1002–3 because it is superfluous. The failure to register a representative as required under current Exchange Rule 1031(a) is in fact a violation of Exchange rules.

B. Minimum Number of Registered Principals (Proposed Rule 1210.01)

Rule 1021(e)(1) currently requires that a member, except a sole proprietorship,

algorithmic trading strategies, or who are responsible for the day-to-day supervision or direction of such activities.

[9] Provisions currently found in Rule 1060(b) are being amended and relocated to new Rule 2040, as discussed below.

[10] Conforming amendments are proposed to Rules 0120, Definitions; 1001, FINRA Regulatory Contract, 1011, Definitions, 1050, Research Analysts; 3010, Supervision; 7003, Regulatory, Registration and Processing Fees; IM–9216, Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d–1(c)(2); and 9630, Appeal. In the Exchange's Options Rules, amendments are proposed to Chapter XI, Section 2, Registration of Options Principals and Section 3, Registration of Representatives.

[11] The proposed 1200 Series of Rules would consist of Rule 1210, Registration Requirements; Rule 1220, Registration Categories; Rule 1230, Associated Persons Exempt from Registration; Rule 1240, Continuing Education Requirements; and Rule 1250, Electronic Filing Requirements for Uniform Forms.

[12] The Exchange's five affiliated exchanges, The Nasdaq Stock Market LLC (''Nasdaq'') Nasdaq PHLX LLC (''PHLX''), Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX''), and Nasdaq MRX, LLC (''MRX'') (together with BX, the ''Nasdaq Affiliated Exchanges'') are also submitting proposed rule changes to adopt the 1200 Series of rules. *See* SR–NASDAQ–2018–078, SR–Phlx–2018–61, SR–ISE–2018–82, SR–GEMX–2018–33, and SR–MRX–2018–31. The Exchange recently added a shell structure to its rulebook with the purpose of improving efficiency and readability and to align its rules more closely to those of the other Nasdaq Affiliated Exchanges. *See* Securities Exchange Act Release No. 82174 (November 29, 2017), 82 FR 57492 (December 5, 2017) (SR–BX–2017–054). Ultimately, the Exchange intends to submit another proposed rule change to transfer the 1200 Series of rules into the new shell structure. (The Exchange notes that the Phlx 1200 Series of rules would differ slightly from the 1200 Series of the other Nasdaq Affiliated Exchanges given Phlx's trading floor and its unique membership structure which features the concept of a ''member organization.'') [sic]

[13] *See* Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (order approving SR–FINRA–2016–007). In its proposed rule change to adopt this registration requirement, FINRA addressed the increasing significance of algorithmic trading strategies by proposing to require registration, as Securities Traders, of associated persons primarily responsible for the design, development or significant modification of algorithmic trading strategies, or who are responsible for the day-to-day supervision or direction of such activities.

[14] In addition, IM–1002–3 provides that the failure to register an individual as a registered representative may be deemed to be conduct inconsistent with just and equitable principles of trade and may be sufficient cause for appropriate disciplinary action. As explained below the Exchange proposes to delete IM–1002–3 as superfluous.

[15] Rule 1031, Registration Requirements, contains certain sections that are not affected by this proposed rule change. However, due to the overall organizational restructuring of the registration rules, those sections (current Rules 1031(c), (d) and (e)) are being relocated with nonsubstantive amendments to new Supplementary Material .12, Application for Registration and Jurisdiction, to proposed Rule 1210, Registration Requirements. These relocated provisions govern the process for applying for registration and amending the registration application, as well as for notifying the Exchange of termination of a member's association with a person registered with the Exchange. The Exchange proposes to adopt Rule 1210, Supplemental Material .12, into the 1200 Series in order to have uniform processes and requirements in this area across the Nasdaq Affiliated Exchanges. This relocated language is unique to the Exchange—the FINRA Rule Changes do not contain a counterpart Rule 1210 Supplementary Material .12. The Exchange anticipates amending Rule 1031(f) in a future proposed rule change.

[16] Miami International Securities Exchange LLC (''MIAX'') Rule 203(a) and ISE Rule 313(a)(1) likewise require registration of associated persons of members engaged in the member's securities business, but do not require registration with the exchanges of associated persons of members who engage in the member's investment banking business. Because the Exchange's proposed registration rules focus solely on securities trading activity, the proposed rules differ from the FINRA Rule Changes by omitting references to investment banking in proposed Rules 1210, 1210.03, 1210.10, 1220(a)(1), 1220(a)(2)(B), 1220(b), and 1240(b)(1), and also by omitting as unnecessary from Rule 1220(a)(10) a limitation on the qualification of a General Securities Sales Supervisor to supervise the origination and structuring of an underwriting.

have a minimum of two registered principals with respect to each aspect of the member's investment banking and securities business pursuant to the applicable provisions of Rule 1022, provided however that a proprietary trading firm with 25 or fewer registered representatives shall only be required to have one registered principal. This requirement applies to applicants for membership and existing members. Exchange Rule 1021(e)(2) also provides that, pursuant to the Exchange's Rule 9600 Series, the Exchange may waive the principal requirements of Rule 1021(e)(1) in situations that indicate conclusively that only one person associated with an applicant for membership should be required to register as a principal. Rule 1021(e)(3) provides that an applicant for membership, if the nature of its business so requires, must also have at least one person qualified for registration under Rule 1022(b) as a Financial and Operations Principal.[17]

The Exchange is proposing to adopt Rule 1021(e) as Rule 1210.01, subject to the following changes. The Exchange proposes to provide firms that limit the scope of their business with greater flexibility to satisfy the two-principal requirement. In particular, proposed Rule 1210.01 requires that a member have a minimum of two General Securities Principals, provided that a member that is limited in the scope of its activities may instead have two officers or partners who are registered in a principal category that corresponds to the scope of the member's activities.[18] For instance, if a firm's business is limited to securities trading, the firm may have two Securities Trader Principals, instead of two General Securities Principals. Currently, a sole proprietor member (without any other associated persons) is not subject to the two-principal requirement because such member is operating as a one-person firm. Given that one-person firms may be organized in legal forms other than a sole proprietorship (such as a single-person limited liability company), proposed Exchange Rule 1210.01 provides that any member with only one associated person is excluded from the two principal requirement. In addition, proposed Rule 1210.01 clarifies that existing members as well as new applicants may request a waiver of the two-principal requirement. Finally, the Exchange is proposing to retain the existing rule's provision permitting a proprietary trading firm with 25 or fewer registered representatives to have just one registered principal. The FINRA Rule Changes do not include this provision.[19]

C. Permissive Registrations (Proposed Rule 1210.02)

Rules 1021(a) and 1031(a) currently permit a member to register or maintain the registration(s) as a representative or principal of an individual performing legal, compliance, internal audit, back-office operations or similar responsibilities for the member. Rule 1031(a) also permits a member to register or maintain the registration as a representative of an individual performing administrative support functions for registered persons. In addition, Rules 1021(a) and 1031(a) permit a member to register or maintain the registration(s) as a representative or principal of an individual engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.

The Exchange is proposing to consolidate these provisions under Rule 1210.02. The Exchange is also proposing to expand the scope of permissive registrations and to clarify a member's obligations regarding individuals who are maintaining such registrations.

Specifically, proposed Rule 1210.02 allows any associated person to obtain and maintain any registration permitted by the member. For instance, an associated person of a member working solely in a clerical or ministerial capacity, such as in an administrative capacity, would be able to obtain and maintain a General Securities Representative registration with the member. As another example, an associated person of a member who is registered, and functioning solely, as a General Securities Representative would be able to obtain and maintain a General Securities Principal registration with the member. Further, proposed Rule 1210.02 allows an individual engaged in the securities business of a foreign securities affiliate or subsidiary of a member to obtain and maintain any registration permitted by the member.

The Exchange is proposing to permit the registration of such individuals for several reasons. First, a member may foresee a need to move a former representative or principal who has not been registered for two or more years back into a position that would require such person to be registered. Currently, such persons are required to requalify (or obtain a waiver of the applicable qualification examinations) and reapply for registration. Second, the proposed rule change would allow members to develop a depth of associated persons with registrations in the event of unanticipated personnel changes. Third, allowing registration in additional categories encourages greater regulatory understanding. Finally, the proposed rule change would eliminate an inconsistency in the current rules, which permit some associated persons of a member to obtain permissive registrations, but not others who equally are engaged in the member's business.

Individuals maintaining a permissive registration under the proposed rule change would be considered registered persons and subject to all Exchange rules, to the extent relevant to their activities. For instance, an individual working solely in an administrative capacity would be able to maintain a General Securities Representative registration and would be considered a registered person for purposes of rules relating to borrowing from or lending to customers, but the rule would have no practical application to his or her conduct because he or she would not have any customers.

Consistent with the Exchange's supervision rules, members would be required to have adequate supervisory systems and procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned functions.[20] With respect to an

[17] Exchange Rule 1022(b) as well as other Exchange rules currently refer to categories of limited principal registration as ''Limited Principal—'' followed by the name of the registration category. In this proposed rule change and in the proposed rules, the Exchange will no longer employ the term ''Limited Principal—'' in identifying various principal registration categories. No substantive change is intended; shortening the names of the various principals simply improves readability of the rules.

[18] The principal registration categories are described in greater detail below.

[19] The Exchange is not proposing provisions conforming to the new FINRA Rule 1210.01 requirements that all FINRA members are required to have a Principal Financial Officer and a Principal Operations Officer, because it believes that its proposed Rule 1220(a)(4), Financial and Operations Principal, which requires member firms operating pursuant to certain provisions of SEC rules to designate at least one Financial and Operations Principal, is sufficient. Further, the Exchange is not adopting the FINRA Rule 1210.01 requirements that (1) a member engaged in investment banking activities have an Investment Banking Principal, (2) a member engaged in research activities have a Research Principal, or (3) a member engaged in options activities with the public have a Registered Options Principal. The Exchange does not recognize the Investment Banking Principal or the Research Principal registration categories, and the Registered Options Principal registration requirement is set forth in Rule 1210.08 and its inclusion is therefore unnecessary in Rule 1210.01.

[20] The FINRA Proposed Rules at Rule 1210.02 cite FINRA's own supervision rule, by number. Because the 1200 Series of rules is intended to apply to the Exchange as well as to its affiliates which have different supervision rules, proposed Rule 1210.02

Continued

individual who solely maintains a permissive registration, such as an individual working exclusively in an administrative capacity, the individual's day-to-day supervisor may be a nonregistered person. Members would be required to assign a registered supervisor to this person who would be responsible for periodically contacting such individual's day-to-day supervisor to verify that the individual is not acting outside the scope of his or her assigned functions. If such individual is permissively registered as a representative, the registered supervisor must be registered as a representative or principal. If the individual is permissively registered as a principal, the registered supervisor must be registered as a principal.[21]

D. Qualification Examinations and Waivers of Examinations (Proposed Rule 1210.03)

Rules 1021(a) and 1031(a) currently set forth general requirements that an individual pass an appropriate qualification examination before his or her registration as a representative or principal can become effective. The Exchange is proposing to consolidate these provisions and adopt them as Rule 1210.03.

In addition, as part of the FINRA Rule Changes FINRA has adopted a restructured representative-level qualification examination program whereby representative-level registrants would be required to take a general knowledge examination (the Securities Industry Essentials Exam or ''SIE'') and a specialized knowledge examination appropriate to their job functions at the firm with which they are associating. Therefore, proposed Rule 1210.03 provides that before the registration of a person as a representative can become effective under proposed Rule 1210, such person must pass the SIE and an appropriate representative-level qualification examination as specified in proposed Rule 1220. Proposed Rule 1210.03 also provides that before the registration of a person as a principal can become effective under proposed Rule 1210, such person must pass an appropriate principal-level qualification examination as specified in proposed Rule 1220.

Further, proposed 1210.03 provides that if the job functions of a registered representative, other than an individual registered as an Order Processing Assistant Representative, change and he or she needs to become registered in another representative-level category, he or she would not need to pass the SIE again. Rather, the registered person would need to pass only the appropriate representative-level qualification examination.[22] Thus under the proposed rule change, individuals seeking registration in two or more representative-level categories would experience a net decrease in the total number of exam questions they would be required to answer because the SIE content would be tested only once.

The proposed rule change solely impacts the representative-level qualification requirements. The proposed rule change does not change the scope of the activities under the remaining representative categories. For instance, after the operative date of the proposed rule change, a previously unregistered individual registering as a Securities Trader for the first time would be required to pass the SIE and an appropriate specialized knowledge examination. However, such individual may engage only in those activities in which a current Securities Trader may engage under current Exchange Rules.

Individuals who are registered on the operative date of the proposed rule change would be eligible to maintain those registrations without being subject to any additional requirements. Individuals who had been registered within the past two years prior to the operative date of the proposed rule change would also be eligible to maintain those registrations without being subject to any additional requirements, provided that they reregister with the Exchange within two years from the date of their last registration.

Further, registered representatives, other than an individual registered as an Order Processing Assistant Representative, would be considered to have passed the SIE in the CRD system, and thus if they wish to register in any other representative category after the operative date of the proposed rule change, they could do so by taking only the appropriate specialized knowledge examination.[23] However, with respect to an individual who is not registered on the operative date of the proposed rule change but was registered within the past two years prior to the operative date of the proposed rule change, the individual's SIE status in the CRD system would be administratively terminated if such individual does not register within four years from the date of the individual's last registration.[24]

In addition, individuals, with the exception of Order Processing Assistant Representatives, who had been registered as representatives two or more years, but less than four years, prior to the operative date of the proposed rule change would also be considered to have passed the SIE and designated as such in the CRD system. Moreover, if such individuals re-register with a firm after the operative date of the proposed rule change and within four years of having been previously registered, they would only need to pass the specialized knowledge examination associated with that registration position. However, if they do not register within four years from the date of their last registration, their SIE status in the CRD system would be administratively terminated. Similar to the current process for registration, firms would continue to use the CRD system to request registrations for representatives. An individual would be able to schedule both the SIE and

refers generally to the supervision rules rather than identifying them by number.

[21] In either case, the registered supervisor of an individual who solely maintains a permissive registration would not be required to be registered in the same representative or principal registration category as the permissively-registered individual.

[22] The exception for Order Processing Assistant Representatives and Foreign Associates was adopted by FINRA in FINRA Rule 1210.03, and is included in proposed Exchange Rule 1210.03 without the reference to Foreign Associates which is a registration category the Nasdaq Affiliated Exchanges do not recognize. FINRA has stated that the SIE would assess basic product knowledge; the structure and function of the securities industry markets, regulatory agencies and their functions; and regulated and prohibited practices. Proposed Rule 1210.03 provides that all associated persons, such as associated persons whose functions are solely and exclusively clerical or ministerial, are eligible to take the SIE. Proposed Rule 1210.03 also provides that individuals who are not associated persons of firms, such as members of the general public, are eligible to take the SIE. FINRA has stated its belief that expanding the pool of individuals who are eligible to take the SIE would enable prospective securities industry professionals to demonstrate to prospective employers a basic level of knowledge prior to submitting a job application. Further, this approach would allow for more flexibility and career mobility within the securities industry. While all associated persons of firms as well as individuals who are not associated persons would be eligible to take the SIE pursuant to proposed Rule 1210.03, passing the SIE alone would not qualify them for registration with the Exchange. Rather, to be eligible for registration with the Exchange, an individual would be required to pass an applicable representative or principal qualification examination and complete the other requirements of the registration process.

[23] Under the proposed rule change, only individuals who have passed an appropriate representative-level examination would be considered to have passed the SIE. Registered principals who do not hold an appropriate representative-level registration would not be considered to have passed the SIE. For example, an individual who is registered solely as a Financial and Operations Principal (Series 27) today would have to take the Series 7 to become registered as a General Securities Representative. Under the proposed rule change, in the future, this individual would have to pass the SIE and the specialized Series 7 examination to obtain registration as a General Securities Representative.

[24] As discussed below, the Exchange is proposing a four-year expiration period for the SIE.

specialized knowledge examinations for the same day, provided the individual is able to reserve space at one of FINRA's designated testing centers.

Finally, paragraph (d) of Rule 1070 currently permits the Exchange, in exceptional cases and where good cause is shown, to waive the applicable qualification examination and accept other standards as evidence of an applicant's qualifications for registration. The Exchange is proposing to transfer the provisions of Rule 1070(d) into proposed Rule 1210.03 with changes which track FINRA Rule 1210.03.[25] The proposed rule provides that the Exchange will only consider examination waiver requests submitted by a firm for individuals associated with the firm who are seeking registration in a representative- or principal-level registration category. Moreover, proposed Rule 1210.03 states that the Exchange will consider waivers of the SIE alone or the SIE and the representative- and principal-level examination(s) for such individuals.

E. Requirements for Registered Persons Functioning as Principals for a Limited Period (Proposed Rule 1210.04)

Exchange Rule 1021(d) provides that a person who is currently registered with a member as a representative and whose duties are changed by the member so as to require registration as a principal may function as a principal for up to 90 calendar days before he or she is required to pass the appropriate qualification examination for principal. In addition, it allows a formerly registered representative who is required to register as a principal to function as a principal without passing the appropriate principal qualification examination for up to 90 calendar days, provided the person first satisfies all applicable prerequisite requirements. A person who has never been registered does not qualify for this exception. This provision applies to a person associated with a member of another registered national securities exchange or association who is required to register in a principal classification under Exchange rules but who is not required to be so registered under the rules of the other exchange or association. It also applies to a person associated with an Exchange member who was not required to register with the Exchange as a principal prior to the adoption of Rule 1021 by the Exchange.

The Exchange is proposing to adopt Rule 1021(d) as Rule 1210.04, subject to the following changes. Proposed Rule 1210.04 states that a member may designate any person currently registered, or who becomes registered, with the member as a representative to function as a principal for a limited period, provided that such person has at least 18 months of experience functioning as a registered representative within the five-year period immediately preceding the designation. This change is intended to ensure that representatives designated to function as principals for the limited period under the proposed rule have an appropriate level of registered representative experience. The proposed rule clarifies that the requirements of the rule apply to any principal category, including those categories that are not subject to a prerequisite representative-level registration requirement, such as the Financial and Operations Principal registration category.[26] The Exchange is not conserving in Rule 1210.04 the language that this provision applies to persons associated with a member of another registered national securities exchange or association who are required to register as principals under Exchange rules but who are not required to be so registered under the rules of the other exchange or association. Similarly, it is not conserving the language concerning individuals not required to register as principal prior to adoption of the rule. The Exchange believes this language is superfluous, as the applicability to various individuals of proposed Rule 1210.04 speaks for itself and requires no elaboration.[27] Proposed Rule 1210.04 would increase the Rule 1021(d)'s 90 day period to 120 days, to provide additional flexibility for representatives functioning as principals for a limited period of time.

F. Rules of Conduct for Taking Examinations and Confidentiality of Examinations (Proposed Rule 1210.05)

Before taking an examination, FINRA currently requires each candidate to agree to the Rules of Conduct for taking a qualification examination. Among other things, the examination Rules of Conduct require each candidate to attest that he or she is in fact the person who is taking the examination. These Rules of Conduct also require that each candidate agree that the examination content is the intellectual property of FINRA and that the content cannot be copied or redistributed by any means. If FINRA discovers that a candidate has violated the Rules of Conduct for taking a qualification examination, the candidate may forfeit the results of the examination and may be subject to disciplinary action by FINRA. For instance, for cheating on a qualifications examination, FINRA's Sanction Guidelines recommend a bar.[28]

Effective October 1, 2018 FINRA has codified the requirements relating to the Rules of Conduct for examinations under FINRA Rule 1210.05. FINRA also adopted Rules of Conduct for taking the SIE for associated persons and non-associated persons who take the SIE.

The Exchange proposes to adopt its own version of Rule 1210.05, which would provide that associated persons taking the SIE are subject to the SIE Rules of Conduct, and that associated persons taking any representative or principal examination are subject to the Rules of Conduct for representative and principal examinations. Under the proposed rule, a violation of the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations by an associated person would be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade, such as Exchange Rule 2110.[29] Further, if the Exchange determines that an associated person has violated the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations, the associated person may forfeit the results of the examination and may be subject to disciplinary action by the Exchange.

Proposed Rule 1210.05 states that the Exchange considers all of the qualification examinations content to be highly confidential. The removal of examination content from an examination center, reproduction, disclosure, receipt from or passing to any person, or use for study purposes of any portion of such qualification examination or any other use that would compromise the effectiveness of the examinations and the use in any manner and at any time of the questions or answers to the examinations would be prohibited and would be deemed to be

[25] Rules 1070(a), (b) and (c) provide general information relating to the examination process. The Exchange is proposing to delete these provisions given that they relate to the administration of the examination program rather than rule requirements.

[26] In this regard, the Exchange notes that qualifying as a registered representative is currently a prerequisite to qualifying as a principal on the Exchange except with respect to the Financial and Operations Principal registration category.

[27] Proposed Rule 1210.04 omits FINRA Rule 1210.04's reference to Foreign Associates, which is a registration category not recognized by the Nasdaq Affiliated Exchanges, but otherwise tracks the language of FINRA Rule 1210.04.

[28] *See* SR–FINRA–2017–007, pp. 26–27.

[29] Pursuant to Exchange Rule 2110, a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade. FINRA Rule 1210.05 cites FINRA Rule 2010, which is a comparable rule.

a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade. Finally, proposed Rule 1210.05 would prohibit an applicant from receiving assistance while taking the examination, and require the applicant to certify that no assistance was given to or received by him or her during the examination.[30]

G. Waiting Periods for Retaking a Failed Examination (Proposed Rule 1210.06)

Rule 1070(e) currently sets forth waiting periods for retaking failed examinations. The rule provides that a person who fails a qualification examination would be permitted to retake the examination after either a period of 30 calendar days has elapsed from the date of the prior examination or the next administration of an examination administered on a monthly basis. However, if the person fails an examination three or more times in succession, he or she would be prohibited from retaking the examination either until a period of 180 calendar days has elapsed from the date of his or her last attempt to pass the examination or until the sixth subsequent administration of an examination administered on a monthly basis. The Exchange is proposing to adopt Rule 1070(e) as Rule 1210.06, with the following changes.

Proposed Rule 1210.06 provides that a person who fails an examination may retake that examination after 30 calendar days from the date of the person's last attempt to pass that examination. The proposed rule deletes the reference to examinations administered on a monthly basis because examinations are no longer administered in such a manner.

Proposed Rule 1210.06 further provides that if a person fails an examination three or more times in succession within a two-year period, the person is prohibited from retaking that examination until 180 calendar days from the date of the person's last attempt to pass it. These waiting periods would apply to the SIE and the representative- and principal-level examinations.[31]

H. CE Requirements (Proposed Rule 1210.07)

Pursuant to current Rule 1120, the CE requirements applicable to registered persons consist of a Regulatory Element[32] and a Firm Element.[33] The Regulatory Element applies to registered persons and must be completed within prescribed time frames.[34] For purposes of the Regulatory Element, a ''registered person'' is defined in the current rule as any person registered with the Exchange as a representative or principal.[35] The Firm Element consists of annual, member-developed and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered by the member. For purposes of the Firm Element, the term ''covered registered persons'' is defined as any registered person who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, and the immediate supervisors of such persons.[36]

The Exchange proposes to delete Rule 1120 and to replace it with Rule 1240, Continuing Education Requirements. The Exchange believes that all registered persons, regardless of their activities, should be subject to the Regulatory Element of the CE requirements so that they can keep their knowledge of the securities industry current. Therefore, the Exchange is proposing Rule 1210.07, to clarify that all registered persons, including those who solely maintain a permissive registration, are required to satisfy the Regulatory Element, as specified in proposed Rule 1240. Individuals who have passed the SIE but not a representative or principal-level examination and do not hold a registered position would not be subject to any CE requirements.

Consistent with current practice, proposed Rule 1210.07 also provides that a registered person of a member who becomes CE inactive would not be permitted to be registered in another registration category with that member or be registered in any registration category with another member, until the person has satisfied the Regulatory Element.

I. Lapse of Registration and Expiration of SIE (Proposed Rule 1210.08)

Rule 1021(c) currently states that any person whose registration has been revoked pursuant to Rule 8310[37] or whose most recent registration as a principal has been terminated for a period of two or more years immediately preceding the date of receipt by the Exchange of a new application is required to pass a qualification examination for principals appropriate to the category of registration as specified in Rule 1022. Pursuant to Rule 1031(b), any person whose registration has been revoked pursuant to Rule 8310 or whose most recent registration as a representative or principal has been terminated for a period of two or more years immediately preceding the date of receipt by the Exchange of a new application is required to pass a qualification examination for representatives appropriate to the category of registration as specified in Rule 1032. The two years are calculated from the termination date stated on the individual's Form U5 (Uniform Termination Notice for Securities Industry Registration) and the date the Exchange receives a new application for registration.

The Exchange is proposing to consolidate the requirements of Rules 1021(c) and 1031(b) and adopt them as Rule 1210.08. Proposed Rule 1210.08 clarifies that, for purposes of the proposed rule, an application would not be considered to have been received by the Exchange if that application does not result in a registration.

[30] In view of proposed Rule 1210.05, the Exchange is proposing to delete Rule 1080 which is largely duplicative. The Exchange is not adopting portions of FINRA's Rule 1210.05 which apply to non-associated persons, over whom the Exchange would in any event have no jurisdiction.

[31] FINRA Rule 1210.06 requires individuals taking the SIE who are not associated persons to agree to be subject to the same waiting periods for retaking the SIE. The Exchange is not including this language in proposed Rule 1210.06, as the Exchange will not apply the 1200 Series of rules in any event to individuals who are not associated persons of members.

[32] *See* Rule 1120(a).

[33] *See* Rule 1120(b).

[34] Pursuant to Rule 1120(a), each registered person is required to complete the Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date. Unless otherwise determined by the Exchange, a registered person who has not completed the Regulatory Element program within the prescribed time frames will have their registrations deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under Rule 1120(a) must cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. A registration that is inactive for a period of two years will be administratively terminated. A person whose registration is so terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the Exchange's rules. The Exchange may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

[35] *See* Rule 1120(a)(5).

[36] *See* Rule 1120(b)(1).

[37] Under Rule 8310(a)(3), the Exchange may impose one or more sanctions on a member or person associated with a member for each violation of the federal securities laws, rules or regulations thereunder, or Exchange rules, including suspending the membership of a member or suspending the registration of a person associated with a member for a definite period or a period contingent on the performance of a particular act.

Proposed Rule 1210.08 also sets forth the expiration period of the SIE. Based on the content covered on the SIE, the Exchange is proposing that a passing result on the SIE be valid for four years. Therefore, under the proposed rule change, an individual who passes the SIE and is an associated person of a firm at the time would have up to four years from the date he or she passes the SIE to pass a representative-level examination to register as a representative with that firm, or a subsequent firm, without having to retake the SIE. In addition, an individual who passes the SIE and is not an associated person at the time would have up to four years from the date he or she passes the SIE to become an associated person of a firm, pass a representative-level examination and register as a representative without having to retake the SIE.

Moreover, an individual holding a representative-level registration who leaves the industry after the operative date of the proposed rule change would have up to four years to re-associate with a firm and register as a representative without having to retake the SIE. However, the four-year expiration period in the proposed rule change extends only to the SIE, and not the representative- and principal-level registrations. The representative- and principal-level registrations would continue to be subject to a two year expiration period as is the case today.

J. Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member (Proposed Rule 1210.09)

The Exchange is proposing Rule 1210.09 to provide a process whereby individuals who would be working for a financial services industry affiliate of a member [38] would terminate their registrations with the member and would be granted a waiver of their requalification requirements upon re-registering with a member, provided the firm that is requesting the waiver and the individual satisfy the criteria for a Financial Services Affiliate (''FSA'') waiver.[39] The purpose of the FSA waiver is to provide a firm greater flexibility to move personnel, including senior and middle management, between the firm and its financial services affiliate(s) so that they may gain organizational skills and better knowledge of products developed by the affiliate(s) without the individuals having to requalify by examination each time they returned to the firm.

Under the proposed waiver process, the first time a registered person is designated as eligible for a waiver based on the FSA criteria, the member with which the individual is registered would notify the Exchange of the FSA designation. The member would concurrently file a full Form U5 terminating the individual's registration with the firm, which would also terminate the individual's other SRO and state registrations.

To be eligible for initial designation as an FSA-eligible person by a member, an individual must have been registered for a total of five years within the most recent 10-year period prior to the designation, including for the most recent year with that member.[40] An individual would have to satisfy these preconditions only for purposes of his or her initial designation as an FSA-eligible person, and not for any subsequent FSA designation(s). Thereafter, the individual would be eligible for a waiver for up to seven years from the date of initial designation [41] provided that the other conditions of the waiver, as described below, have been satisfied. Consequently, a member other than the member that initially designated an individual as an FSA-eligible person may request a waiver for the individual and more than one member may request a waiver for the individual during the seven-year period.[42]

An individual designated as an FSA-eligible person would be subject to the Regulatory Element of CE while working for a financial services industry affiliate of a member. The individual would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and CE would be based on the same cycle had the individual remained registered. If the individual fails to complete the prescribed Regulatory Element during the 120-day window for taking the session, he or she would lose FSA eligibility (*i.e.,* the individual would have the standard two-year period after termination to re-register without having to retake an examination). The Exchange is making corresponding changes to proposed Rule 1240 (currently Rule 1120, Continuing Education).

Upon registering an FSA-eligible person, a firm would file a Form U4 and request the appropriate registration(s) for the individual. The firm would also submit an examination waiver request to the Exchange,[43] similar to the process used today for waiver requests, and it would represent that the individual is eligible for an FSA waiver based on the conditions set forth below. The Exchange would review the waiver request and make a determination of whether to grant the request within 30 calendar days of receiving the request. The Exchange would summarily grant the request if the following conditions are met:

(1) Prior to the individual's initial designation as an FSA-eligible person, the individual was registered for a total of five years within the most recent 10-year period, including for the most recent year with the member that initially designated the individual as an FSA-eligible person;

(2) The waiver request is made within seven years of the individual's initial

[38] Proposed Rule 1210.09 defines a ''financial services industry affiliate of a member'' as a legal entity that controls, is controlled by or is under common control with a member and is regulated by the SEC, Commodity Futures Trading Commission (''CFTC''), state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

[39] There is no counterpart to proposed Rule 1210.09 in the Exchange's existing rules. FINRA Rule 1210.09 was recently adopted as a new waiver process for FINRA registrants, as part of the FINRA Rule Changes.

[40] For purposes of this requirement, a five year period of registration with the Exchange, with FINRA or with another self-regulatory organization would be sufficient.

[41] Individuals would be eligible for a single, fixed seven-year period from the date of initial designation, and the period would not be tolled or renewed.

[42] The following examples illustrate this point:

Example 1. Firm A designates an individual as an FSA-eligible person by notifying the Exchange and files a Form U5. The individual joins Firm A's financial services affiliate. Firm A does not submit a waiver request for the individual. After working for Firm A's financial services affiliate for three years, the individual directly joins Firm B's financial services affiliate for three years. Firm B then submits a waiver request to register the individual.

Example 2. Same as Example 1, but the individual directly joins Firm B after working for Firm A's financial services affiliate, and Firm B submits a waiver request to register the individual at that point in time.

Example 3. Firm A designates an individual as an FSA-eligible person by notifying the Exchange and files a Form U5. The individual joins Firm A's financial services affiliate for three years. Firm A then submits a waiver request to reregister the individual. After working for Firm A in a registered capacity for six months, Firm A re-designates the individual as an FSA-eligible person by notifying FINRA and files a Form U5. The individual rejoins Firm A's financial services affiliate for two years, after which the individual directly joins Firm B's financial services affiliate for one year. Firm B then submits a waiver request to register the individual.

Example 4. Same as Example 3, but the individual directly joins Firm B after the second period of working for Firm A's financial services affiliate, and Firm B submits a waiver request to register the individual at that point in time.

[43] The Exchange would consider a waiver of the representative-level qualification examination(s), the principal-level qualification examination(s) and the SIE, as applicable.

designation as an FSA-eligible person by a member;

(3) The initial designation and any subsequent designation(s) were made concurrently with the filing of the individual's related Form U5;

(4) The individual continuously worked for the financial services affiliate(s) of a member since the last Form U5 filing;

(5) The individual has complied with the Regulatory Element of CE; and

(6) The individual does not have any pending or adverse regulatory matters, or terminations, that are reportable on the Form U4, and has not otherwise been subject to a statutory disqualification while the individual was designated as an FSA-eligible person with a member.

Following the Form U5 filing, an individual could move between the financial services affiliates of a member so long as the individual is continuously working for an affiliate. Further, a member could submit multiple waiver requests for the individual, provided that the waiver requests are made during the course of the seven-year period.[44] An individual who has been designated as an FSA-eligible person by a member would not be able to take additional examinations to gain additional registrations while working for a financial services affiliate of a member.

K. Status of Persons Serving in the Armed Forces of the United States (Proposed Rule 1210.10)

IM–1002–2(a) and (b) currently provide specific relief to registered persons serving in the Armed Forces of the United States. Among other things, these rules permit a registered person of a member who volunteers for or is called into active duty in the Armed Forces of the United States to be registered in an inactive status and remain eligible to receive ongoing transaction-related compensation. IM–1002–2(c) also includes specific provisions regarding the deferment of the lapse of registration requirements in Exchange Rules 1021(c) and 1031(b) for formerly registered persons serving in the Armed Forces of the United States.

The Exchange is proposing to adopt IM–1002–2 as Rule 1210.10 with the following changes. To enhance the efficiency of the current notification process for registered persons serving in the Armed Forces, proposed Rule 1210.10 requires that the member with which such person is registered promptly notify the Exchange of such person's return to employment with the member. A sole proprietor must similarly notify the Exchange of his or her return to participation in the securities business. Further, proposed Rule 1210.10 provides that the Exchange would also defer the lapse of the SIE for formerly registered persons serving in the Armed Forces of the United States.[45]

L. Impermissible Registrations (Proposed Rule 1210.11)

Rules 1021(a) and 1031(a) currently prohibit a member from maintaining a representative or principal registration with the Exchange for any person who is no longer active in the member's investment banking or securities business, who is no longer functioning as a representative or principal as defined under the rules or where the sole purpose is to avoid the requalification requirement applicable to persons who have not been registered for two or more years. These rules also prohibit a member from applying for the registration of a person as representative or principal where the member does not intend to employ the person in its investment banking or securities business. These prohibitions do not apply to the current permissive registration categories.

In light of proposed Rule 1210.02, the Exchange is proposing to delete these provisions and instead adopt Rule 1210.11 prohibiting a member from registering or maintaining the registration of a person unless the registration is consistent with the requirements of proposed Rule 1210.[46]

M. Registration Categories (Proposed Rule 1220)

The Exchange is proposing to integrate the various registration categories and related definitions under the Exchange's rules into a single rule, Rule 1220, subject to the changes described below.[47]

1. Definition of Principal (Proposed Rule 1220(a)(1))

Rule 1021(b) currently defines the term ''principal'' to include sole proprietors, officers, partners, managers of offices of supervisory jurisdiction and directors who are actively engaged in the management of the member's investment banking or securities business, such as supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions. The Exchange is proposing to streamline and adopt Rule 1021(b) as Rule 1220(a)(1).

For the reason discussed above in connection with proposed Rule 1210, proposed Rule 1220(a)(1) would not apply to individuals who are not engaged in the management of the member's securities business even if they are engaged in the management of the member's investment banking business. The proposed rule clarifies that a member's chief executive officer (''CEO'') and chief financial officer (''CFO'') (or equivalent officers) are considered principals based solely on their status. The proposed rule further clarifies that the term ''principal'' includes any other associated person who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under Exchange rules. In addition, the proposed rule provides that the phrase ''actively engaged in the management of the member's securities business'' includes the management of, and the implementation of corporate policies related to, such business as well as managerial decision-making authority with respect to the member's securities business and management-level responsibilities for supervising any aspect of such business, such as serving as a voting member of the member's executive, management or operations committees.

2. General Securities Principal (Proposed Rule 1220(a)(2))

Rule 1022(a)(1) currently requires that an associated person who meets the definition of ''principal'' under Rule 1021 and each person designated as Chief Compliance Officer (''CCO'') on Schedule A of the member's Form BD

[44] For example, if a member submits a waiver request for an FSA-eligible person who has been working for a financial services affiliate of the member for three years and re-registers the individual, the member could subsequently file a Form U5 and re-designate the individual as an FSA-eligible person. Moreover, if the individual works with a financial services affiliate of the member for another three years, the member could submit a second waiver request and re-register the individual upon returning to the member.

[45] Proposed Rule 1210.10 tracks FINRA Rule 1210.10 except for the statement that inactive registered persons are not to be included within the definition of ''Personnel'' for purposes of dues or assessments as provided in Article VI of the FINRA By-Laws. Instead, proposed Rule 1210.10 conserves language from existing IM–1002–2 stating that inactive persons under the rule are not included within the scope of fees, if any, charged by the Exchange with respect to registered persons.

[46] As discussed above, the Exchange is also proposing Rule 1210, Supplementary Material .12, Application for Registration and Jurisdiction, which is not included in FINRA Rule 1210. Proposed Exchange Rule 1210, Supplementary Material .12, is based upon portions of existing Exchange Rule 1031.

[47] For ease of reference, the Exchange proposes to adopt as Rule 1220, Supplementary Material .07, in chart form, a Summary of Qualification Requirements in chart form for each of the Exchange's permitted registration categories discussed below.

(Uniform Application for Broker-Dealer Registration) register as a General Securities Principal. A person registering as a General Securities Principal must pass the General Securities Principal examination. The rule, however, provides that such person is not required to register as a General Securities Principal if the person's activities are so limited as to qualify such person for one or more of the limited principal categories specified in Rule 1022. Further, the rule does not preclude individuals registered in a limited principal category from registering as General Securities Principals. Rule 1022(a)(1) also includes transitioning and grandfathering provisions for CCO's.

Rule 1022(a)(1) provides that a person seeking to register as a General Securities Principal must satisfy the General Securities Representative prerequisite registration. Rule 1022(a)(3) includes a grandfathering provision for persons who were registered as principals before the adoption of the General Securities Principal registration category. Rule 1022(a)(4) provides that an associated person registered solely as a General Securities Principal is not qualified to function as a Financial and Operations Principal, General Securities Sales Supervisor or Securities Trader Principal unless the General Securities Principal is also registered in these other categories.

The Exchange is proposing to streamline the provisions of Rule 1022(a) and adopt them as Rule 1220(a)(2) with the following changes.

The Exchange is proposing to more clearly set forth the obligation to register as a General Securities Principal. Specifically, proposed Rule 1220(a)(2)(A) states that each principal as defined in proposed Rule 1220(a)(1) is required to register with the Exchange as a General Securities Principal, subject to the following exceptions. The proposed rule provides that if a principal's activities are limited to the functions of a Compliance Official, a Financial and Operations Principal, a Securities Trader Principal, a Securities Trader Compliance Officer, or a Registered Options Principal, then the principal shall appropriately register in one or more of these categories.[48] Proposed Rule 1220(a)(2)(A) further provides that if a principal's activities are limited solely to the functions of a General Securities Sales Supervisor, then the principal may appropriately register in that category in lieu of registering as a General Securities Principal, provided that if the principal is engaged in options sales activities he or she shall be required to register as a General Securities Sales Supervisor or as a Registered Options Principal.[49]

Proposed Rule 1220(a)(2)(B) requires that an individual registering as a General Securities Principal satisfy the General Securities Representative prerequisite registration and pass the General Securities Principal qualification examination.

In conjunction with the elimination of the Corporate Securities Representative registration category by FINRA, the Exchange is proposing that Rule 1220(a)(2)(B) provide that, subject to the lapse of registration provisions in proposed Rule 1210.08, General Securities Principals who obtained the Corporate Securities Representative prerequisite registration on the Exchange in lieu of the General Securities Representative prerequisite registration and individuals who had been registered as such within the past two years prior to the operative date of the proposed rule change, may continue to supervise corporate securities activities as currently permitted.[50] Proposed Rule 1220(a)(2)(B) requires all other individuals registering as General Securities Principals after October 1, 2018, to first become registered as a General Securities Representative pursuant to Rule 1220(b)(2).[51]

The Exchange is also proposing to eliminate the grandfathering provision for individuals who were registered as principals prior to the adoption of the General Securities Principal registration category because it no longer has any practical application. Finally, the Exchange is proposing to delete the provision that persons eligible for registration in other principal categories are not precluded from registering as General Securities Principals because it is superfluous.[52]

3. Compliance Official (Proposed Rule 1220(a)(3))

The Exchange is proposing to adopt Rule 1022(a)(1)'s CCO registration requirement as Rule 1220(a)(3), subject to the following changes.

Specifically, proposed Rule 1220(a)(3) provides that each person designated as a Chief Compliance Officer on Schedule A of Form BD shall be required to register with the Exchange as a General Securities Principal, provided that such person may instead register as a Compliance Official if his or her duties do not include supervision of trading. All individuals registering as Compliance Official shall, prior to or concurrent with such registration, pass the Compliance Official qualification examination. An individual designated as a Chief Compliance Officer on Schedule A of Form BD of a member that is engaged in limited securities business could also be registered in a principal category under Rule 1220(a) that corresponds to the limited scope of the member's business.

Additionally, proposed Rule 1220(a)(3) provides that an individual designated as a Chief Compliance Officer on Schedule A of Form BD may register and qualify as a Securities Trader Compliance Officer if, with respect to transactions in equity, preferred or convertible debt securities, or options such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities other than a person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the SEC pursuant to the Investment Company Act and that controls, is controlled by, or is under common control with a member. All individuals

[48] The Exchange is proposing to recognize the Compliance Official and Securities Trader Compliance Officer registration categories for the first time as a result of this proposed rule change.

[49] The Exchange's proposed Rule 1220(a)(2)(A) deviates somewhat from the counterpart FINRA rule in that it does not offer various limited registration categories provided for in FINRA's new Rule 1220(a)(2)(A).

[50] The Exchange itself does not recognize the Corporate Securities Representative registration category, but understands that FINRA and Nasdaq currently accept Corporate Securities Representative registration as a prerequisite to General Securities Principal registration.

[51] The Exchange is not adopting the FINRA Rule 1220(a)(2)(B) language permitting an individual registering as a General Securities Principal after October 1, 2018 to register as a General Securities Sales Supervisor and to pass the General Securities Principal Sales Supervisor Module qualification examination. The Exchange believes that individuals registering as General Securities Principals should be required to demonstrate their competence for that role by passing the General Securities Principal qualification examination.

[52] Proposed Rule 1220(a)(2) generally tracks FINRA Rule 1220(a)(2), except that it omits references to a number of registration categories which FINRA recognizes but that the Exchange does not, and it includes a reference to the Securities Trader Compliance Officer category which the Exchange proposes to recognize, but which FINRA does not. Additionally, proposed Rule 1220(a)(2)(A)(i) extends that provision's exception to the General Securities Principal registration requirement to certain principals whose activities are ''limited to'' (rather than ''include'') the functions of a more limited principal. The Exchange believes that activities ''limited to'' expresses the intent of that exception more accurately than activities that ''include.'' Finally, proposed Rule 1220(a)(2)(B) specifies that registration as a Corporate Securities Representative must be with the Exchange in order to fulfill the Corporate Securities Representative registration prerequisite for General Securities Principal registration pursuant to that rule.

registering as Securities Trader Compliance Officers would be required to first become registered pursuant to paragraph (b)(4) as a Securities Trader, and to pass the Compliance Official qualification exam.[53]

4. Financial and Operations Principal, [sic] (Proposed Rule 1220(a)(4))

Rule 1022(b)(1) currently provides that every member operating pursuant to the provisions of SEC Rule 15c3–1(a)(1)(ii), (a)(2)(i) or (a)(8), shall designate as Limited Principal—Financial and Operations those persons associated with it, at least one of whom shall be its chief financial officer, who performs [sic] the duties described in Rule 1022(b)(2).[54] Each person associated with a member who performs such duties is required to register as a Limited Principal—Financial and Operations with the Exchange and pass an appropriate qualification examination before such registration may become effective. A person registered solely as a Limited Principal—Financial and Operations is not qualified to function in a principal capacity with responsibility over any area of business activity not described in 1022(b)(2).

Financial and Operations Principals are not subject to a prerequisite representative registration, but they must pass the Financial and Operations Principal examination.

The Exchange is proposing to move the provisions in Rules 1022(b) regarding Financial and Operations Principals to Rule 1220(a)(4)(A), substituting the word ''and'' for the current word ''or'' found in Rule 1022(b)(2)(F) in order to conform to FINRA Rule 1220(a)(4)(A) in describing the duties of a Financial and Operations Principal.[55]

5. Investment Banking Principal (Proposed Rule 1220(a)(5))

The Exchange does not recognize the Investment Banking Principal registration category and is reserving Rule 1220(a)(5), retaining the caption solely to facilitate comparison with FINRA's rules.

6. Research Principal (Proposed Rule 1220(a)(6))

The Exchange does not recognize the Research Principal registration category and is reserving Rule 1220(a)(6), retaining the caption solely to facilitate comparison with FINRA's rules.

7. Securities Trader Principal (Proposed Rule 1220(a)(7))

Existing Rule 1022(h) requires each person associated with a member who is included within the definition of principal and who will have supervisory responsibility over the securities trading activities described in Rule 1032(b) to register as a Securities Trader Principal. To qualify for registration as a Securities Trader Principal, such person must become qualified and registered as a Securities Trader under Rule 1032(b) and pass the General Securities Principal qualification examination. A person who is qualified and registered as a Securities Trader Principal under Rule 1022(h) may only have supervisory responsibility over the Securities Trader activities specified in Rule 1032(b), unless such person is separately qualified and registered in another appropriate principal registration category, such as the General Securities Principal registration category. Conversely, a person who is registered as a General Securities Principal may not supervise the trading activities described in Rule 1032(b) unless such person has also become qualified and registered as a Securities Trader under Rule 1032(b) by passing the Securities Trader qualification examination and registering as a Securities Trader Principal.

The Exchange is proposing to delete Rule 1022(h) and to adopt in its place Rule 1220(a)(7), Securities Trader Principal. Similar to the current rule, proposed Rule 1220(a)(7) requires that a principal responsible for supervising the securities trading activities specified in proposed Rule 1220(b)(4)[56] register as a Securities Trader Principal. The proposed rule requires individuals registering as Securities Trader Principals to be registered as Securities Traders and to pass the General Securities Principal qualification examination.

8. Registered Options Principal (Proposed Rules 1220(a)(8))

Chapter II, Section 2(g) of the rulebook currently requires that members engaged in security futures or options transactions with public customers have at least one Registered Options and Security Futures Principal. It also provides that every person engaged in the supervision of options and security futures sales practices shall be registered as a Registered Options and Security Futures Principal and pass the appropriate qualification examination for Registered Options and Security Futures Principal, or an equivalent examination acceptable to the Exchange. Further, each person required to register and qualify as a Registered Options and Security Futures Principal must, prior to or concurrent with such registration, be or become qualified pursuant to the Rule 1030 Series, as either a General Securities Representative or a Limited Representative—Corporate Securities and a Registered Options and Security Futures Representative. The rule provides that a person registered solely as a Registered Options and Security Futures Principal is not qualified to function in a principal capacity with responsibility over any area of business activity not prescribed in Chapter II, Section 2(g). Chapter II, Section 2(g)(5) provides that any person who is registered as a Registered Options and Security Futures Principal, or who becomes registered as a Registered Options and Security Futures Principal before a revised examination that includes security futures products is offered, must complete a firm-element continuing education program that addresses security futures and a

[53] Proposed Rule 1220(a)(3) differs from FINRA Rule 1220(a)(3), Compliance Officer. The Exchange does not recognize the Compliance Officer registration category. Similarly, FINRA does not recognize the Compliance Official or the Securities Trader Compliance Officer registration categories which the Exchange proposes to recognize. However, FINRA Rule 1220(a)(3), like proposed Rule 1220(a)(3), offers an exception pursuant to which a Chief Compliance Officer designated on Schedule A of Form BD may register in a principal category that corresponds to the limited scope of the member's business.

[54] These duties include (A) final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body; (B) final preparation of such reports; (C) supervision of individuals who assist in the preparation of such reports; (D) supervision of and responsibility for individuals who are involved in the actual maintenance of the member's books and records from which such reports are derived; (E) supervision and/or performance of the member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act; (F) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations; or (G) any other matter involving the financial and operational management of the member.

[55] FINRA Rule 1220(a)(4) differs from proposed Rule 1220(a)(4) in that it includes an Introducing Broker-Dealer Financial and Operations Principal registration requirement. Additionally, proposed Rule 1220(a)(4) contains a requirement, which the FINRA rule does not, that each person associated with a member who performs the duties of a Financial and Operations Principal must register as such with the Exchange. Further, as discussed above, the Exchange is not adopting a Principal Financial Officer or Principal Operations Officer requirement like FINRA Rule 1220(a)(4)(B), as it believes the Financial and Operations Principal requirement is sufficient. Finally, proposed Rule 1220(a)(4)(B)(v) and (vi) contain minor wording variations from the FINRA rule.

[56] Proposed Rule 1220(b)(4), discussed below, provides for representative-level registration in the ''Securities Trader'' category.

principal's responsibilities for security futures before such person can supervise security futures activities. Finally, Chapter II, Section 2 of the Exchange's options rules further requires that members that have one Registered Options Principal promptly notify the Exchange and agree to specified conditions if such person is terminated, resigns, becomes incapacitated or is otherwise unable to perform his or her duties.

The Exchange is proposing to adopt Chapter II, Section (2)(g) as Rule 1220(a)(8), Registered Options Principal, with certain changes. The registration category would now be titled Registered Options Principal, rather than Registered Options and Security Futures Principal.[57] All references to a revised examination that includes security futures products would be deleted. Instead, Rule 1220(b), Supplementary Material .02 will simply provide that each person who is registered with the Exchange as a Registered Options Principal (or as a General Securities Representative, Options Representative, or General Securities Sales Supervisor) shall be eligible to engage in security futures activities as a principal, as applicable, provided that such individual completes a Firm Element program as set forth in proposed Rule 1240 that addresses security futures products before such person engages in security futures activities.[58]

Proposed Rule 1220(a)(8) provides that a General Securities Sales Supervisor may also supervise options activities. Rule 1220(b), Supplementary Material .02 regarding security futures activities will apply to General Securities Sales Supervisors as well as to Registered Options Principals.[59]

Further, as discussed below, the Exchange is proposing to eliminate the Options Representative and Corporate Securities Representative registration categories. In conjunction with these changes, the Exchange is proposing to eliminate registration as an Options Representative from the prerequisite choices in the current rule. Consequently, a person registering as a Registered Options Principal under proposed Rule 1220(a)(8) would be required to satisfy the General Securities Representative prerequisite registration.[60]

Finally, the Exchange is proposing to adopt the Chapter II, Section 2 provisions regarding the loss of a sole Registered Options Principal with non-substantive changes as Supplementary Material .03 of Rule 1220.[61]

9. Government Securities Principal (Rule 1220(a)(9))

The Exchange does not recognize the Government Securities Principal registration category and is reserving Rule 1220(a)(9), retaining the caption solely to facilitate comparison with FINRA's rules.

10. General Securities Sales Supervisor (Proposed Rules 1220(a)(10) and 1220.04)

Pursuant to Exchange Rule 1022(g), each associated person of a member who is included within the definition of ''principal'' in Rule 1021 may register as a Limited Principal—General Securities Sales Supervisor, instead of separately registering in multiple principal registration categories,[62] if the individual's supervisory responsibilities are limited solely to securities sales activities. A person registering as a Limited Principal—General Securities Sales Supervisor must satisfy the General Securities Representative prerequisite registration and pass the General Securities Sales Supervisor examinations.[63] Moreover, a General Securities Sales Supervisor is precluded from performing any of the following activities: (1) Supervision of the origination and structuring of underwritings; (2) supervision of market-making commitments; (3) final approval of advertisements as these are defined in Exchange Rule 2210; (4) supervision of the custody of firm or customer funds or securities for purposes of SEC Rule 15c3–3; or (5) supervision of overall compliance with financial responsibility rules. Current IM–1022–2 explains the purpose of the General Securities Sales Supervisor registration category.

The Exchange is proposing to adopt Rule 1022(g) and IM–1022–2 as Rules 1220(a)(10) and 1220.04, respectively.[64] Rule 1220(a)(10), however, omits the current Rule 1022(g) prohibition against supervision of the origination and structuring of underwritings, as that activity does not fall within the new, more limited scope of ''securities trading'' covered by the new 1200 Series of rules.

11. Investment Company and Variable Contracts Products Principal and Direct Participation Programs Principal (Rules 1220(a)(11) and (a)(12))

The Exchange does not recognize the Investment Company and Variable Contracts Products Principal registration category or the Direct Participation

[57] FINRA has also shortened references to ''Registered Options and Security Futures Principal'' in its rulebook to ''Registered Options Principal''. *See* Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (SR–FINRA–2008–032).

[58] Unlike FINRA Rule 1220.02, proposed Exchange Rule 1220.02 omits references to United Kingdom Securities Representatives and Canada Securities Representatives, which are registration categories the Exchange does not recognize. In any case, the Exchange does not currently offer security futures products for trading.

[59] Rule 1220(b), Supplementary Material .02 regarding security futures activities will also apply to General Securities Representatives and to Options Representatives.

[60] Proposed Rule 1220(a)(8) differs from FINRA Rule 1220(a)(8) in that it omits certain references to other specific FINRA rules.

[61] Chapter XI, Doing Business with the Public, at Section 2(a) provides that no order entry firm (''OEF'') shall be approved to transact options business with the public until those associated persons who are designated as Options Principals have been approved by and registered with the Exchange. Persons engaged in the management and supervision of the OEF's business pertaining to options contracts must be designated as Options Principals and shall have responsibility for the overall oversight of the OEF's options related activities on the Exchange. Similarly, Chapter XI, Sections 3(a) and (b) provide [sic] that no OEF shall be approved to transact business with the public until those persons associated with it who are designated representatives have been approved by and registered with the Exchange, and also that persons who perform duties for the OEF which are customarily performed by sales representatives or branch office managers shall be designated as representatives of the OEF. The foregoing provisions of Chapter XI are specific to conducting an options business with the public and are not proposed to be amended in this proposed rule change, other than to add a customer protection requirement, similar to existing Phlx Rule 1024.08 and existing ISE Rule 602(d), that a person accepting orders from non-member customers (unless such customer is a broker-dealer registered with the Commission) is required to register with the Exchange and to be qualified by passing the General Securities Registered Representative Examination (Series 7). However, Chapter XI, Sections 2(b) and (c) and Section 3(c) also contain provisions regarding submission of Forms U4 and U5 to WebCRD that are duplicative of the proposed 1200 Series of rules, in particular proposed Rules 1210.12, Application for Registration and Jurisdiction, and 1250, Electronic Filing Requirements for Electronic Forms, and are therefore proposed to be deleted.

[62] For instance, a principal supervising the sale of corporate securities and options must be registered as a General Securities Principal and a Registered Options Principal, unless the principal is registered as a General Securities Sales Supervisor.

[63] An individual may also register as a General Securities Sales Supervisor bypassing [sic] a combination of other principal-level examinations.

[64] The Exchange is not proposing to carry over into proposed Rule 1220(a)(10) the current Rule 1022(g)(2)(C)(iii) prohibition against final approval of advertisements by General Securities Sales Supervisors. The Exchange notes that FINRA removed this prohibition several years ago from NASD Rule 1022(g) (Limited Principal— General Securities Sales Supervisor) and NASD IM–1022–2 (Limited Principal— General Securities Sales Supervisor). *See* Securities Exchange Act Release No. 68918 (February 13, 2013), 78 FR 11925 (February 20, 2013) (SR–FINRA–2013–014). Also, unlike FINRA Rule 1220.04, proposed Exchange Rule 1220.04 refers to ''multiple exchanges'' rather than listing the various exchanges where a sales principal might be required to qualify in the absence of the General Securities Sales Supervisor registration category. It also omits FINRA internal cross-references.

Programs Principal registration category. The Exchange is therefore reserving Rules 1220(a)(11) and (a)(12), retaining the captions solely to facilitate comparison with FINRA's rules.

12. Private Securities Offerings Principal (Rule 1220(a)(13))

The Exchange does not recognize the Private Securities Offerings Principal registration category and is therefore reserving Rule 1220(a)(13), retaining the caption solely to facilitate comparison with FINRA's rules.

13. Supervisory Analyst (Rule 1220(a)(14))

The Exchange does not recognize the Supervisory Analyst registration category and is therefore reserving Rule 1220(a)(14), retaining the caption solely to facilitate comparison with FINRA's rules.

14. Definition of Representative (Proposed Rule 1220(b)(1))

Rule 1011(k) currently defines the term ''representative'' as an associated person of a registered broker or dealer, including assistant officers other than principals, who is engaged in the investment banking or securities business for the member including the functions of supervision, solicitation or conduct of business in securities or who is engaged in the training of persons associated with a broker or dealer for any of these functions are designated as representatives. Rule 1011(k) further states that, as provided in Rule 1031, all representatives of members are required to be registered with the Exchange, and that representatives that are so registered are referred to as registered representatives.

The Exchange now proposes to adopt a definition of ''representative'' in proposed Rule 1220(b)(1). Current Rule 1011, Definitions, Section (k) would be amended by deleting the existing definition of representative, and replacing it with a cross reference to the new definition of representative in Rule 1220(b)(1). Proposed 1220(b)(1) would define the term representative as any person associated with a member, including assistant officers other than principals, who is engaged in the member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a member for any of these functions. Unlike the current Rule 1011(k) ''representative'' definition, the new Rule 1220(b)(1) definition would be confined to associated persons of Exchange members (rather than to associated persons of broker dealers generally) who are engaged in the member's securities business (and not also in the member's investment banking business).

15. General Securities Representative (Proposed Rule 1220(b)(2))

Rule 1032(a) currently requires that an associated person who meets the definition of ''representative'' under Rule 1011 register as a General Securities Representative. A person registering as a General Securities Representative must pass the General Securities Representative examination. The rule, however, provides that a representative is not required to register as a General Securities Representative if the person's activities are so limited as to qualify such person as a Securities Trader. Further, the rule does not preclude individuals registered in a limited representative category such as Securities Trader from registering as General Securities Representatives.

Similar to the proposed changes to the General Securities Principal registration category, the Exchange is proposing to more clearly set forth the obligation to register as a General Securities Representative. Specifically, proposed Rule 1220(b)(2)(A) states that each representative as defined in proposed Rule 1220(b)(1) is required to register with the Exchange as a General Securities Representative, except that if a representative's activities include the functions of a Securities Trader, as specified in this Rule, then such person shall appropriately register as a Securities Trader.

Further, consistent with the proposed restructuring of the representative-level examinations, proposed Rule 1220(b)(2)(B) would require that individuals registering as General Securities Representatives pass the SIE and the General Securities Representative examination.[65]

In addition, the Exchange is proposing to adopt Rule 1220.01 to provide individuals who are associated persons of firms and who hold foreign registrations an alternative, more flexible, process to obtain an Exchange representative-level registration. The Exchange believes that there is sufficient overlap between the SIE and these foreign qualification requirements to permit them to act as exemptions to the SIE. Under proposed Rule 1220.01, individuals who are in good standing as representatives with the Financial Conduct Authority in the United Kingdom or with a Canadian stock exchange or securities regulator would be exempt from the requirement to pass the SIE, and thus would be required only to pass a specialized knowledge examination to register with the Exchange as a representative. The proposed approach would provide individuals with a United Kingdom or Canadian qualification more flexibility to obtain an Exchange representative-level registration. Finally, the Exchange is proposing to delete the provision that persons eligible for registration in other representative categories are not precluded from registering as General Securities Representatives because it is superfluous.

16. Operations Professional, Securities Trader, Investment Banking Representative, Research Analyst, Investment Company and Variable Contracts Products Representative, Direct Participation Programs Representative and Private Securities Offerings Representative (Rules 1220(b)(3), 1220(b)(4), 1220(b)(5), 1220(b)(6), 1220(b)(7), 1220(b)(8), 1220(b)(9) and 1220.05))

Operations Professional, Investment Banking Representative, Research Analyst, Investment Company and Variable Contracts Products Representative, Direct Participation Programs Representative and Private Securities Offerings Representative. The Exchange has not adopted these registration categories for its associated persons. The Exchange is reserving Rules 1220(b)(3)—Operations Professional, and related Rule 1220.05; 1220(b)(5)—Investment Banking Representative, 1220(b)(6)—Research Analyst; Investment Company and Variable Contracts Products Representative—Proposed Rule 1220(b)(7); 1220(b)(8)—Direct Participation Programs Representative; and 1220(b)(9)—Private Securities Offerings Representative, retaining the captions, solely to facilitate comparison with FINRA's rules.

Securities Trader—Proposed Rule 1220(b)(4). Pursuant to current Exchange Rule 1032(f), each associated person of a member who is included within the definition of ''representative'' in Rule 1101 is required to register as a Securities Trader if, with respect to transactions in equity, preferred or convertible debt securities or foreign currency options on the Exchange, such person is engaged in proprietary trading, the execution of transactions on an agency basis or the direct supervision of such activities.[66] The rule provides an

[65] Proposed Rule 1220(b)(2)(B) differs from FINRA Rule 1220(b)(2)(B) in that it omits references to various registration categories which FINRA recognizes but which the Exchange does not propose to recognize.

[66] Proposed Rule 1220(b)(4)(A) differs from FINRA Rule 1220(b)(4)(A) in that it applies to

exception from the registration requirement for any associated person of a member whose trading activities are conducted principally on behalf of an investment company that is registered with the SEC pursuant to the Investment Company Act and that controls, is controlled by, or is under common control with the member. Individuals registering as Securities Traders must pass the Securities Trader examination. Finally, the rule provides that registered Securities Traders are not qualified to function in any other registration category, unless he or she is also qualified and registered in such other registration category.

The Exchange now proposes to amend the rule, and adopt it as proposed Rule 1220(b)(4). As amended, the Rule would require individuals registering as Securities Traders to pass the SIE as well as the Securities Trader qualification exam, and it would be expanded to refer not just to foreign currency options, but to the trading of options generally.

Additionally, proposed Rule 1220(b)(4)(A) would require each person associated with a member who is: (i) Primarily responsible for the design, development or significant modification of an algorithmic trading strategy relating to equity, preferred or convertible debt securities or options; or (ii) responsible for the day-to-day supervision or direction of such activities to register with the Exchange as a Securities Trader.[67]

For purposes of this proposed new registration requirement an ''algorithmic trading strategy'' is an automated system that generates or routes orders (or order-related messages) but does not include an automated system that solely routes orders received in their entirety to a market center. The proposed registration requirement applies to orders and order related messages whether ultimately routed or sent to be routed to an exchange or over the counter. An order router alone would not constitute an algorithmic trading strategy. However, an order router that performs any additional functions would be considered an algorithmic trading strategy. An algorithm that solely generates trading ideas or investment allocations—including an automated investment service that constructs portfolio recommendations—but that is not equipped to automatically generate orders and order-related messages to effectuate such trading ideas into the market—whether independently or via a linked router—would not constitute an algorithmic trading strategy.[68]

The associated persons covered by the expanded registration requirement would be required to pass the requisite qualification examination and be subject to the same continuing education requirements that are applicable to individual Securities Traders. The Exchange believes that potentially problematic conduct stemming from algorithmic trading strategies—such as failure to check for order accuracy, inappropriate levels of messaging traffic, wash sales, failure to mark orders as ''short'' or perform proper short sale ''locates,'' and inadequate risk management controls—could be reduced or prevented, in part, through improved education regarding securities regulations for the specified individuals involved in the algorithm design and development process.

The proposal is intended to ensure the registration of one or more associated persons that possesses knowledge of, and responsibility for, both the design of the intended trading strategy and the technological implementation of the strategy, sufficient to evaluate whether the resulting product is designed to achieve regulatory compliance in addition to business objectives. For example, a lead developer who liaises with a head trader regarding the head trader's desired algorithmic trading strategy and is primarily responsible for the supervision of the development of the algorithm to meet such objectives must be registered under the proposal as the associated person primarily responsible for the development of the algorithmic trading strategy and supervising or directing the team of developers. Individuals under the lead developer's supervision would not be required to register under the proposal if they are not primarily responsible for the development of the algorithmic trading strategy or are not responsible for the day-to-day supervision or direction of others on the team. Under this scenario, the person on the business side that is primarily responsible for the design of the algorithmic trading strategy, as communicated to the lead developer, also would be required to register. In the event of a significant modification to the algorithm, members, likewise, would be required to ensure that the associated person primarily responsible for the significant modification (or the associated person supervising or directing such activity), is registered as a Securities Trader.

A member employing an algorithm is responsible for the algorithm's activities whether the algorithm is designed or developed in house or by a third-party. Thus, in all cases, robust supervisory procedures, both before and after deployment of an algorithmic trading strategy, are a key component in protecting against problematic behavior stemming from algorithmic trading. In addition, associated persons responsible for monitoring or reviewing the performance of an algorithmic trading strategy must be registered, and a member's trading activity must always be supervised by an appropriately registered person. Therefore, even where a firm purchases an algorithm off-the-shelf and does not significantly modify the algorithm, the associated person responsible for monitoring or reviewing the performance of the algorithm would be required to be registered.

Pursuant to proposed Rule 1220(b)(4)(B) each person registered as a Securities Trader on October 1, 2018 and each person who was registered as a Securities Trader within two years prior to October 1, 2018 would be qualified to register as a Securities Trader without passing any additional qualification examinations. All other individuals registering as Securities Traders after October 1, 2018 would be required, prior to or concurrent with such registration, pass the SIE and the Securities Trader qualification examination.

17. Eliminated Registration Categories (Proposed Rule 1220.06)

Consistent with the FINRA Rule Changes, the Exchange is proposing to eliminate from its rules the Options Representative category that FINRA is eliminating effective October 1, 2018.[69]

trading on the Exchange while the FINRA rule is limited to the specified trading which is ''effected otherwise than on a securities exchange.'' Additionally, the FINRA rule does not specifically extend to options trading.

[67] As noted above, this new registration requirement was recently added to the FINRA rulebook. The Exchange has determined to add a parallel requirement to its own rules, but also to add options to the scope of products within the proposed rule's coverage. *See* Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR–FINRA–2016–007).

[68] *See* Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (Order Approving File No. SR–FINRA–2016–007).

[69] Chapter II, Section 2(h) of the Exchange's rulebook provides that each person associated with a member who is included within the definition of a representative as defined in Rule 1031 may register with BX as a Limited Representative—Options and Security Futures if: (A) Such person's activities in the investment banking or securities business of the member involve the solicitation or sale of option or security futures contracts, including option contracts on government securities as that term is defined in Section 3(a)(42)(D) of the Act, for the account of a broker, dealer or public

Continued

Proposed Rule 1220.06, which is proposed to be adopted on a uniform basis by the Nasdaq Affiliated Exchanges, provides that, subject to the lapse of registration provisions in proposed Rule 1210.08, individuals who are registered with the Exchange in any capacity recognized by the Exchange (such as the Options Representative category) immediately prior to October 1, 2018, and each person who was registered with the Exchange in such categories within two years prior to October 1, 2018, shall be eligible to maintain such registrations with the Exchange. However, if individuals registered in such categories terminate their registration with the Exchange and the registration remains terminated for two or more years, they would not be able to re-register in that category. In addition, proposed Rule 1220.06 would include the current restrictions to which Order Processing Assistant Representatives are subject under Nasdaq rules.[70]

18. Grandfathering Provisions

In addition to the grandfathering provisions in proposed Rule 1220(a)(2) (relating to General Securities Principals) and proposed Rule 1220.06 (relating to the eliminated registration categories), the Exchange is proposing to include grandfathering provisions in proposed Rule 1220(a)(8) (Registered Options Principal), 1220(b)(2) (General Securities Representative), and 1220(b)(4) (Securities Trader). Specifically, the proposed grandfathering provisions provide that, subject to the lapse of registration provisions in proposed Rule 1210.08, individuals who are registered in specified registration categories on the operative date of the proposed rule change and individuals who had been registered in such categories within the past two years prior to the operative date of the proposed rule change would be qualified to register in the proposed corresponding registration categories without having to take any additional examinations.

N. Associated Persons Exempt From Registration (Proposed Rules 1230 and 1230.01)

Rule 1060(a) currently provides that the following persons associated with a member are not required to register:

(1) persons associated with a member whose functions are solely and exclusively clerical or ministerial;

(2) persons associated with a member who are not actively engaged in the investment banking or securities business;

(3) persons associated with a member whose functions are related solely and exclusively to the member's need for nominal corporate officers or for capital participation;

(4) persons associated with a member whose functions are related solely and exclusively to: (A) Effecting transactions on the floor of another national securities exchange and who are registered as floor members with such exchange; (B) transactions in municipal securities; (C) transactions in commodities; (D) transactions in security futures, provided that any such person is registered with FINRA or a registered futures association; or (E) transactions in variable contracts and insurance premium funding programs and other contracts issued by an insurance company; (F) transactions in direct participation programs; (G) Reserved; (H) transactions in government securities; or (I) effecting sales as part of a primary offering of securities not involving a public offering pursuant to Section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder; and

(5) persons associated with a member that are not citizens, nationals, or residents of the United States or any of its territories or possessions and that will conduct all of their securities activities in areas outside the jurisdiction of the United States and will not engage in any securities activities with or for any citizen, national or resident of the United States.

Rule 1060(a) is not meant to provide an exclusive or exhaustive list of exemptions from registration. Associated persons may otherwise be exempt from registration based on their activities and functions.

The Exchange is proposing to adopt Rule 1060(a) as Rule 1230 subject to the following changes. As noted above, Rule 1060(a) exempts from registration those associated persons who are not actively engaged in the investment banking or securities business. Rule 1060(a) also exempts from registration those associated persons whose functions are related solely and exclusively to a member's need for nominal corporate officers or for capital participation.[71] The Exchange believes that the determination of whether an associated person is required to register must be based on an analysis of the person's activities and functions in the context of the various registration categories. The Exchange does not believe that categorical exemptions for associated persons who are not ''actively engaged'' in a member's investment banking or securities business, associated persons whose functions are related only to a member's need for nominal corporate officers or associated persons whose functions are related only to a member's need for capital participation is consistent with this analytical framework. The Exchange therefore is proposing to delete these exemptions. Rule 1060(a) further exempts from registration associated persons whose functions are related solely and exclusively to effecting transactions on the floor of another national securities exchange as long as they are registered as floor members with such exchange. Because exchanges have registration categories other than the floor member category, proposed Rule 1230 clarifies that the exemption applies to associated persons solely and exclusively effecting transactions on the floor of another national securities exchange, provided they are appropriately registered with such exchange.[72] Additionally, the Exchange proposes to add Section 3 of Rule 1230, pursuant to which persons associated with a member that are not citizens, nationals, or residents of the United States or any of its territories or possessions, that will conduct all of their securities activities in areas outside the jurisdiction of the United States, and that will not engage in any securities activities with or for any citizen, national or resident of the United States need not register with the Exchange.[73]

customer; and (B) such person passes an appropriate qualification examination for Limited Representative—Options and Security Futures. It also provides that each person seeking to register and qualify as a Limited Representative—Options and Security Futures must, concurrent with or before such registration may become effective, become registered with BX or another SRO as either as a Limited Representative—Corporate Securities or Limited Representative—Government Securities. The Limited Representative—Options and Security Futures registration category is the same as the Options Representative category. The Exchange has very few registrants in this category, and none in the Corporate Securities or Limited Representative—Government Securities categories (for which there is no provision in the Exchange's rules).

[70] *See* Nasdaq Rule 1042. Proposed Exchange Rule 1220.06 omits references to a number of registration categories it does not propose to recognize, but which FINRA refers to in its own Rule 1220.06.

[71] These exemptions generally apply to associated persons who are corporate officers of a member in name only to meet specific corporate legal obligations or who only provide capital for a member, but have no other role in a member's business.

[72] Proposed Rule 1230 differs from FINRA Rule 1230 in that it includes a number of exemptions based upon current Nasdaq Rule 1060(a) which are not found in FINRA Rule 1230.

[73] Individuals described by Section 3 of Rule 1230 who are associated with FINRA members may be registered with FINRA as Foreign Associates pursuant to FINRA Rule 1220.06. FINRA is eliminating this registration category effective

The Exchange proposes to adopt Rule 1230.01 to clarify that the function of accepting customer orders is not considered a clerical or ministerial function and that associated persons who accept customer orders under any circumstances are required to be appropriately registered. However, the proposed rule provides that an associated person is not accepting a customer order where occasionally, when an appropriately registered person is unavailable, the associated person transcribes the order details and the registered person contacts the customer to confirm the order details before entering the order.

O. Changes to CE Requirements (Proposed Rule 1240)

As described above, current Rule 1120 includes a Regulatory Element and a Firm Element. The Regulatory Element applies to registered persons and consists of periodic computer-based training on regulatory, compliance, ethical, supervisory subjects and sales practice standards. The Firm Element consists of at least annual, member-developed and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered by the member. The Exchange is proposing to delete Rule 1120 and replace it with Rule 1240. Proposed Rule 1240 would differ from current Rule 1120 in a number of respects, discussed below.[74]

1. Regulatory Element

The Exchange is proposing to replace the term ''registered person'' under current Rule 1120(a) with the term ''covered person'' and make conforming changes to proposed Rule 1240(a). For purposes of the Regulatory Element, the Exchange is proposing to define the term ''covered person'' in Rule 1240(a)(5) as any person registered pursuant to proposed Rule 1210, including any person who is permissively registered pursuant to proposed Rule 1210.02, and any person who is designated as eligible for an FSA waiver pursuant to proposed Rule 1210.09. The purpose of this change is to ensure that all registered persons, including those with permissive registrations, keep their knowledge of the securities industry current. The inclusion of persons designated as eligible for an FSA waiver under the term ''covered persons'' corresponds to the requirements of proposed Rule 1210.09. In addition, consistent with proposed Rule 1210.09, proposed Rule 1240(a) provides that an FSA-eligible person would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and CE would be based on the same cycle had the individual remained registered. The proposed rule also provides that if an FSA-eligible person fails to complete the Regulatory Element during the prescribed time frames, he or she would lose FSA eligibility.

Further, the Exchange is proposing to add a rule to address the impact of failing to complete the Regulatory Element on a registered person's activities and compensation. Specifically, proposed Rule 1240(a)(2) provides that any person whose registration has been deemed inactive under the rule may not accept or solicit business or receive any compensation for the purchase or sale of securities. However, like the FINRA rule, the proposed rule provides that such person may receive trail or residual commissions resulting from transactions completed before the inactive status, unless the member with which the person is associated has a policy prohibiting such trail or residual commissions.

The Exchange is also proposing to remove the requirements currently found in Rule 1120(a)(1) prescribing the specific Regulatory Elements administered by FINRA that are required for General Securities Representatives, Securities Traders or persons registered in a supervisory capacity, so that Rule 1240(a)(1) will conform more closely to the FINRA counterpart rule which does not identify specific Regulatory Element requirements for particular categories of registrant.

2. Firm Element

The Exchange believes that training in ethics and professional responsibility should apply to all covered registered persons. Therefore, proposed Rule 1240(b)(2)(B), which provides that the Firm Element training programs must cover applicable regulatory requirements, would also require that a firm's training program cover training in ethics and professional responsibility.

P. Electronic Filing Rules

Existing BX Rule 1140, Electronic Filing Rules, is proposed to be amended and relocated as Rule 1250, Electronic Requirements for Uniform Forms. Proposed Rule 1250 is based on existing Nasdaq Rule 1140 which is a more comprehensive version of existing BX Rule 1140.

Current BX Rule 1140 requires registration forms to be filed through an electronic process or such other process as the Exchange may prescribe to the Central Registration Depository. The rule includes supervisory requirements related to the submission of electronic filings, as well as Form U4 manual signature requirements. It also requires applicants' fingerprint cards to be submitted by members, includes Form U5 filing requirements, and permits a member to employ a third party to file required forms electronically on its behalf.

Proposed Rule 1250 reorganizes and enhances the content of current BX Rule 1140. It would provide that all forms required to be filed under the Exchange's registration rules, including the Rule 1200 series, must be filed through an electronic process or such other process as the Exchange may prescribe to the Central Registration Depository. It would provide for the electronic filing of Form U4 amendments in a number of cases without the individual's manual signature, subject to certain safeguards and procedures, and would permit the delegation of filing functions by supervisors (again, subject to certain safeguards). Additionally, Rule 1250, Supplementary Material .02 would state clearly that members remain responsible for complying with the requirements of the rule even if forms are filed electronically by a third party pursuant to an agreement. Finally, it would establish a number of recordkeeping requirements related to electronic registration filings.

Rule 1250, as part of the uniform 1200 Series, will consolidate Form U4 and U5 electronic filing requirements in a single location, across the Nasdaq Affiliated Exchanges.

Q. Other Rules

The Exchange is deleting Rule 1060, Persons Exempt from Registration, as explained above. Rule 1060(b) however, contains provisions dealing with Nonregistered Foreign ''Finders'' and is simply being relocated with nonsubstantive changes to new Rule 2040.[75] The remaining rules identified above under ''Overview'' which are to be amended in this proposed rule change but are not further discussed herein simply update citations and/or

October 1, 2018, and the Exchange has never recognized it.

[74] Proposed Rule 1240 also differs slightly from FINRA Rule 1240 in that it omits references to certain registration categories which the Exchange does not recognize as well as an internal cross reference to FINRA Rule 4517.

[75] The FINRA counterpart to current Rule 1060(b) occupies a similar location in the FINRA rulebook. *See* FINRA Rule 2040(c), Nonregistered Foreign Finders.

make technical or nonsubstantive changes to the proposed new rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[76] in general, and furthers the objectives of Section 6(b)(5) of the Act,[77] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed rule change will streamline, and bring consistency and uniformity to, the registration rules, which will, in turn, assist members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule change will also improve the efficiency of the examination program, without compromising the qualification standards, by eliminating duplicative testing of general securities knowledge on examinations and by removing examinations that currently have limited utility. In addition, the proposed rule change will expand the scope of permissive registrations, which, among other things, will allow members to develop a depth of associated persons with registrations to respond to unanticipated personnel changes and will encourage greater regulatory understanding. Further, the proposed rule change will provide a more streamlined and effective waiver process for individuals working for a financial services industry affiliate of a member, and it will require such individuals to maintain specified levels of competence and knowledge while working in areas ancillary to the securities business. The proposed rule change will improve the supervisory structure of firms by imposing an experience requirement for representatives that are designated by firms to function as principals for a 120-day period before having to pass an appropriate principal qualification examination. The proposed rule change will also prohibit unregistered persons from accepting customer orders under any circumstances, which will enhance investor protection.

The Exchange believes that, with the introduction of the SIE and expansion of the pool of individuals who are eligible to take the SIE, the proposed rule change has the potential of enhancing the pool of prospective securities industry professionals by introducing them to securities laws, rules and regulations and appropriate conduct before they join the industry in a registered capacity.

The extension of the Securities Trader registration requirement to developers of algorithmic trading strategies requires associated persons primarily responsible for the design, development or significant modification of an algorithmic trading strategy or responsible for the day-to-day supervision or direction of such activities to register and meet a minimum standard of knowledge regarding the securities rules and regulations applicable to the member employing the algorithmic trading strategy. This minimum standard of knowledge is identical to the standard of knowledge currently applicable to traditional securities traders. The Exchange believes that improved education of firm personnel may reduce the potential for problematic market conduct and manipulative trading activity.

Finally, the proposed rule change makes organizational changes to Exchange rules to maintain appropriate parallelism with corresponding Exchange rules, in order to prevent unnecessary regulatory burdens and promote efficient administration of the rules. The change also makes minor updates and corrections to the Exchange's rules which improve readability.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that all associated persons of members engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions, will be supervised, and can be identified by regulators. The proposed new 1200 Series of rules, which are similar in many respects to the registration-related requirements adopted by FINRA effective October 1, 2018, should enhance the ability of member firms to comply with the Exchange's rules as well as with the Federal securities laws. Additionally, as described above, the Exchange intends the amendments described herein to eliminate inconsistent registration-related requirements across the Nasdaq Affiliated Exchanges, thereby promoting uniformity of regulation across markets. The new 1200 Series should in fact remove administrative burdens that currently exist for members seeking to register associated persons on multiple Nasdaq Affiliated Exchanges featuring varying registration-related requirements. Additionally, all similarly-situated associated persons of members will be treated similarly under the new 1200 Series in terms of standards of training, experience and competence for persons associated with Exchange members.

With respect to registration of developers of algorithmic trading strategies in particular, the Exchange recognizes that the proposal would impose costs on member firms employing associated persons engaged in the activity subject to the registration requirement. Specifically, among other things, additional associated persons would be required to become registered under the proposal, and the firm would need to establish policies and procedures to monitor compliance with the proposed requirement on an ongoing basis. However, given the prevalence and importance of algorithmic trading strategies in today's markets, the Exchange believes that associated persons engaged in the activities covered by this proposal must meet a minimum standard of knowledge regarding the applicable securities rules and regulations. To mitigate the costs imposed on member firms, the proposed rule change limits the scope of registration requirement by excluding technological or development support personnel who are not primarily responsible for the covered activities. It also excludes supervisors who are not responsible for the ''day-to-day'' supervision or direction of the covered activities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

[76] 15 U.S.C. 78f(b).

[77] 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act [78] and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b–4(f)(6)(iii) [79] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative on October 1, 2018 to coincide with the effective date of FINRA's proposed rule change on which the proposal is based.[80] The waiver of the operative delay would make the Exchange's qualification requirements consistent with those of FINRA, as of October 1, 2018. Therefore, the Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposal operative on October 1, 2018.[81]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2018–047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2018–047. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2018–047 and should be submitted on or before October 31, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[82]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21904 Filed 10–9–18; 8:45 am]

BILLING CODE 8011–01–P

[78] 15 U.S.C. 78s(b)(3)(A).

[79] 17 CFR 240.19b–4(f)(6)(iii).

[80] *See supra* note 7. As discussed above, the Exchange has stated that the new registration requirements for developers of algorithmic trading strategies would become operative on April 1, 2019.

[81] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[82] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84355; File No. SR–NASDAQ–2018–066]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Align Existing Investigatory and Disciplinary Processes and Related Rules With the Investigatory and Disciplinary Processes and Related Rules of Nasdaq PHLX LLC

October 3, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to align its existing investigatory and disciplinary processes and related rules with the investigatory and disciplinary processes and related rules of Nasdaq PHLX LLC (''Phlx'') [sic]

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to amend certain of its rules to align its existing investigatory and disciplinary processes and related rules with the investigatory and disciplinary processes and related rules of Phlx. Nasdaq notes that Phlx amended its rules recently to adopt an investigatory and disciplinary process identical in all material respects to the investigatory and disciplinary processes of Nasdaq BX, Inc. (''BX'') and Nasdaq.[3] The amendment also vested the Phlx Regulation Department with the same authority proposed herein. The Exchange therefore proposes the below changes to the 8000 and 9000 Series of the Nasdaq Rules in order to conform its rules to those of Phlx 8000 and 9000 Series rules in all respects.[4]

Definition of Nasdaq Regulation

The Exchange proposes to revise the definition of Nasdaq Current Rule 9120(w) (''Nasdaq Regulation'') to expressly include the Exchange's Enforcement Department. The Exchange's Enforcement Department is specifically charged with pursuing disciplinary action against members, persons associated with a member, and persons subject to the Exchange's jurisdiction, in addition to FINRA's Department of Enforcement.

Similarly, the Exchange proposes to add references to the ''Nasdaq Regulation Department'' in Nasdaq Current Rule 9120(aa) (definition of the term ''Party''). The Exchange also proposes to add a definition for the term ''Party'' as used in the Nasdaq Rule 9400 series,[5] and to add references to ''FINRA'' in Nasdaq Current Rule 9120(aa)(3) to clarify that FINRA falls under the definition of ''Party'' as used in the Rule 9550 series. In addition, the Exchange is adding references to the Nasdaq Regulation Department throughout the Nasdaq Rule 8000 and 9000 series.[6] These amendments will conform the text of Nasdaq 8000 and 9000 rules with those of Phlx.[7]

Role of FINRA

The Exchange proposes to add rule text to certain rules to clarify that FINRA may act on behalf of the Exchange. Today, FINRA is empowered to act on behalf of the Exchange.[8] The revisions to these rules will therefore clarify FINRA's authority as it currently exists today.[9]

Jurisdiction

The Exchange proposes to replace the current rule text related to jurisdiction of Nasdaq to initiate disciplinary actions with text substantially similar to the Phlx's jurisdiction rule text. Nasdaq Current Rules 1012(h)[10] and 1031(f)[11] permit a disciplinary action to be brought within two years after the effective date of resignation, cancellation, or revocation of a member or associated person. The current Nasdaq provisions are more limited than Phlx's jurisdictional language. Phlx Rule 9110(d) does not contain a time limit on when a matter may be brought against a member or associated person following its termination or deregistration, so long as the Exchange serves written notice within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member or associated person.[12] The substantive amendment

[3] *See* Securities Exchange Act Release No. 82143 (November 22, 2017), 82 FR 56672 (November 29, 2017) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Investigatory and Disciplinary Processes Substantially Similar to Nasdaq BX, Inc. and The Nasdaq Stock Market LLC for Phlx, which, among other things, similarly enabled Phlx to retain discretion to perform these functions).

[4] The Exchange notes that the Financial Industry Regulatory Authority (''FINRA'') amended its rules recently to reflect an internal reorganization of FINRA's Enforcement Operations. *See* Securities Exchange Act Release No. 83781 (August 6, 2018), 83 FR 39802 (August 10, 2018). In July 2017, FINRA announced its plan to consolidate its existing enforcement functions into a unified Department of Enforcement. FINRA's recent rule change makes technical and other non-substantive changes to FINRA Rules 9000 Series Code of Procedure (the ''Code'') to reflect the single Department of Enforcement. The rule change removed references to the Market Regulation department, its head and employees from the Code where those references reflect the previously separate Market Regulation enforcement function. In light of FINRA's reorganization, the Exchange is likewise removing references to the Market Regulation department, its head and employees from the Code, and re-lettering the remainder of those sections where such re-lettering is necessary (*i.e.* Rule 9120). Phlx will also submit a similar rule filing to remove those references in due course.

[5] The Exchange notes that, like Phlx, it is likewise including the Department of Enforcement as a potential party to a matter under the Rule 9400 Series. The Exchange believes that including this department in Rule 9400 Series is appropriate because it may be involved in the initiation of such a matter for Nasdaq currently. The Exchange is also adding FINRA to other parts of Rule 9400 where it is appropriate to show that FINRA may be the entity that initiated an action under the rule.

[6] *See* Nasdaq Current Rules 8001, 8210, 8211, IM–8310–3, 9001, 9120, 9131, 9133, 9143, 9146, 9211, 9212, 9213, 9215, 9216, 9251, 9252, 9253, 9264, 9269, 9270, 9311, 9400, 9522, 9523, 9524, 9552, 9553, 9554, 9555, 9556, 9557, 9558, 9559, 9610, 9630, 9810, 9820, 9830, and 9840.

[7] The Exchange is also amending Current Nasdaq Rule 9120(aa)(2), to align that rule text with FINRA's recent rule change. The term ''Party'' when used in the Rule 9520 Series, now means FINRA's Department of Enforcement, rather than Member Regulation. *See* Securities Exchange Act Release No. 83781 (August 6, 2018), 83 FR 39802 (August 10, 2018).

[8] *See* Nasdaq Current Rule 8001 (''Nasdaq and FINRA are parties to the Regulatory Contract pursuant to which FINRA has agreed to perform certain functions described in these rules on behalf of Nasdaq. Nasdaq rules that refer to Nasdaq Regulation, Nasdaq Regulation staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the Regulatory Contract.'').

[9] *See* Nasdaq Current Rules 9400, 9522, 9552, 9553, 9554, 9555, 9556, 9557, and 9558. The Exchange notes that FINRA currently performs the functions described in these rules. The proposed changes further clarify that in the rule text.

[10] A resigned Nasdaq member or a Nasdaq member that has had its membership canceled or revoked shall continue to be subject to the filing of a complaint under the Nasdaq Rules based upon conduct that commenced prior to the effective date of the Nasdaq member's resignation from Nasdaq or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within two years after the effective date of resignation, cancellation, or revocation.

[11] A person whose association with a Nasdaq member has been terminated and who is no longer associated with any member of Nasdaq or a person whose registration has been revoked or canceled shall continue to be subject to the filing of a complaint under Nasdaq Rules based upon conduct which commenced prior to the termination, revocation, or cancellation or upon such person's failure, while subject to Nasdaq's jurisdiction as provided herein, to provide information requested by Nasdaq pursuant to the Nasdaq Rules, but any such complaint shall be filed within: (A) Two years after the effective date of termination of registration pursuant to subsection (c); provided, however, that any amendment to a notice of termination filed pursuant to paragraph (c)(2) that is filed within two years of the original notice that discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the two-year period under this subsection; (B) two years after the effective date of revocation or cancellation of registration pursuant to the Nasdaq Rules; or (C) in the case of an unregistered person, within two years after the date upon which such person ceased to be associated with the Nasdaq member.

A person whose association with a member has been terminated and is no longer associated with any Nasdaq member shall continue to be subject to a proceeding to suspend, consistent with Article IX, Section 2 of the Nasdaq By-Laws, his or her ability to associate with a member based on such person's failure to comply with an arbitration award or a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to Nasdaq Rules, provided that such proceeding is instituted within two years after the date of entry of such award or settlement.

[12] Any member or any partner, officer, director or person employed by or associated with any member (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities Exchange Act of 1934 (Exchange Act), the rules and regulations thereunder, the By-Laws and Rules of the Exchange or any interpretation thereof, and the Rules, Regulations, resolutions and stated policies of the Board of Directors or any Committee of the

with respect to jurisdiction is with the timeframe for bringing a disciplinary action against a member or associated person. The proposed rule expands the timeframe.

The amendment to expand jurisdiction will not apply retroactively and any complaints not filed within the existing two year time-period will be time-barred. The new jurisdiction rule will only apply to members or associated persons who terminate with the Exchange on or after October 15, 2018.

The Exchange also proposes to eliminate the rule text contained within Nasdaq Current Rules 1012(h) and 1031(f) and reserve those sections.

Interested Staff Definition

The definition of Interested Staff is being conformed to Phlx's definition and includes references to Exchange and FINRA employees as those terms are proposed to be defined.[13] The proposed Nasdaq definition better defines who falls within the category of Interested Staff without substantively amending the definition. At this time, Nasdaq's proposal mirrors the Phlx definition, except insofar as Nasdaq's proposal omits references to FINRA's Department of Market Regulation for the reasons set forth in footnote 5 above.[14] The Exchange also notes that it is removing the words ''a district director or'' from Nasdaq Current Rules 9120(t)(1)(D), 9120(t)(2)(D), and 9120(t)(3)(D) because there is no such position at the Exchange. The use of those words in the current definition refers to the individual to whom a FINRA employee may report. Those words are therefore being preserved as they relate to FINRA in Proposed New Rules 9120(r)(1)(H), 9120(r)(2)(E), 9120(r)(3)(E), and 9210(r)(4)(F).

Special Panelist

The Exchange is removing the definition of Special Panelist and re-lettering the remainder of the Section. Phlx and BX do not use or otherwise define a Special Panelist. Nasdaq Current Rule 9120(u) defines a Special Panelist.[15] The Exchange notes that related rules, Nasdaq Current Rules 9212(a)(2)(B) and 9231(b)(2), are not mandatory today and permit, but do not require, a Chief Hearing Officer to utilize a Special Panelist. Nasdaq has automated its system throughout the years so that most disciplinary actions today involve issues which pertain to quotations of securities, execution of transactions, reporting of transactions and trading practices, including rules, for example, that prohibit manipulation and insider trading, among other Rules as described in Nasdaq Current Rules 9120(u)(1)–(4). Further, FINRA has skilled panelists who, like the Special Panelists, are trained to handle matters involving the subject matters described in the Special Panelist definition. The Exchange believes that the notion of a Special Panelist is not necessary because today FINRA panelists are equipped to handle matters related to the subject matter of Nasdaq Current Rules 9120(u)(1)–(4) with respect to any type of hearing. The concept of a Special Panelist is not extraordinary, rather it is a presumed skill set for today's FINRA panelists. The Exchange therefore proposes to remove all references to the term ''Special Panelist'' from its rules because the reality of current panelist selection and disciplinary processes obviate the need for this rule.[16]

Hearing Panelists

The Exchange is removing a category of individuals that may serve on a Hearing Panel and re-lettering the remainder of the section.[17] Phlx and BX rules do not include that category of individuals from among those whom the Chief Hearing Officer may select as a Panelist. The Exchange originally proposed Current Rule 9231(b)(1)(D) as a transitional rule when the Exchange sought to become registered as a national securities exchange. The Rule allowed ''persons who served on the NASD National Adjudicatory Council, or a disciplinary subcommittee thereof, prior to the date that Nasdaq commenced operating as a national securities exchange to sit on Hearing Panels.'' [18] This enabled the Exchange to pull from a larger pool of candidates. The Exchange has now been a national securities exchange for nearly 12 years, and believes that there is a sufficient pool of panelists from which the Chief Hearing Officer may now pull. This is evidenced by the Hearing Panels both Phlx and BX are able to assemble. Given the passage of time, the need for Nasdaq Current Rule 9231(b)(1)(D) no longer exists.

The Exchange is also clarifying Current Rule 9231(b)(1)(E) (Proposed New Rule 9231(b)(1)(D)) to more clearly state who may serve on a Hearing Panel.

Exchange, shall be subject to the disciplinary jurisdiction of the Exchange, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a member organization, or any other fitting sanction in accordance with the provisions of these disciplinary Rules.

An individual member, or a partner, officer, director or person employed by or associated with a member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by employees under his supervision or by the member with which he is associated, as though such violations were his own. A member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or employees or by a member or other person who is associated with such member, as though such violation were its own.

Any member, or any partner, officer, director, or person employed by or associated with a member organization, and any member organization shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such person's permit or the termination of the employment by or the association with a member organization of such member or partner, officer, director or person, or following the deregistration of a member organization from the Exchange; provided, that the Exchange serves written notice to such former member, partner, officer, director, employee, associated person or member organization within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member, or as a partner, officer, director or person employed by or associated with a member organization, or prior to the deregistration of such member organization.

[13] As noted in n.5 above, the Exchange is, however, omitting references to FINRA's Department of Market Regulation in light of FINRA's recent rule filing that similarly omitted references to its Department of Market Regulation.

[14] The Exchange notes that it is adopting a more comprehensive definition of ''Interested Staff'' under Nasdaq Current Rule 9120(t) to align it with the definition used by Phlx. Specifically, the Exchange is adopting new text that accounts for the role of the Nasdaq Regulation Department, including the involvement of employees thereof. Thus, the proposed new definition will include all individuals that should be considered as ''Interested Staff'' for purposes of the Nasdaq Rule 9000 Series.

[15] ''The term ''Special Panelist'' means an individual approved by the Nasdaq Board of Directors at least annually who may be selected by the Chief Hearing Officer to serve on a Hearing Panel pursuant to Rules 9212, 9221, 9231, and 9232. A Special Panelist may be drawn from FINRA's Market Regulation Committee, or any other source the Nasdaq Board of Directors deems appropriate given the responsibilities of Special Panelists. Special Panelists may participate in disciplinary proceedings in which issues arise regarding: (1) The quotations of securities; (2) the execution of transactions; (3) the reporting of transactions; and (4) trading practices, including rules prohibiting manipulation and insider trading, and those Rules designated as Trading Rules (Rule 3300 Series), The Nasdaq Stock Market Rules (Rule 4000 Series), and Other Systems and Programs Rules (Rule 6000 Series).'' *See* Nasdaq Current Rule 9120(u).

[16] *See* Nasdaq Current Rules 9120(u), 9212(a)(2)(B), 9221(a)(3), 9231(b)(2), 9231(c)(2), and 9232(a)–(c).

[17] Specifically, the Exchange is removing Nasdaq Current Rule 9231(b)(1)(D) (''served on the FINRA National Adjudicatory Council or on a disciplinary subcommittee of the FINRA National Adjudicatory Council prior to the date that Nasdaq commenced operating as a national securities exchange; or'').

[18] *See* Securities Exchange Act Release No. 34–53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (Order granting application of NASDAQ Stock Market LLC for registration as a national securities exchange).

Currently, BX and Phlx Rules 9231(b)(1)(D) indicate that the Chief Hearing Office may select as a Panelist a person who ''is a FINRA Panelist approved by the Nasdaq Board at least annually, including a person who previously served on the Market Regulation Committee [19] not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed, or from other sources the Board deems appropriate given the responsibilities of Panelists.'' The Exchange is adding the same text after ''is a FINRA Panelist approved by the Nasdaq Board at least annually'' in Proposed New Rule 9231(b)(1)(D) to make it clear that a person who served on the Market Regulation Committee is among those permitted to serve as a Panelist, provided that person meets the requirements of the rule.

Other Non-Substantive and Technical Amendments

The Exchange proposes to add a sentence within Nasdaq Current Rule 9270(e)(2), similar to Phlx, to add more specificity to this rule and make clear that the Office of Disciplinary Affairs may accept an offer of settlement and order of acceptance or refer them to the Exchange Review Council. The Exchange notes that today the Office of Disciplinary Affairs may accept an offer of settlement and order of acceptance or refer them to the Exchange Review Council, so this language is intended to clarify current practice under the rule.

The Exchange also proposes to make certain technical amendments throughout these rules to: (i) Add ''FINRA'' before ''Regulatory Contract''; [20] (ii) amend ''NASD'' to the updated name ''FINRA''; [21] (iii) replace ''Association'' with ''FINRA''; [22] (iv) update certain incorrect cross-references to both FINRA and Nasdaq rule citations [23]; (v) add, remove, or modify rule text or punctuation in certain rules to conform the rule text of Nasdaq to Phlx ;[24] (vi) include the phrase ''or person'' in various places throughout the rule to make it clear that inclusion of the person associated with a member is applicable ;[25] (vii) relocate and/or renumber certain rules for ease of reference given other amendments described herein ;[26] and (vii) correct a typographical error.[27]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[28] in general, and furthers the objectives of Section 6(b)(5) of the Act,[29] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In addition, the Exchange believes that the proposed rule changes further the objectives of Section 6(b)(7) of the Act,[30] in particular, in that these changes provide for fair procedures for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

In addition, the Exchange believes that the proposed rule changes are consistent with Section 6(b)(6) of the Act,[31] which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or the rules of the Exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

The Exchange believes that the proposed changes are consistent with these requirements because the changes further harmonize Nasdaq's investigative and adjudicatory processes with similar processes used by Phlx. The new processes are well-established as fair and designed to protect investors and the public interest. Because the Exchange is conforming the Nasdaq rule text to the Phlx rule text to eliminate any differences (except for those noted herein), the Exchange believes that the proposed changes should facilitate prompt, appropriate, and effective discipline of members and their associated persons consistent with the Act. The Exchange believes that adding references to the Nasdaq Regulation Department within the 8000 and 9000 Nasdaq Series rules as described in this proposal clarifies the involvement that Nasdaq Regulation plays in the investigation and enforcement of Nasdaq's disciplinary rules. In addition, the Exchange believes that adding references to FINRA within the 8000 and 9000 Nasdaq Series rules as described in this proposal brings greater transparency to its rules and clarifies the process as it exists today. Today, FINRA is empowered to act on behalf of the Exchange.[32]

The Exchange believes that harmonizing the rule text of the investigative and adjudicatory processes with those of Phlx will reduce the burden on members and their associated persons as they only will need to be familiar with a single rule set going forward. Because the substance of the rules would remain unchanged, the Exchange believes that the proposed change would continue to provide fair procedures for the suspending and disciplining of members and associated persons, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

The Exchange's proposal to replace the current rule text related to jurisdiction of Nasdaq to initiate disciplinary actions with text substantially similar to the Phlx's jurisdiction rule text will permit the Exchange to initiate a disciplinary action beyond two years after the effective date of the member's or associated person's termination with the Exchange. This provision would not apply retroactively, but would permit the Exchange to bring actions after the effective date of termination, so long as the Exchange serves written notice within one year of receipt by the

[19] The Exchange notes that while FINRA recently ''consolidate[d] its existingenforcement [sic] functions into a unified Department of Enforcement'', *see* Securities Exchange Act Release No. 83781 (August 6, 2018), 83 FR 39802 (August 10, 2018), it did not eliminate the Market Regulation Committee. *See, e.g.,* FINRA Code of Procedure Rule 9120(u).

[20] *See* Nasdaq Current Rules 8001, 9001, 9120(f), and Proposed New Rules 9120(g), and 9120(u) and (v).

[21] *See* Nasdaq Current Rule 8110.

[22] *See* Nasdaq Current Rules 8210(a)(1), 9558(a)(2), and 9610(a).

[23] *See* Nasdaq Current Rules 9231(c), 9268(e)(2), 9269(d)(2), 9270(e), 9270(e)(2), 9270(f)(2), 9311(a), 9312(a)(3), 9331(a)(2), 9351(a), 9524(a)(1), 9524(b)(3), and 9559 (q)(1).

[24] *See* Nasdaq Current Rules IM–8310–3, 9211(a)(1)–(2), 9221(a)(1), 9231(b)(1), 9270(e)(2), 9270(f)(3), 9559(e), 9559(h)(2), and 9630(b).

[25] *See* Nasdaq Current Rules 9552(b), 9553(b), 9554(b), 9555(b).

[26] *See* Proposed New Rule 9212(a)(2), which relocates language from Current Rule 9212(a)(2)(A); and Proposed New Rule 9231(c), which relocates language from Current Rule 9231(c)(1).

[27] *See* Nasdaq Current Rules 9215(f) and 9523(a)(4).

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78f(b)(7).

[31] 15 U.S.C. 78f(b)(6).

[32] *See* Nasdaq Current Rule 8001.

Exchange of notice of such termination that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of status as a member or associated person. The Exchange believes that this provision will provide the Exchange with the same latitude as Phlx to bring actions against its members and associated persons for violations of its rule. The Exchange believes that it is consistent with the Act to provide the Exchange with the ability to initiate violations for members and their associated persons for violations which took place while these members and associated persons were members of the Exchange. The rule change will better protect investors and the public interest by allowing actions to proceed that may otherwise have been time barred under the old rule.

The Exchange's proposal to amend the definition of Interested Staff will conform Nasdaq's definition to Phlx's definition, except insofar as Nasdaq's proposal omits references to FINRA's Department of Market Regulation for the reasons set forth in footnote 5 above. The Exchange believes that it is consistent with the Act because the definition better defines who falls within the category of Interested Staff without substantively amending the definition.

Removing the definition of Special Panelist is consistent with the Act because today Nasdaq Current Rules 9212(a)(2)(B) and 9231(b)(2) do not require a Chief Hearing Officer to utilize a Special Panelist. Further, FINRA has skilled panelists who, like the Special Panelists, are trained to handle matters involving the subject matters described in the Special Panelist definition, thus the reality of the panel selection and disciplinary processes today obviate the need for this rule.

Removing from the pool of panelists persons that served on the FINRA National Adjudicatory Council or on a disciplinary subcommittee of the FINRA National Adjudicatory Council prior to the date that Nasdaq commenced operating as a national securities exchange is consistent with the act because there currently exists a sufficient number of persons from whom a Chief Hearing Officer may select as a Panelist. This change, in addition to adding clarifying text to Current Rule 9231(b)(1)(E) (Proposed New Rule 9231(b)(1)(D)) to more clearly state who may serve on a Hearing Panel, thereby aligning the text with the text of the parallel BX and Phlx Rules, is also consistent with the Act because it creates a uniform pool from which Panelists may be selected across the Nasdaq, BX, and Phlx, thus removing confusion that may result from having different pools of Panelists depending on the exchange.

Finally, making technical amendments in Nasdaq Current Rules 8001, 8110, 8210, IM–8310–3, 9001, 9120, 9211, 9212, 9221, 9231, 9268, 9269, 9270, 9311, 9312, 9331, 9351, 9524, 9552, 9553, 9554, 9555, 9556, 9558, 9559, 9610, and 9630 removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having incorrect or incomplete material in the Exchange's rulebook.

The Exchange believes that its proposal furthers the objectives of Section 6(b)(7) of the Act,[33] in that it is designed to provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof. Specifically, the Exchange believes that the proposed investigatory and disciplinary process is consistent with Section 6(b)(7) of the Act[34] because it is based on the existing processes used by Phlx.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended to more clearly align the text of Phlx's and the Exchange's rules. Specifically and as described in detail above, the Exchange believes that this change will bring efficiency and consistency to the investigative and adjudicatory processes, thereby reducing the burden on members and their associated persons who are also members of Phlx.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[35] and subparagraph (f)(6) of Rule 19b–4 thereunder.[36]

A proposed rule change filed under Rule 19b–4(f)(6)[37] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[38] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so the Exchange may immediately amend its disciplinary rules to conform to Phlx's disciplinary process. The Exchange states that the proposed amendment to expand its current jurisdiction will not apply retroactively and any complaints not filed within the existing two-year time period will be time-barred. The Exchange further states that its new jurisdiction rule will only apply to applicable members or associated persons who terminate their membership or association on October 15, 2018 or thereafter. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow Nasdaq to conform its disciplinary rules to those of Phlx. In addition, the proposal does not present any novel issues. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[39]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

[33] 15 U.S.C. 78f(b)(7).

[34] *Id.*

[35] 15 U.S.C. 78s(b)(3)(A)(iii).

[36] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[37] 17 CFR 240.19b–4(f)(6).

[38] 17 CFR 240.19b–4(f)(6)(iii).

[39] For purposes only of waving the 30-day operative delay, the Commission has considered the purposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2018–066 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2018–066. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2018–066 and should be submitted on or before October 31, 2018.

[40] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21900 Filed 10–9–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84349; File No. SR–NYSE–2018–42]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.14, Clearance and Settlement

October 3, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 20, 2018, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.14, Clearance and Settlement, to remove language that is inconsistent with the Exchange's Price List. 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.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.14, Clearance and Settlement, to remove language that was inadvertently included when the rule was first adopted and that is inconsistent with the Exchange's Price List. The Exchange adopted Rule 7.14 as part of a proposed rule change to adopt rules for trading UTP securities on Pillar, the Exchange's new trading technology platform.[4] Rule 7.14 was based on similar rules of its affiliate, NYSE Arca, Inc. (''NYSE Arca'') Rule 7.14–E and adopted by the Exchange without any substantive differences.[5] Rule 7.14 applies only to trading in UTP Securities. Paragraph (c) of Rule 7.14 states that ''[e]ach clearing firm must be admitted to the Exchange as a member organization by meeting the qualification requirements set forth in Rule 2.'' Paragraph (c) of Rule 7.14 also includes language that exempts clearing firms from paying the regular member organization fee [6] where that clearing firm became a member organization for the sole purpose of acting as a clearing firm on the Exchange. This language was inadvertently included when Rule 7.14 was adopted and is inconsistent with the Exchange's Price List, which does not include language exempting clearing only member organizations from the fee's application.[7] The Exchange notes that no such exemption exists in the Exchange's rule governing the trading of NYSE-listed securities. Therefore, the Exchange proposes to remove the following phrase from the first sentence of Exchange Rule 7.14(c): ''provided, however, if the clearing firm has become a member organization for the sole purpose of acting as a clearing firm on the Exchange, such clearing firm need

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 76803; (December 30, 2015), 81 FR 536 (January 6, 2016) (SR–NYSE–2015–67); *and* 81225 (July 27, 2017), 82 FR 36033 (August 2, 2017) (SR–NYSE–2017–35).

[5] *Id.*

[6] The ''regular membership organization fee'' referred to in Exchange Rule 7.14(c) is referred to as a Trading Licenses fee in the Exchange's Price List.

[7] In accordance with the Price list, the Exchange charges all member organizations a Trading License fee on an annual basis. All member organizations with 10 or more trading licenses are charged a fee or $50,000 for the first trading license held by the member organization unless they qualify for a reduced rate. *See* the Exchange's Price List on pages 33–34 *available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf* (dated September 4, 2018).

not pay the regular member organization fee''.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[9] in particular, because it is designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because it would remove language from Exchange Rule 7.14(c) that was inadvertently included when the rule was adopted and that is inconsistent with the Exchange's Price List. The proposed rule change would delete language from Rule 7.14(c) that incorrectly exempts clearing only member organizations from the Trading License fee and would, therefore, remove an inconsistency between Rule 7.14 and the Exchange's Price List. Rule 7.14 applies only to trading in UTP Securities. No member organizations currently acts solely as a clearing firm for UTP Securities and, therefore, no member organization would be affected by the proposed rule change. The proposed rule change should avoid potential confusion about the applicability of the Trading License fee should a member organization seek to act solely as a clearing firm on the Exchange in UTP Securities. Lastly, the Exchange notes that no such exemption exists in the Exchange's rule governing the trading of NYSE-listed securities. Therefore, the proposed rule change would allow for the consistent application of the Trading License fee among member organizations that act solely as clearing firms in NYSE-listed and UTP securities.

The Exchange also believes that the proposed rule change is consistent with Sections 6(b)(4) of the Act[10] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The proposed rule change is equitable, reasonable, and not unfairly discriminatory because it would clarify the application of the Trading License fee and apply it equally to member organizations that act solely as a clearing firm in UTP and NYSE-listed securities.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to have a competitive impact. It is simply intended to amend the Exchange's rules to remove language from Exchange Rule 7.14(c) that was inadvertently included when the rule was adopted and that is inconsistent with the Exchange's Price List. It is not intended to address any competitive issues or to attract additional order flow the Exchange.

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[12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[16] 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–NYSE–2018–42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2018–42. 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

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 15 U.S.C. 78s(b)(2)(B).

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–NYSE–2018–42, and should be submitted on or before October 31, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21909 Filed 10–9–18; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84358; File No. SR–PEARL–2018–19

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing of a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

October 3, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 18, 2018, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the ''Fee Schedule'') to modify certain of the Exchange's system connectivity fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Description of the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding connectivity to the Exchange. Specifically, the Exchange proposes to amend Sections 5(a) and (b) of the Fee Schedule to increase the network connectivity fees for the 1 Gigabit (''Gb'') fiber connection, the 10Gb fiber connection, and the 10Gb ultra-low latency (''ULL'') fiber connection, which are charged to both Members[3] and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to increase the network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster recovery facility. These proposed fee increases are collectively referred to herein as the ''Proposed Fee Increases.''

The Exchange initially filed the Proposed Fee Increases on July 31, 2018, designating the Proposed Fee Increases effective August 1, 2018.[4] The proposed rule change was published for comment in the **Federal Register** on August 13, 2018.[5] The Commission received one comment letter on the proposal.[6] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Suspension Order'') issued by the Commission.[7] The Suspension Order also instituted proceedings to determine whether to approve or disapprove the proposed rule change.[8]

The Healthy Markets Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal is consistent with the Act. Specifically, the Healthy Markets Letter objected to the Exchange's reliance on the fees of other exchanges to demonstrate that its fee increases are consistent with the Act. In addition, the Healthy Markets Letter argued that the Exchange did not offer any details to support its basis for asserting that the proposed fee increases are consistent with the Act. The Exchange is now re-filing the Proposed Fee Increases, and is also providing additional detail regarding the basis for the Proposed Fee Increases. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange, consisting of a 1Gb fiber connection, a 10Gb fiber connection, and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange currently assesses the following monthly network connectivity fees to both Members and non-Members for connectivity to the Exchange's primary/secondary facility: (a) $1,100 for the 1Gb connection; (b) $5,500 for the 10Gb connection; and (c) $8,500.00 for the 10Gb ULL connection. The Exchange also assesses to both Members and non-Members a monthly per connection network connectivity fee of $500 for each 1Gb connection to the disaster recovery facility and a monthly per connection network connectivity fee of $2,500 for each 10Gb connection to the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms,

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange's Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] *See* Securities Exchange Act Release No. 83785 (August 7, 2018), 83 FR 40101 (August 13, 2018)(SR–PEARL–2018–16).

[5] *Id.*

[6] See Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated September 4, 2018 (''Healthy Markets Letter'').

[7] *See* Securities Exchange Act Release No. 34–84177 (September 17, 2018).

[8] *Id.*

market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, Miami International Securities Exchange (''MIAX Options''), via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange and MIAX Options via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

The Exchange proposes to increase the monthly network connectivity fees for such connections for both Members and non-Members. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be increased as follows: (a) From $1,100 to $1,400 for the 1Gb connection; (b) from $5,500 to $6,100 for the 10Gb connection; and (c) from $8,500 to $9,300 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be increased as follows: (a) From $500 to $550 for the 1Gb connection; and (b) from $2,500 to $2,750 for the 10Gb connection.

The Exchange believes that it is reasonable and appropriate to increase its fees charged for use of its connectivity to partially offset increased costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry. The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC (''Phlx''), NYSE Arca, Inc. (''Arca''), NYSE American LLC (''NYSE American'') and Nasdaq ISE, LLC (''ISE'') all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[9] The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities.[10] Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[11] The Exchange believes that it is reasonable and appropriate to increase its fees charged for use of its connectivity to partially offset increased costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry.

In particular, the Exchange's increased costs associated with supporting its network are due to several factors, including increased costs associated with maintaining and expanding a team of highly-skilled network engineers, increasing fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's R&D efforts. For example, the Exchange has had to hire additional network engineering staff in the last year, and plans to hire additional staff in the coming months. Further, the Exchange contracts with a third-party data center provider for its data center space. The Exchange does not operate its own data centers. Other exchange operators do operate their own data centers. Thus, they can better control data center costs. They also operate them as profit centers. Conversely, the Exchange is subject to fee increases from its data center provider, which the Exchange experienced in the last year. Further, the Exchange invests significant resources in network R&D to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. The costs associated with the maintenance and improvement of existing tools and the development of new tools resulted in increased cost to the Exchange. Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, the Exchange routinely conducts R&D projects to improve the performance of the network's hardware infrastructure. As an example, in the last year, the Exchange's R&D efforts resulted in a performance improvement in its network switches, requiring the purchase of new switching equipment, and thus resulting in increased costs. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry is a significant expense for the Exchange that continues to increase, and thus the Exchange believes that it is reasonable to offset some of those increased costs by increasing its network connectivity fees, as proposed herein. Overall, the Proposed Fee Increases are projected to offset only a portion of the Exchange's increased network connectivity costs.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(4) of the Act[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[14] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the fees assessed for connectivity allow the

[9] *See* Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. S*ee also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

[10] *Id.*

[11] *See* Nasdaq ISE Schedule of Fees, IX(D) (charging $3,000 for disaster recovery testing & relocation services); *see also* Cboe Exchange, Inc. (''CBOE'') Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of $2,000 for a 1Gb disaster recovery network access port and a monthly fee of $6,000 for a 10Gb disaster recovery network access port).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(5).

Exchange to cover the costs associated with providing and maintaining the necessary hardware and other infrastructure to support this technology. The Exchange believes that the proposal to increase the fees for connectivity alternatives is fair, equitable and not unreasonably discriminatory because the increased fees are assessed equally among all users of the applicable connections.

As discussed above, Phlx and ISE each offer different connections with respect to latency, and Arca and NYSE American both offer similar connectivity alternatives.[15] Despite this, Phlx, ISE, Arca and NYSE American charge a higher fee than the Exchange currently charges for similar connections to primary and secondary facilities.[16] Furthermore, the connectivity fees for the disaster recovery facilities of other exchanges are within the range of the proposed fees of the Exchange.[17] For these reasons, the Exchange believes the proposed increase in the fees for the fiber connectivity to the Exchange is reasonable and not unfairly discriminatory.

The Exchange believes that the proposal to increase the fees for connectivity alternatives is fair, equitable and not unreasonably discriminatory because the increased fees will only partially offset the Exchange's increased costs associated with maintaining its network infrastructure. In particular, the Exchange's increased costs associated with supporting its network are due to several factors, including increased costs associated with maintaining and expanding a team of highly-skilled network engineers, increasing fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's R&D efforts. For example, the Exchange has had to hire additional network engineering staff in the last year, and plans to hire additional staff in the coming months. Further, the Exchange contracts with a third-party data center provider for its data center space. The Exchange does not operate its own data centers. Other exchange operators do operate their own data centers. Thus, they can better control data center costs. They also operate their data centers as profit centers. Conversely, the Exchange is subject to fee increases from its data center provider, which the Exchange experienced in the last year. Further, the Exchange invests significant resources in network R&D to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. The costs associated with the maintenance and improvement of existing tools and the development of new tools resulted in increased cost to the Exchange. Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, the Exchange routinely conducts R&D projects to improve the performance of the network's hardware infrastructure. As an example, in the last year, the Exchange's R&D efforts resulted in a performance improvement in its network switches, requiring the purchase of new switching equipment, and thus resulting in increased costs. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry is a significant expense for the Exchange that continues to increase, and thus the Exchange believes that it is fair, equitable, and not unreasonably discriminatory to offset some of those increased costs by increasing its network connectivity fees, as proposed herein. Overall, the Proposed Fee Increases are projected to offset only a portion of the Exchange's increased network connectivity costs.

The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act[18] because all MIAX PEARL participants have the opportunity to subscribe to the Exchange's connections. There is also no differentiation among MIAX PEARL participants with regard to the fees charged for these services.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX PEARL does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that the proposed changes should increase both intermarket and intramarket competition. Specifically, the Exchange believes that the changes will promote competition by increasing the connectivity fees to become more within the range of comparable fees assessed by other competing exchanges.[19]

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[20] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[21] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

Identical fee increases to those proposed herein were originally filed on

[15] *See supra* note 9.

[16] *Id.*

[17] *See supra* note 11.

[18] 15 U.S.C. 78f(b)(5).

[19] *See supra* note 9.

[20] 15 U.S.C. 78s(b)(3)(C).

[21] 15 U.S.C. 78s(b)(1).

July 31, 2018, and designated effective August 1, 2018.[22] That proposal, PEARL–2018–16, was published for comment in the **Federal Register** on August 13, 2018.[23] The Commission received one comment letter on that proposal.[24] On September 17, 2018, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposal.[25] The instant filing proposes identical fees and raises similar concerns as to whether they are consistent with the Act.[26]

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[27] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [28]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [29] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [30] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[31]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether increasing certain connectivity fees to the Exchange is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[32]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule changes.[33]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C) [34] and 19(b)(2)(B) of the Act [35] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[36] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,'' [37]
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to perfect the operation of a free and open market and a national market system'' and ''protect investors and the public interest,'' and not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers,'' [38] and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [39]

As noted above, the proposal increases connectivity fees for physical connections to the Exchange. The Exchange states that this fee increase would partially offset costs associated with providing and maintaining this technology.[40] In the instant filing the Exchange states that its increased costs relate to maintaining and expanding a team of highly-skilled network engineers, increasing fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability.[41]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [42] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[43] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[44]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public

[22] *See supra* note 4, and accompanying text.

[23] *See supra* note 5, and accompanying text.

[24] *See supra* note 6.

[25] *See* Securities Exchange Act Release No. 84177, 83 FR 47953 (September 21, 2018).

[26] *See id.*

[27] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[28] *Id.*

[29] 15 U.S.C. 78f(b)(4).

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78f(b)(8).

[32] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[33] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[35] 15 U.S.C. 78s(b)(2)(B).

[36] 15 U.S.C. 78s(b)(2)(B).

[37] 15 U.S.C. 78f(b)(4).

[38] 15 U.S.C. 78f(b)(5).

[39] 15 U.S.C. 78f(b)(8).

[40] *See supra* Section II.A.1.

[41] *See id.*

[42] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[43] *See id.*

[44] *See id.*

interest, and not be unfairly discriminatory; or not impose an unnecessary or inappropriate burden on competition.[45]

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by October 31, 2018. Rebuttal comments should be submitted by November 14, 2018. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[46]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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–PEARL–2018–19 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–PEARL–2018–19. 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–PEARL–2018–19 and should be submitted on or before October 31, 2018. Rebuttal comments should be submitted by November 14, 2018.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[47] that File Number SR–PEARL–2018–19 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21922 Filed 10–9–18; 8:45 am]

BILLING CODE 8011–01–P

[45] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[46] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[47] 15 U.S.C. 78s(b)(3)(C).

[48] 17 CFR 200.30–3(a)(57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84356; File No. 265–30]

Fixed Income Market Structure Advisory Committee

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: The Securities and Exchange Commission Fixed Income Market Structure Advisory Committee is providing notice that it will hold a public meeting on Monday, October 29, 2018 in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE, Washington, DC. The meeting will begin at 9:30 a.m. (EDT) and will be open to the public, except for the period during lunch when the Committee will meet in an administrative work session. The public portions of the meeting will be webcast on the Commission's website at *www.sec.gov.* Persons needing special accommodations to take part because of a disability should notify the contact persons listed below. The public is invited to submit written statements to the Committee. The meeting will include updates and presentations from the subcommittees.

DATES: The public meeting will be held on Monday, October 29, 2018. Written statements should be received on or before October 24, 2018.

ADDRESSES: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC. Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rule-comments@sec.gov.* Please include File Number 265–30 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Brent J. Fields, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–30. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the Commission's internet website at SEC website at (*http://www.sec.gov/comments/265-30/265-30.shtml*).

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: David Dimitrious, Senior Special Counsel, at (202) 551–5131, or Benjamin Bernstein, Special Counsel, at (202) 551–5354, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington DC 20549–7010.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, and the regulations thereunder, Brett Redfearn, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: October 3, 2018.

Brent J. Fields,

Committee Management Officer.

[FR Doc. 2018–21953 Filed 10–9–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84348; File No. SR–NYSEArca–2018–57]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 4 and 6, To List and Trade Shares of the Amplify BlackSwan Growth & Treasury Core ETF Under Commentary .02 to NYSE Arca Rule 5.2–E(j)(3)

October 3, 2018.

I. Introduction

On July 31, 2018, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Amplify BlackSwan Growth & Treasury Core ETF (''Fund'') under Commentary .02 to NYSE Arca Rule 5.2–E(j)(3). On August 10, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the original filing in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on August 20, 2018.[3] On September 10, 2018, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1, in its entirety. On September 24, 2018, the Exchange filed Amendment No. 3 to the proposed rule change. On September 28, 2018, the Exchange filed Amendment No. 4 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, in its entirety.[4] On October 1, 2018, the Exchange submitted and withdrew Amendment No. 5 to the proposed rule change. On October 1, 2018, the Exchange also filed Amendment No. 6 to the proposed rule change.[5] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment Nos. 4 and 6.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 4 and 6 [6]

The Exchange proposes to list and trade the Shares under Commentary .02 to NYSE Arca Rule 5.2–E(j)(3), which governs the listing and trading of Investment Company Units on the Exchange. The Fund will be an index-based exchange traded fund (''ETF''). The Shares will be offered by the Amplify ETF Trust (''Trust''), which is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission on behalf of the Fund.[7]

Amplify Investments LLC will be the Fund's investment adviser (''Adviser''). CSAT Investment Advisory, L.P., d/b/a Exponential ETFs and ARGI Investment Services LLC will be the Fund's sub-advisers (''Sub-Advisers'').[8] U.S. Bancorp Fund Services, LLC will be the administrator, custodian, and fund accounting and transfer agent for the Fund. Quasar Distributors LLC will serve as the distributor for the Fund.

A. The Fund's Underlying Index

According to the Exchange, the Fund will seek investment results that generally correspond (before fees and expenses) to the price and yield of the S-Network BlackSwan Core Total Return Index (''Index''). The Index was created and is maintained by S-Network Global Networks, Inc. (''Index Provider'').[9] The Index is also compiled and calculated by the Index Provider.

According to the Exchange, the Index is a rules-based, quantitative index that seeks to provide capital protection against the unpredictable, rare, and highly disruptive events that have come to be referred to as ''Black Swans.'' The Index endeavors to provide investment returns that correspond to those of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83845 (August 14, 2018), 83 FR 42188 (''Notice'').

[4] In Amendment No. 4, the Exchange: (i) Amended the description of the Fund's sub-advisers, the Index Provider (as defined below), and the Index Committee (as defined below); (ii) represented that the Index Provider has implemented and will maintain procedures designed to prevent the use and dissemination of material non-public information regarding the Index (as defined below); (iii) amended the name of the Index; (iv) stated that the Exchange believes that surveillances by other exchanges on which SPY LEAPS trade should help to protect against market manipulation of the Fund's Shares and SPY LEAPS; (v) clarified that statements and representations in the filing regarding the description of, or limitations on, the Index shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange; (vi) stated that the value of the Index will be widely disseminated by one or more major market data vendors at least once per day; (vii) clarified the availability of certain information on the Fund's website; and (viii) made certain technical and conforming changes. Amendment No. 4 to the proposed rule change is available at: *https://www.sec.gov/comments/sr-nysearca-2018-57/nysearca201857.htm.* Amendment No. 4 is not subject to notice and comment because it does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues.

[5] In Amendment No. 6, the Exchange: (i) Clarified that the Index Provider is not registered as an investment adviser and is not affiliated with an investment adviser; and (ii) made certain technical and conforming changes. Amendment No. 6 to the proposed rule change is available at: *https://www.sec.gov/comments/sr-nysearca-2018-57/nysearca201857.htm.* Amendment No. 6 is not subject to notice and comment because it does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues.

[6] For more information regarding the Fund and the Shares, *see* Amendment No. 4, *supra* note 4 and Amendment No. 6, *supra* note 5.

[7] The Exchange states that, on June 26, 2018, the Trust filed a Registration Statement on Form N–1A on behalf of the Fund (File Nos. 333–207937 and 811–23108). In addition, the Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 Act. *See* Investment Company Act Release No. 31822 (September 14, 2015) (File No. 812–14424).

[8] The Exchange represents that the Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund's portfolio. The Exchange represents that the Sub-Advisers are not registered as a broker-dealer or affiliated with a broker-dealer. The Exchange further represents that, in the event (a) the Adviser or a Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

[9] According to the Exchange, the Index Provider is not registered as an investment adviser or broker-dealer and is not affiliated with an investment adviser or broker-dealer. The Exchange states that the Index Provider has implemented and will maintain procedures designed to prevent the use and dissemination of material non-public information regarding the Index. In addition, the Exchange states that the Index Provider is not affiliated with the Fund, the Adviser, or the Sub-Advisers.

S&P 500 Index, while mitigating against significant losses.

The Index is composed of U.S. Treasury securities and long-dated call options (''LEAPS'') [10] on the SPDR S&P 500 ETF Trust (''SPY'') [11] (which options are referred to herein as ''SPY LEAPS''). Twice a year, in June and December, on the Index reconstitution and rebalance date, the Index places 90% of its index market capitalization in the portfolio of U.S. Treasury securities and 10% of its index market capitalization in the portfolio of SPY LEAPS. The U.S. Treasury portfolio of the Index is composed of 2-, 3-, 5-, 7-, 10-, and 30-year U.S. Treasury securities that cumulatively provide a portfolio duration that matches the initial duration of the 10-year U.S. Treasury security.[12] The SPY LEAPS portfolio of the Index is composed of in-the-money SPY LEAPS that, at the time of purchase, have expirations of at least one year and one day in the future and expire in either June or December, as applicable.[13]

The Index is governed by a committee (''Index Committee'') that is responsible for overseeing the activities of the Index Provider and approving all changes to the Index related to its semi-annual reconstitutions and rebalances. According to the Exchange, all members of the Index Committee and their advisors must comply with the Index Provider's code of conduct and ethics with respect to the disclosure and use of material non-public information.

B. The Fund's Principal Investments

Under normal market conditions,[14] the Fund will invest at least 80% of its total assets in the securities that comprise the Index, which, as described above, are U.S. Treasury securities and SPY LEAPS.

C. The Fund's Non-Principal Investments

While, under normal market conditions, the Fund will invest at least 80% of its total assets in securities that comprise the Index, the Fund may also hold cash and cash equivalents.[15]

D. Application of Generic Listing Requirements

The Exchange represents that it has submitted the proposed rule change because the Index does not meet all of the generic listing requirements of Commentary .02(a) to NYSE Arca Rule 5.2–E(j)(3). Specifically, because the Index includes SPY LEAPS, the Index does not satisfy the requirement set forth in Commentary .02(a)(1) to NYSE Arca Rule 5.2–E(j)(3), which states that the index or portfolio underlying a series of Investment Company Units must consist of (i) only Fixed Income Securities [16] or (ii) Fixed Income Securities and cash. The Exchange represents that, with the exception of the requirement in Commentary .02(a)(1) to NYSE Arca Rule 5.2–E(j)(3), the Index and the Fund will meet each of the initial and continued listing criteria in NYSE Arca Rule 5.2–E(j)(3) and NYSE Arca Rule 5.5–E(g)(2).

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 4 and 6, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 4 and 6, is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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.

As discussed above, the Shares do not qualify for generic listing under Commentary .02 to NYSE Arca Rule 5.2–E(j)(3) because the Index includes SPY LEAPS. The Commission notes that the Exchange represents that, other than Commentary .02(a)(1) to NYSE Arca Rule 5.2–E(j)(3), the Shares will meet the initial and continued listing criteria under NYSE Arca Rules 5.2–E(j)(3) and 5.5–E(g)(2). The Commission also notes that SPY LEAPS are traded on U.S. options exchanges, SPY is listed and traded on the Exchange, and SPY is based on the S&P 500 Index.[19]

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[20] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

Quotation and last sale information for the Shares will be available via the Consolidated Tape Association high-speed line. Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. In addition, the Intraday Indicative Value (''IIV'') (as defined in NYSE Arca Rule 5.2–E(j)(3), Commentary .02(c)) will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[21] The value of the Index will be widely disseminated by one or more major market data vendors at least once per day. Information about the Index constituents, the weighting of the

[10] LEAPS are long-term options traded on U.S. options exchanges.

[11] Shares of SPY are listed and traded on the Exchange.

[12] The Exchange states that the treasury position holds 5% of its allocated portion of Index market capitalization in a ''barbell'' portfolio of 2- and 30-year treasuries, and 95% of its allocated portion of Index market capitalization in a core portfolio that invests in 3-, 5-, 7-, 10-, and 30-year treasuries.

[13] The Exchange states that the SPY LEAPS will generally have a delta of 70 at the time of purchase, and should there not be a 70-delta option, the closest option above 70 will be utilized. The Exchange states that the options portion of the Index holds 5% of the Index market capitalization in June 70-delta SPY LEAPS and 5% in December 70-delta SPY LEAPS. At each June reconstitution, the Index liquidates its existing June SPY LEAPS and purchases SPY LEAPS that expire the following June. The December SPY LEAPS positions will remain unchanged at each June reconstitution. At each December reconstitution, the Index liquidates its existing December SPY LEAPS and purchases SPY LEAPS that expire the following December. The June SPY LEAPS positions will remain unchanged at each December reconstitution. Net gains or losses derived from the reconstitutions of the SPY LEAPS positions will be added to or subtracted from the U.S. Treasury portfolio at each reconstitution.

[14] The term ''normal market conditions'' is as that term is defined in NYSE Arca Rule 8.600–E(c)(5).

[15] The term ''cash equivalents'' has the meaning specified in Commentary .01(c) to NYSE Arca Rule 8.600–E.

[16] Commentary .02 to NYSE Arca Rule 5.2–E(j)(3) states that ''Fixed Income Securities'' are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities, government-sponsored entity securities, municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof.

[17] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] The Exchange also notes that the S&P 500 Index would meet the generic listing standards applicable to an index composed of U.S. Component Stocks in Commentary .01(a) to NYSE Arca Rule 5.2–E(j)(3).

[20] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[21] The Exchange states that all Fund holdings will be included in calculating the IIV.

constituents, the Index's methodology, and the Index's rules will be available on the Index Provider's website. Quotation and last sale information for SPY LEAPS will be available from the exchange on which they are traded and through the Options Price Reporting Authority. The intraday, closing, and settlement prices of exchange-traded options also will be available from the options exchanges, automated quotation systems, published or other public sources, or online information services. Price information on U.S. Treasury securities and cash equivalents will be available from major broker-dealer firms or market data vendors, automated quotation systems, published or other public sources, or online information services.

The Fund's website, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund and additional data relating to the net asset value (''NAV'') and other applicable quantitative information. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website information regarding each portfolio holding of the Fund. In addition, a portfolio composition file, which will include the security names and quantities of securities and other assets required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated prior to the opening of the Exchange via the National Securities Clearing Corporation.

The Commission also believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading the Shares inadvisable. In addition, trading in the Shares will be subject to NYSE Arca Rule 5.5–E(g)(2)(b), which sets forth circumstances under which Shares of the Fund may and/or will be halted. The Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily every day the New York Stock Exchange is open and that the NAV will be made available to all market participants at the same time. Under NYSE Arca Rule 7.18–E(d)(2), if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading until such time as the NAV is available to all market participants.

In support of this proposal, the Exchange represents that:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Rules 5.2–E(j)(3) and 5.5(E)(g)(2), except that the Index will not meet the requirements of NYSE Arca Rule 5.2–E(j)(3), Commentary .02(a)(1) in that the Index will include SPY LEAPS.

(2) The Shares will comply with all other requirements applicable to Investment Company Units, including the dissemination of key information such as the Index value, the NAV, and the IIV, rules governing the trading of equity securities, trading hours, trading halts, firewalls for the Index Provider, Adviser and Sub-Advisers, surveillance, and the Information Bulletin, as set forth in Exchange rules applicable to Investment Company Units and the orders approving such rules.

(3) The Shares will be subject to the existing trading surveillances administered by the Exchange and Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to deter and detect violations of Exchange rules and applicable federal securities laws relating to trading on the Exchange.[22]

(4) The Exchange, or FINRA on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and SPY LEAPS with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange, or FINRA on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and SPY LEAPS from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and SPY LEAPS from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

(5) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

(6) The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. The Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2× or −2×) of the Index.

(7) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act.[23]

(8) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.

(9) All statements and representations made in the filing regarding (a) the description of the Index, portfolio or reference asset, (b) limitations on the Index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in the rule filing shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange. In addition, the issuer is required to notify the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor[24] for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendment Nos. 4 and 6.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 4 and 6, is consistent with Section 6(b)(5) of the Act[25] and Section 11A(a)(1)(C)(iii) of the Act[26] and the rules and regulations thereunder applicable to a national securities exchange.

[22] The Exchange states that FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement, and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[23] 17 CFR 240.10A–3.

[24] The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR–BATS–2016–04). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78k–1(a)(1)(C)(iii).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–NYSEArca–2018–57), as modified by Amendment Nos. 4 and 6 be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21901 Filed 10–9–18; 8:45 am]

BILLING CODE 8011–01–P

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84350; File No. SR–NYSENAT–2018–21]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Amendments to Rules Regarding Qualification, Registration and Continuing Education Applicable to Equity Trading Permit Holders

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 September 27, 2018, NYSE National, Inc. (the ''Exchange'' or ''NYSE National'') 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 amendments to the Exchange's rules regarding qualification, registration and continuing education requirements applicable to Equity Trading Permit (''ETP'') Holders. To the extent the Exchange's rule proposal is intended to harmonize with Financial Regulatory Authority, Inc. (''FINRA'') rules and thus promote consistency within the securities industry, the Exchange is only adopting rules that are relevant to the Exchange's ETP Holders. The Exchange is not adopting registration categories that are not applicable to ETP Holders because ETP Holders do not engage in the type of business that would require such registration. As such, the Exchange is amending current Rule 2.2 regarding continuing education requirements to reflect the FINRA rule; adopting Commentary .08 to current Rule 2.2 regarding fingerprint information; adopting new Rule 2.1210 regarding registration requirements and related Commentary to new Rule 2.1210; adopting new Rule 2.1220 regarding registration categories[4] and related Commentary to new Rule 2.1220; and adopting new Rule 2.1230 regarding associated persons exempt from registration and related Commentary to new Rule 2.1230. Each of these rule changes, which are [sic] described in more detail below, would become operative on October 1, 2018. 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.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its qualification, registration, and continuing education requirements applicable to ETP Holders. The proposed amendments are intended to: (i) Provide transparency and clarity with respect to the Exchange's registration, qualification and examination requirements; (ii) amend its rules relating to categories of registration and respective qualification examinations required for ETP Holders that engage in trading activities on the Exchange; (iii) harmonize the Exchange's qualification, registration and examination rules with those of FINRA[5] so as to promote uniform standards across the securities industry; and (iv) add new definitions of terms and make other conforming changes to enhance the comprehensiveness and clarity of the Exchange's rules.[6] The proposed changes are discussed below.

A. Amendments to Rule 2.2(c)

Rule 2.2(c)(1) currently provides, among other things, that an ETP Holder shall register with the Exchange as a Principal any Person who meets the definition of a Principal as described in Rule 1.1 and that each such Principal must be registered as such through the FINRA Central Registration Depository System (''CRD''), and must pass the general Securities Principal (Series 24) examination. The current rule further provides that a Principal must pass the Series 7 examination or an equivalent foreign examination module as a prerequisite to taking the Series 24 examination. The Exchange proposes to amend the current rule to reflect the change of the prerequisite examination requirements for Principals registered with the Exchange. The amended rule provides that the Exchange would require the Series 7 examination and the Securities Industry Essentials examination as a prerequisite to taking the Series 24 examination and would no longer accept a foreign examination module as a prerequisite given the elimination of the foreign examination module in the FINRA Filing.

Rule 2.2(c)(2) currently provides, among other things, that each ETP Holder, other than a sole proprietorship or a proprietary trading firm that has 25 or fewer Authorized Traders, is required to register at least two Principals with the Exchange. Per the rule, a sole proprietorship or a proprietary trading firm with 25 or fewer Authorized Traders is required to register one Principal with the Exchange. The

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The relevant principal registration categories the Exchange proposes to adopt are (1) Principal; (2) General Securities Principal; (3) Compliance Officer; (4) Financial and Operations Principal and Introducing Broker-Dealer Financial and Operations Principal; (5) Securities Trader Principal; and (6) General Securities Sales Supervisor. The relevant representative registration categories the Exchange proposes to adopt are (1) Representative; (2) General Securities Representative; and (3) Securities Trader.

[5] *See* Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (SR–FINRA–2017–007) (Approval Order) (the ''FINRA Filing''). The Exchange notes that in order to maintain consistency with the FINRA Filing, the Exchange proposes to incorporate certain terms from the relevant FINRA rule into the Exchange's rule that may not be applicable to all ETP Holders. For example, while ETP Holders may not be engaged in ''investment banking'' activity, the Exchange proposes to adopt that term within these registration rules to conform them to the FINRA rules.

[6] The conforming changes the Exchange proposes would substitute the term ''ETP Holder'' for ''member'' and the term ''Exchange'' for ''FINRA.''

Exchange proposes to make a drafting change to the text of the rule without any substantive change to the application of the current rule.[7] As proposed, each ETP Holder would continue to be required to register at least two Principals unless the ETP Holder is a sole proprietorship or a proprietary trading firm, in which case, such ETP Holder would continue to be required to register one Principal with the Exchange.

B. Amendments to Rule 2.2(e)—Continuing Education Requirements

Rule 2.2(e) provides the continuing education requirements of certain Registered Persons[8] subsequent to their initial qualification and registration with the Exchange, and includes a Regulatory Element and a Firm Element. The Regulatory Element applies to Registered Persons and consists of periodic computer-based training on regulatory, compliance, ethical, supervisory subjects and sales practice standards. The Firm Element consists of at least an annual, member-developed and administered training programs designed to keep Registered Persons current regarding securities products, services and strategies offered by the member. For purposes of Rule 2.2(e), the Exchange proposes to include within the definition of a Registered Person any Person who is permissively registered pursuant to proposed Rule 2.1210, Commentary .01, and any Person designated as eligible for a waiver pursuant to proposed Rule 2.1210, Commentary .08.[9] The purpose of this change is to ensure all Registered Persons, including those with permissive registrations, keep their knowledge of the securities industry current. The inclusion of persons designated as eligible for a waiver under the term ''Registered Person'' corresponds to the requirements of proposed Rule 2.1210, Commentary .08.

1. Regulatory Element

The Exchange proposes to amend Rule 2.2(e)(1) to provide, consistent with proposed Rule 2.1210, Commentary .08, that a waiver-eligible person would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and that the content of the Regulatory Element would be based on the same cycle had the individual remain [sic] registered.[10] The proposed amendment to Rule 2.2(e)(1) also provides that if a waiver-eligible person fails to complete the Regulatory Element during the prescribed time frames, he or she would lose waiver eligibility.[11]

Further, the Exchange proposes to amend Rule 2.2(e)(1) to provide that any person who registration has been deemed inactive under the rule may not accept or solicit business or receive any compensation for the purchase or sale of securities. The proposed amendment provides, however, that such person may receive trail or residual commissions resulting from transactions completed before the inactive status, unless the ETP Holder with which the person is associated has a policy prohibiting such trail or residual commissions.[12]

Additionally, under Rule 2.2(e)(1), a Registered Person is required to retake the Regulatory Element in the event that such person (i) is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act; (ii) is subject to suspension or to the imposition of a fine of $5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or (iii) is ordered as a sanction in a disciplinary action to retake the Regulatory Element by any securities governmental agency or self-regulatory organization. The Exchange proposes to amend Rule 2.2(e)(1) to provide an exception to a waiver-eligible person from retaking the Regulatory Element and satisfy [sic] all of its requirements.[13]

2. Firm Element

Current Rule 2.2(e)(2)(B)(ii) provides that programs used to implement an ETP Holder's training program must be appropriate for the business of the ETP Holder and, at a minimum must cover specific matters concerning securities products, services, and strategies offered by the ETP Holder. The Exchange proposes to amend the current rule to expand the minimum standard for such training programs by requiring that, at a minimum, a firm's training program must also cover training in ethics and professional responsibility.[14]

C. Amendments to Rule 2.2, Commentary .01

Current Rule 2.2, Commentary .01, states that the Exchange requires the General Securities Representative examination (''Series 7'') or an equivalent foreign examination module approved by the Exchange in qualifying Persons seeking registration as general securities representatives. As noted above, given the elimination of the foreign examination module in the FINRA Filing, the Exchange proposes to amend the current rule to remove a foreign examination module as an equivalent requirement to register as a general securities representative. As amended, Rule 2.2, Commentary .01, would provide that qualifying Persons seeking registration as a general securities representatives would be required to take the Series 7 examination and the Securities Industry Essentials examination.

D. Amendments to Rule 2.2, Commentary .02

Current Rule 2.2, Commentary .02, states that the Exchange will accept the New York Stock Exchange Chief Compliance Officer Examination (''NYSE Series 14'') as an alternative qualification to register as Principal an individual identified as the Chief Compliance Officer on an ETP Holder's Form BD. The Exchange proposes a technical change to rename the NYSE Series 14 examination as the Compliance Official Examination which is the correct name of the examination.

E. Amendments to Rule 2.2, Commentary .03

Current Rule 2.2, Commentary .03, provides that the definition of a Securities Trader is defined in Rule 1.1. With this proposed rule change, the Exchange is adopting FINRA's definition of Securities Trader (as described below) and therefore, proposes to replace the reference to Rule 1.1 to Rule 2.1220(b)(3) in current Rule 2.2(e), Commentary .03, as the appropriate rule in the Exchange's Rulebook where the definition of Securities Trader can be found. In doing so, the Exchange proposes to amend current Rule 1.1(ac) which provides the current definition of Securities Trader

[7] The proposed change would align the text of the rule to the rules of other exchanges. *See e.g.,* NASDAQ Stock Market Rule 1021(e).

[8] For purposes of Rule 2.2(e), the term ''Registered Person'' means any Person registered with the Exchange as a General Securities Representative, Securities Trader, Principal, Principal—Financial and Operations (''FINOP''), Person Associated with an ETP Holder, Authorized Trader or Market Maker Authorized Trader. *See* Rule 2.2(e).

[9] The proposed change is substantially similar to that contained in FINRA Rule 1240(a)(5).

[10] The proposed change is substantially similar to that contained in FINRA Rule 1240(a)(1).

[11] The proposed change is substantially similar to that contained in FINRA Rule 1240(a)(2).

[12] The proposed change is substantially similar to that contained in FINRA Rule 1240(a)(2).

[13] The proposed change is substantially similar to that contained in FINRA Rule 1240(a)(3).

[14] The proposed change is substantially similar to that contained in FINRA Rule 1240(b)(2).

and proposes to mark that rule as 'Reserved.'

Further, current Rule 2.2, Commentary .03, states that each Person Associated with an ETP Holder meeting the definition of a Securities Trader under Rule 1.1 must pass the Securities Trader Qualification examination (''Series 57'') and register as such in CRD. The rule further provides that a Person registered as a Securities Trader shall not function in any other registration category unless he/she is also qualified in such other registration category. Given the formulation of the Securities Industry Essential examination which all potential representative-level registrants would be required to pass, the Exchange proposes to amend the current rule to require each Person Associated with an ETP Holder that meets the definition of a Securities Trader to take the Series 57 examination and the Securities Industry Essential examination and register as such in CRD.

F. Amendments to Rule 2.2, Commentary .04

Current Rule 2.2, Commentary .04, provides that the definition of a Securities Trader Principal is defined in Rule 1.1. With this proposed rule change, the Exchange is adopting FINRA's definition of Securities Trader (as described below) and therefore, proposes to replace the reference to Rule 1.1 to Rule 2.1220(a)(5) in current Rule 2.2(e), Commentary .04, as the appropriate rule in the Exchange's Rulebook where the definition of Securities Trader Principal can be found. In doing so, the Exchange proposes to amend current Rule 1.1(ad) which provides the current definition of Securities Trader Principal and proposes to mark that rule as 'Reserved.'

Current Rule 2.2, Commentary .04, references by incorporation NASD Rule 1032(f).[15] With this proposed rule change, the Exchange is adopting the content of Rule 1032(f) into the Exchange's rules and therefore would no longer need to reference by incorporation the NASD rule. The Exchange, therefore, proposes to replace reference to NASD Rule 1032(f) in Rule 2.2, Commentary .04, with Rule 2.1220(b)(3) which is a proposed new Exchange rule that is substantively similar to NASD Rule 1032(f).

G. Amendment to Rule 2.2—Commentary .06

Rule 2.2, Commentary .06, currently provides that the Exchange may, in exceptional cases and where good cause is shown, waive a proficiency examination and accept other standards as evidence of an applicant's qualifications for registration. The rule further provides that advanced age or physical infirmity will not individually of themselves constitute sufficient grounds to waive a qualification examination and that experience in fields ancillary to the investment banking or securities business may constitute sufficient grounds to waive a qualification examination. In light of the Exchange's proposal to adopt proposed new Rule 2.1210, Commentary .02 (Qualification Examinations and Waivers of Examinations),[16] which adopts revised language regarding the waiver of examinations (see below for a further discussion), the Exchange proposes to delete the text of current Rule 2.2, Commentary .06, in its entirety.

H. Proposed New Rule 2.2—Commentary .08—Fingerprint Information [17]

The Exchange proposes to adopt new Rule 2.2(e), Commentary .08, regarding the submission of fingerprint information by ETP Holders. As proposed, upon filing an electronic Form U4 on behalf of a person applying for registration, an ETP Holder would be required to promptly submit fingerprint information for that person. If the ETP Holder fails to submit the fingerprint information within 30 days after the Exchange receives the electronic Form U4, the person's registration shall be deemed inactive and the person would be required to immediately cease all activities requiring registration and would be prohibited from performing any duties and functioning in any capacity requiring registration. The proposed rule further provides allows [sic] the Exchange to administratively terminate a registration that is inactive for a period of two years. However, a person whose registration is administratively terminated may seek to reactivate his or her registration by reapplying for registration and meeting the qualification requirements under Exchange rules.

I. Proposed New Rules 2.1210 Through 2.1230

As a general matter, FINRA administers qualification examinations that are designed to establish that persons associated with ETP Holders have attained specified levels of competence and knowledge. Over time, the examination program has increased in complexity to address the introduction of new products and functions, and related regulatory concerns and requirements. As a result, today, there are a large number of examinations, considerable content overlap across the representative-level examinations and requirements for individuals in various segments of the industry to pass multiple examinations. To address these issues, FINRA has formulated a general knowledge examination called the Securities Industry Essential (''SIE'') that all potential representative-level registrants would take.[18] Rule changes related to the adoption of the SIE and other proposed new rules are discussed below.

1. Proposed Rule 2.1210—Registration Requirements [19]

Proposed Rule 2.1210 provides that each person engaged in the investment banking or securities business of an ETP Holder must register with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in proposed Rule 2.1220, unless exempt from registration pursuant to proposed Rule 2.1230. Proposed Rule 2.1210 also provides that such person is not qualified to function in any registered capacity other than that for which the person is registered, unless otherwise stated in the rules.

[15] NASD Rule 1032(f) was recently amended to expand the scope of individuals associated with a FINRA member broker-dealer who are required to register as Security Traders. *See* Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (SR–FINRA–2016–007) (Order Approving a Proposed Rule Change To Require Registration as Securities Traders of Associated Persons Primarily Responsible for the Design, Development, Significant Modification of Algorithmic Trading Strategies or Responsible for the Day-to-Day Supervision of Such Activities).

[16] The proposed rule is substantially similar to FINRA Rule 1210.03.

[17] The proposed rule is substantially similar to FINRA Rule 1010(d).

[18] The SIE would assess basic product knowledge; the structure and function of the securities industry markets, regulatory agencies and their functions; and regulated and prohibited practices. In particular, the SIE will cover four major areas. The first, ''Knowledge of Capital Markets,'' focuses on topics such as types of markets and offerings, broker-dealers and depositories, and economic cycles. The second, ''Understanding Products and Their Risks,'' covers securities products at a high level as well as associated investment risks. The third, ''Understanding Trading, Customer Accounts and Prohibited Activities,'' focuses on accounts, orders, settlement and prohibited activities. The final area, ''Overview of the Regulatory Framework,'' encompasses topics such as SROs, registration requirements and specified conduct rules.

[19] The proposed rule is substantially similar to FINRA Rule 1210.

2. Proposed Rule 2.1210, Commentary .01—Permissive Registrations [20]

The Exchange currently does not have a specific rule that provides for permissive registrations. With this proposed rule change, and to conform its rules to the FINRA rules, the Exchange proposes to adopt a specific rule regarding permissive registrations. Proposed Rule 2.1210, Commentary .01, allows any associated person to obtain and maintain any registration permitted by an ETP Holder. For instance, an associated person of an ETP Holder working solely in a clerical or ministerial capacity, such as in an administrative capacity, would be able to obtain and maintain a General Securities Representative registration with the ETP Holder. As another example, an associated person of an ETP Holder who is registered, [sic] and functioning solely as a General Securities Representative would be able to obtain and maintain a General Securities Principal registration with the ETP Holder. Further, proposed Rule 2.1210, Commentary .01, allows an individual engaged in the securities business of a foreign securities affiliate or subsidiary of an ETP Holder to obtain and maintain any registration permitted by the ETP Holder.

The Exchange is proposing to permit the registration of such individuals for several reasons. First, an ETP Holder may foresee a need to move a former representative or principal who has not been registered for two or more years back into a position that would require such person to be registered. Currently, such persons are required to requalify (or obtain a waiver of the applicable qualification examinations) and reapply for registration. Second, the proposed rule change would allow ETP Holders to develop a depth of associated persons with registrations in the event of unanticipated personnel changes. Finally, allowing registration in additional categories encourages greater regulatory understanding.

Individuals maintaining a permissive registration under the proposed rule change would be considered Registered Persons and subject to all Exchange rules, to the extent relevant to their activities. Additionally, consistent with the requirements of the Exchange's supervision rules, as proposed, ETP Holders would be required to have adequate supervisory systems and procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned functions. With respect to an individual who solely maintains a permissive registration, such as an individual working exclusively in an administrative capacity, the individual's day-to-day supervisor may be a non-Registered Person. However, for purposes of compliance with the Exchange's supervision rules, an ETP Holder would be required to assign a registered supervisor who would be responsible for periodically contacting such individual's day-to-day supervisor to verify that the individual is not acting outside the scope of his or her assigned functions. If such individual is permissively registered as a representative, the registered supervisor must be registered as a representative or principal. If the individual is permissively registered as a principal, the registered supervisor must be registered as a principal.[21]

3. Proposed Rule 2.1210, Commentary .02—Qualification Examinations and Waivers of Examinations [22]

Proposed Rule 2.1210, Commentary .02, provides that before the registration of a person as a representative can become effective under proposed Rule 2.1210, such person must pass the SIE and an appropriate representative-level qualification examination as specified in proposed Rule 2.1220.[23] Proposed Rule 2.1210, Commentary .02, also provides that before the registration of a person as a principal can become effective under proposed Rule 2.1210, such person must pass an appropriate principal-level qualification examination as specified in proposed Rule 2.1220.

Further, proposed Rule 2.1210, Commentary .02, provides that if a Registered Person's job functions change and he or she needs to become registered in another representative-level category, he or she would not need to pass the SIE again. Rather, the Registered Person would need to pass only the appropriate representative-level qualification examination.

Moreover, proposed Rule 2.1210, Commentary .02, provides that all associated persons, such as associated persons whose functions are solely and exclusively clerical or ministerial, are eligible to take the SIE. Proposed Rule 2.1210, Commentary .02, also provides that individuals who are not associated persons of firms, such as members of the general public, are eligible to take the SIE. The Exchange believes that expanding the pool of individuals who are eligible to take the SIE would enable prospective securities industry professionals to demonstrate to prospective employers a basic level of knowledge prior to submitting a job application. Further, this approach would allow for more flexibility and career mobility within the securities industry. While all associated persons of firms as well as individuals who are not associated persons would be eligible to take the SIE pursuant to the proposed rule, passing the SIE alone would not qualify them for registration with the Exchange. Rather, to be eligible for registration with the Exchange, an individual must pass an applicable representative or principal qualification examination and complete the other requirements of the registration process.

Proposed Rule 2.1210, Commentary .02, also provides that the Exchange may, in exceptional cases and where good cause is shown, pursuant to the Rule 10.9600 Series, waive the applicable qualification examination(s) and accept other standards as evidence of an applicant's qualifications for registration. The proposed rule further provides that the Exchange will only consider examination waiver requests submitted by an ETP Holder for individuals associated with the ETP Holder who are seeking registration in a representative- or principal-level registration category. Moreover, the proposed rule states that the Exchange will consider waivers of the SIE alone or the SIE and the representative- and principal-level examination(s) for such individuals. The Exchange would not consider a waiver of the SIE for non-associated persons or for associated persons who are not registering as representatives or principals.

4. Proposed Rule 2.1210, Commentary .03—Requirements for Registered Persons Functioning as Principals for a Limited Period [24]

Proposed Rule 2.1210, Commentary .03, provides that an ETP Holder may designate any person currently registered, or who becomes registered, with the ETP Holder as a representative to function as a principal for a limited period, provided that such person has at least 18 months of experience functioning as a registered representative with [sic] the five-year

[20] The proposed rule is substantially similar to FINRA Rule 1210.02.

[21] In either case, the registered supervisor of an individual who solely maintains a permissive registration would not be required to be registered in the same representative or principal registration category as the permissively-registered individual.

[22] The proposed rule is substantially similar to FINRA Rule 1210.03.

[23] Proposed Rule 2.1220 sets forth each registration category and applicable qualification examination for ETP Holders on the Exchange.

[24] The proposed rule is substantially similar to FINRA Rule 1210.04.

period immediately preceding the designation. The proposed rule is intended to ensure that representatives designated to function as principals for the limited period under the proposal have an appropriate level of registered representative experience. The proposed rule clarifies that the requirements of the rule apply to designations to any principal category, including those categories that are not subject to a prerequisite representative-level registration requirement, such as the Financial and Operations Principal registration category.[25]

The proposed rule also clarifies that the individual must fulfill all applicable prerequisite registration, fee and examination requirements before his or her designation as a principal. Further, the proposed rule provides that in no event may such person function as a principal beyond the initial 120 calendar days without having successfully passed an appropriate principal qualification examination. The proposed rule also provides an exception to the experience requirement for principals who are designated by an ETP Holder to function in other principal categories for a limited period. Specifically, the proposed rule states that an ETP Holder may designate any person currently registered, or who becomes registered, with the ETP Holder as a principal to function in another principal category for 120 calendar days before passing any applicable examinations.

5. Proposed Rule 2.1210, Commentary .04—Rules of Conduct for Taking Examinations and Confidentiality of Examinations [26]

Proposed Rule 2.1210, Commentary .04 states that associated persons taking the SIE would be subject to the SIE Rules of Conduct, and associated persons taking a representative or principal examination would be subject to the Rules of Conduct for representative and principal examinations. Pursuant to proposed Rule 2.1210, Commentary .04, a violation of the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations by an associated person would be deemed to be a violation of Rule 11.3.1. Moreover, if an associated person is deemed to have violated the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations, the associated person may forfeit the results of the examination and may be subject to disciplinary action by the Exchange.

Further, the proposed rule states that individuals taking the SIE who are not associated persons must agree to be subject to the SIE Rules of Conduct. Among other things, the SIE Rules of Conduct would require individuals to attest that they are not qualified to engage in the investment banking or securities business based on passing the SIE and would prohibit individuals from cheating on the examination or misrepresenting their qualifications to the public subsequent to passing the SIE. Moreover, non-associated persons may forfeit their SIE results and may be prohibited from retaking the SIE if the Exchange determines that they cheated on the SIE or that they misrepresented their qualifications to the public subsequent to passing the SIE.

The proposed rule further notes that the Exchange considers all qualification examinations [sic] content to be highly confidential and that the removal of examination content from an examination center, reproduction, disclosure, receipt from or passing to any person, or use for study purposes of any portion of such qualification examination or any other use that would compromise the effectiveness of the examinations and the use in any manner and at any time of the questions or answers to the examinations is prohibited and would be deemed a violation of Rule 11.3.1.

6. Proposed Rule 2.1210, Commentary .05—Waiting Periods for Retaking a Failed Examination [27]

Proposed Rule 2.1210, Commentary .05 provides that any person who fails a qualification examination may retake that examination after 30 calendar days from the date of the person's last attempt to pass that examination. The proposed rule further provides that if a person fails an examination three or more times in succession within a two-year period, he or she would be prohibited from retaking the examination either until a period of 180 calendar days from the date of the person's last attempt to pass it [sic]. These waiting periods would apply to the SIE and the representative- and principal-level examinations. Moreover, the proposed rule provides that non-associated persons taking the SIE must agree to be subject to the same waiting periods for retaking the SIE.

7. Proposed Rule 2.1210, Commentary .06—All Registered Persons Must Satisfy the Regulatory Element of Continuing Education [28]

Pursuant to Rule 2.2(e), the CE requirements applicable to Registered Persons consist of a Regulatory Element [29] and a Firm Element.[30] The Regulatory Element applies to Registered Persons and must be completed within prescribed time frames.[31] For purposes of the Regulatory Element, a Registered Person is any person registered with the Exchange as a General Securities Principal, Securities Trader, Principal, FINOP, Person Associated with an ETP Holder, Authorized Trader or Market Maker Authorized Trader. The Firm Element consists of annual, ETP Holder-developed and administered training programs designed to keep covered Registered Persons current regarding securities products, services and strategies offered by the ETP Holder. For purposes of the Firm Element, the term covered Registered Persons means any Person registered with an ETP Holder who has direct contact with customers in the conduct of the ETP Holder's securities sales, trading and investment banking activities and to the immediate supervisors of such Persons.

The Exchange believes that all Registered Persons, regardless of their activities, should be subject to the Regulatory Element of the CE requirements so that they can keep their knowledge of the securities industry current. Therefore, the Exchange proposes to adopt Rule 2.1210, Commentary .06, to clarify that all Registered Persons, including those who solely maintain a permissive

[25] The Exchange notes that qualifying as a registered representative is a prerequisite to qualifying as a principal except with respect to the following principal-level registrations: (1) Compliance Official; (2) Financial and Operations Principal; and (3) Introducing Broker-Dealer Financial and Operations Principal.

[26] The proposed rule is substantially similar to FINRA Rule 1210.05.

[27] The proposed rule is substantially similar to FINRA Rule 1210.06.

[28] The proposed rule is substantially similar to FINRA Rule 1210.07.

[29] *See* Rule 2.2(e)(1).

[30] *See* Rule 2.2(e)(2).

[31] Pursuant to Rule 2.2(e)(1), each specified Registered Person is required to complete the Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date. A Registered Person who has not completed the Regulatory Element program within the prescribed time frames will have his or her registrations deemed inactive and designated as ''CE inactive'' on the CRD system until such time as the requirements of the program have been satisfied. A CE inactive person is prohibited from performing, or being compensated for, any activities requiring registration, including supervision. Moreover, if a Registered Person is CE inactive for a two-year period, the Exchange will administratively terminate the person's registration status. The two-year period would be calculated from the date the person becomes CE inactive. In either case, such person must requalify (or obtain a waiver of the applicable qualification examination(s)) to be re-eligible for registration.

registration, are required to satisfy the Regulatory Element, as specified in Rule 2.2(e)(1). The Exchange is making corresponding changes to Rule 2.2(e)(1). The Exchange is not proposing any changes to the Firm Element requirement at this time. Individuals who have passed the SIE but not a representative- or principal-level examination and do not hold a registered position would not be subject to any CE requirements.

Proposed Rule 2.1210, Commentary .06, also provides that a Registered Person of an ETP Holder who becomes CE inactive would not be permitted to be registered in another registration category with the ETP Holder or be registered in any registration category with another ETP Holder, until the person has satisfied the Regulatory Element.

8. Proposed Rule 2.1210, Commentary .07—Lapse of Registration and Expiration of the SIE [32]

Proposed Rule 2.1210, Commentary .07, provides that any person who was last registered as a representative two or more years immediately preceding the date of receipt by the Exchange of a new application for registration as a representative is required to pass a qualification examination for representatives appropriate to the category of registration as specified in proposed Rule 2.1220(b). Proposed Rule 2.1210, Commentary .07, also sets forth that a passing result on the SIE would be valid for up to four years. Therefore, under the proposed rule change, an individual who passes the SIE and is an associated person of an ETP Holder at the time would have up to four years from the date he or she passes the SIE to pass a representative-level examination to register as a representative with that ETP Holder, or a subsequent ETP Holder, without having to retake the SIE. In addition, an individual who passes the SIE and is not an associated person at the time would have up to four years from the date he or she passes the SIE to become an associated person of an ETP Holder and pass a representative-level examination and register as a representative without having to retake the SIE.

Moreover, an individual holding a representative-level registration who leaves the industry after the effective date of this proposed rule change would have up to four years to re-associate with an ETP Holder and register as a representative without having to retake the SIE. However, the four-year expiration period in the proposed rule change extends only to the SIE, and not the representative- and principal-level registrations. The representative- and principal-level registrations would continue to be subject to a two-year expiration period as is the case today.

Finally, proposed Rule 2.1210, Commentary .07, clarifies that, for purposes of the proposed rule, an application would not be considered to have been received by the Exchange if that application does not result in a registration.

9. Proposed Rule 2.1210, Commentary .08—Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of an ETP Holder [33]

Proposed Rule 2.1210, Commentary .08, provides the process for individuals working for a financial services industry affiliate of an ETP Holder [34] to terminate their registrations with the ETP Holder and be granted a waiver of their requalification requirements upon re-registering with an ETP Holder, provided the firm that is requesting the waiver and the individual satisfy the criteria for a Financial Services Affiliate (''FSA'') waiver.

Under the proposed waiver process, the first time a Registered Person is designated as eligible for a waiver based on the FSA criteria, the ETP Holder with which the individual is registered would notify the Exchange of the FSA designation. The ETP Holder would concurrently file a full Form U5 terminating the individual's registration with the firm, which would also terminate the individual's other SRO and state registrations. To be eligible for initial designation as an FSA-eligible person by an ETP Holder, an individual must have been registered for a total of five years within the most recent 10-year period prior to the designation, including for the most recent year with that ETP Holder. An individual would have to satisfy these preconditions only for purposes of his or her initial designation as an FSA-eligible person, and not for any subsequent FSA designation(s). Thereafter, the individual would be eligible for a waiver for up to seven years from the date of initial designation,[35] provided that the other conditions of the waiver, as described below, have been satisfied. Consequently, an ETP Holder other than the ETP Holder that initially designated an individual as an FSA-eligible person may request a waiver for the individual and more than one ETP Holder may request a waiver for the individual during the seven-year period.[36]

An individual designated as an FSA-eligible person would be subject to the Regulatory Element of CE while working for a financial services industry affiliate of an ETP Holder. The individual would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and CE would be based on the same cycle had the individual remained registered. If the individual fails to complete the prescribed Regulatory Element during the 120-day window for taking the session, he or she would lose FSA eligibility (*i.e.,* the individual would have the standard two-year period after termination to re-register without having to retake an examination). The Exchange is making corresponding changes to Rule 2.2(e).

Upon registering an FSA-eligible person, a firm would file a Form U4 and request the appropriate registration(s) for the individual. The firm would also submit an examination waiver request

[32] The proposed rule is substantially similar to FINRA Rule 1210.08.

[33] The proposed rule is substantially similar to FINRA Rule 1210.09.

[34] Proposed Rule 2.1210, Commentary .07 [sic], defines a ''financial services industry affiliate of an ETP Holder'' as a legal entity that controls, is controlled by or is under common control with an ETP Holder and is regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

[35] Individuals would be eligible for a single, fixed seven-year period from the date of initial designation, and the period would not be tolled or renewed.

[36] The following examples illustrate this point:

Example 1. Firm A designates an individual as an FSA-eligible person by notifying the Exchange and files a Form U5. The individual joins Firm A's financial services affiliate. Firm A does not submit a waiver request for the individual. After working for Firm A's financial services affiliate for three years, the individual directly joins Firm B's financial services affiliate for three years. Firm B then submits a waiver request to register the individual.

Example 2. Same as Example 1, but the individual directly joins Firm B after working for Firm A's financial services affiliate, and Firm B submits a waiver request to register the individual at that point in time.

Example 3. Firm A designates an individual as an FSA-eligible person by notifying the Exchange and files a Form U5. The individual joins Firm A's financial services affiliate for three years. Firm A then submits a waiver request to re-register the individual. After working for Firm A in a registered capacity for six months, Firm A re-designates the individual as an FSA-eligible person by notifying the Exchange and files a Form U5. The individual rejoins Firm A's financial services affiliate for two years, after which the individual directly joins Firm B's financial services affiliate for one year. Firm B then submits a waiver request to register the individual.

Example 4. Same as Example 3, but the individual directly joins Firm B after the second period of working for Firm A's financial services affiliate, and Firm B submits a waiver request to register the individual at that point in time.

to the Exchange,[37] similar to the process used today for waiver requests, and it would represent that the individual is eligible for an FSA waiver based on the conditions set forth below. The Exchange would review the waiver request and make a determination of whether to grant the request within 30 calendar days of receiving the request. The Exchange would summarily grant the request if the following conditions are met:

(1) Prior to the individual's initial designation as an FSA-eligible person, the individual was registered for a total of five years within the most recent 10-year period, including for the most recent year with the ETP Holder that initially designated the individual as an FSA-eligible person;

(2) The waiver request is made within seven years of the individual's initial designation as an FSA-eligible person by an ETP Holder;

(3) The initial designation and any subsequent designation(s) were made concurrently with the filing of the individual's related Form U5;

(4) The individual continuously worked for the financial services affiliate(s) of an ETP Holder since the last Form U5 filing;

(5) The individual has complied with the Regulatory Element of CE; and

(6) The individual does not have any pending or adverse regulatory matters, or terminations, that are reportable on the Form U4, and has not otherwise been subject to a statutory disqualification while the individual was designated as an FSA-eligible person with an ETP Holder.

Following the Form U5 filing, an individual could move between the financial services affiliates of an ETP Holder so long as the individual is continuously working for an affiliate. Further, an ETP Holder could submit multiple waiver requests for the individual, provided that the waiver requests are made during the course of the seven-year period.[38] An individual who has been designated as an FSA-eligible person by an ETP Holder would not be able to take additional examinations to gain additional registrations while working for a financial services affiliate of an ETP Holder.

10. Proposed Rule 2.1210, Commentary .09—Status of Persons Serving in the Armed Forces of the United States [39]

Proposed Rule 2.1210, Commentary .09 provides specific relief to Registered Persons serving in the Armed Forces of the United States. Among other things, the proposed rule permits a Registered Person of an ETP Holder who volunteers for or is called into active duty in the Armed Forces of the United States to be registered in an inactive status and remain eligible to receive ongoing transaction-related compensation. The proposed rule also includes specific provisions regarding the deferment of the lapse of registration requirements for formerly Registered Persons serving in the Armed Forces of the United States. The proposed rule further requires that the ETP Holder with which such person is registered promptly notify the Exchange of such person's return to employment with the ETP Holder. The proposed rule would require an ETP Holder that is a sole proprietor to also similarly notify the Exchange of his or her return to participation in the investment banking or securities business. The proposed rule also provides that the Exchange would defer the lapse of the SIE for formerly Registered Persons serving in the Armed Forces of the United States.

J. Proposed New Rule 2.1220—Registration Categories [40]

1. Proposed Rule 2.1220(a)(1)—Principal

Rule 1.1(y) currently defines the term ''Principal'' to mean any Person Associated with an ETP Holder actively engaged in the management of the ETP Holder's securities business, including supervision, solicitation, conduct of the ETP Holder's business, or the training of Authorized Traders and Persons Associated with an ETP Holder for any of these functions. Such Persons include Sole Proprietors, Officers, Partners, and Directors of Corporations. The Exchange is not proposing any change to the current definition for purposes of the proposed new registration rules.

The Exchange does, however, propose to codify the phrase ''actively engaged in the management of the ETP Holder's securities business'' to include the management of, and the implementation of corporate policies related to, such business. The term also includes managerial decision-making authority with respect to the ETP Holder's securities business and management-level responsibilities for supervising any aspect of such business, such as serving as a voting member of the ETP Holder's executive, management or operations committee.

2. Proposed Rule 2.1220(a)(2)—General Securities Principal [41]

Proposed Rule 2.1220(a)(2)(A) states that each principal as defined in proposed Rule 2.1220(a)(1) is required to register with the Exchange as a General Securities Principal, subject to the following exceptions. The proposed rule provides that if a principal's activities include the functions of a Compliance Officer, a Financial and Operations Principal (or an Introducing Broker-Dealer Financial and Operations Principal, as applicable), a Principal Financial Officer, a Principal Operations Officer, or a Securities Trader Principal, then the principal must appropriately register in one or more of these categories.

Proposed Rule 2.1220(a)(2)(A) further provides that if a principal's activities are limited solely to the functions of a General Securities Sales Supervisor, then the principal may appropriately register in that category in lieu of registering as a General Securities Principal.

Proposed Rule 2.1220(a)(2)(B) requires that an individual registering as a General Securities Principal satisfy the General Securities Representative prerequisite registration and pass the General Securities Principal qualification examination. Proposed Rule 2.1220(a)(2)(B) also clarifies that an individual may register as a General Securities Sales Supervisor and pass the General Securities Sales Supervisor

[37] The Exchange would consider a waiver of the representative-level qualification examination(s), the principal-level qualification examination(s) and the SIE, as applicable.

[38] For example, if an ETP Holder submits a waiver request for an FSA-eligible person who has been working for a financial services affiliate of the ETP Holder for three years and re-registers the individual, the ETP Holder could subsequently file a Form U5 and re-designate the individual as an FSA-eligible person. Moreover, if the individual works with a financial services affiliate of the ETP Holder for another three years, the ETP Holder could submit a second waiver request and re-register the individual upon returning to the ETP Holder.

[39] The proposed rule is substantially similar to FINRA Rule 1210.10.

[40] The Exchange is not adopting the following categories from the FINRA Filing because ETP Holders do not engage in the type of business that would require registration with the Exchange: Investment Banking Principal, Research Principal, Registered Options Principal, Government Securities Principal, Investment Company and Variable Contracts Products Principal, Direct Participation Programs Principal, Private Securities Offerings Principal, Supervisory Analyst, Operations Professional, Investment Banking Representative, Research Analyst, Investment Company and Variable Contracts Products Representative, Direct Participation Programs Representative, and Private Securities Offering Representative. The Exchange is also not adopting the following categories because the FINRA Filing eliminated them: Order Processing Assistant Representative, United Kingdom Securities Representative, Canadian Securities Representative, Options Representative, Corporate Securities Representative and Government Securities Representative.

[41] The proposed rule is substantially similar to FINRA Rule 1220(a)(2).

qualification examination in lieu of passing the General Securities Principal examination.

As a general matter, the Exchange currently recognizes the Corporate Securities Representative but would no longer recognize this registration category given its elimination by FINRA. Proposed Rule 2.1220(a)(2)(B), however, provides that, subject to the lapse of registration provisions in proposed Rule 2.1210, Commentary .07, each person registered with the Exchange as a Corporate Securities Representative and a General Securities Principal on October 1, 2018 and each person who was registered with the Exchange as a Corporate Securities Representative and a General Securities Principal within two years prior to October 1, 2018 would be qualified to register as a General Securities Principal without having to take any additional qualification examinations, provided that such person's supervisory responsibilities in the investment banking and securities business of an ETP Holder are limited to corporate securities activities of the ETP Holder. The proposed rule further provides that all other individuals registering as General Securities Principals after October 1, 2018 shall, prior to or concurrent with such registration, become registered as a General Securities Representative and either (1) pass the General Securities Principal qualification examination; or (2) register as a General Securities Sales Supervisor and pass the General Securities Sales Supervisor qualification examination.

3. Proposed Rule 2.1220(a)(3)—Compliance Officer [42]

Proposed Rule 2.1220(a)(3) establishes a Compliance Officer registration category and requires all persons designated as CCOs on Schedule A of Form BD to register as Compliance Officers, subject to an exception for ETP Holders engaged in limited investment banking or securities business. The proposed rule only addresses the registration requirements for CCOs. However, consistent with proposed Rule 2.1210, Commentary .01 relating to permissive registrations, a firm may allow other associated persons to register as Compliance Officers.

In addition, the Exchange is proposing to provide CCOs of firms that engage in limited investment banking or securities business with greater flexibility to satisfy the qualification requirements for CCOs. Specifically, proposed Rule 2.1220(a)(3) set forth the following qualification requirements for Compliance Officer registration:

- Subject to the lapse of registration provisions in proposed Rule 2.1210, Commentary .07, each person registered with the Exchange as a General Securities Representative and a General Securities Principal on October 1, 2018 and each person who was registered with the Exchange as a General Securities Representative and a General Securities Principal within two years prior to October 1, 2018 would be qualified to register as Compliance Officers without having to take any additional examinations. In addition, subject to the lapse of registration provisions in proposed Rule 2.1210, Commentary .07, individuals registered as Compliance Officials in the CRD system on October 1, 2018 and individuals who were registered as such within two years prior to October 1, 2018 would also be qualified to register as Compliance Officers without having to take any additional examinations; [sic]
- All other individuals registering as Compliance Officers after October 1, 2018 would have to: (1) Satisfy the General Securities Representative prerequisite registration and pass the General Securities Principal qualification examination; or (2) pass the Compliance Official qualification examination.
- An individual designated as a CCO on Schedule A of Form BD of an ETP Holder that is engaged in limited investment banking or securities business may be registered in a principal category under proposed Rule 2.1220(a) that corresponds to the limited scope of the ETP Holder's business.

4. Proposed Rule 2.1220(a)(4)—Financial and Operation Principal and Introducing Broker-Dealer Financial and Operations Principal [43]

Proposed Rule 2.1220(a)(4) provides that each principal who is responsible for the financial and operational management of an ETP Holder that has a minimum net capital requirement of $250,000 under SEA Rules 15c3–1(a)(1)(ii) and 15c3–1(a)(2)(i), or an ETP Holder that has a minimum net capital requirement of $150,000 under SEA Rule 15c–3–1(a)(8) must be designated as a Financial and Operations Principal. In addition, proposed Rule 2.1220(a)(4) provides that a principal who is responsible for the financial and operational management of an ETP Holder that is subject to the net capital requirements of SEA Rule 15c3–1, other than an ETP Holder that is subject to the net capital requirements of SEA Rules 15c3–1(a)(1)(ii), (a)(2)(i) or (a)(8), must be designated and registered as either a Financial and Operations Principal or an Introducing Broker-Dealer Financial and Operations Principal. Financial and Operations Principals and Introducing Broker-Dealer Financial and Operation Principals are not subject to a prerequisite representative registration, but they must pass the Financial and Operations Principal or Introducing Broker-Dealer Financial and Operations Principal examination, as applicable.

Additionally, proposed Rule 2.1220(a)(4)(B) requires an ETP Holder to designate a Principal Financial Officer with primary responsibility for the day-to-day operations of the business, including overseeing the receipt and delivery of securities and funds, safeguarding customer and firm assets, calculation and collection of margin from customers and processing dividend receivable and payables and reorganization redemptions and those books and records related to such activities. Further, the proposed rule requires that a firm's Principal Financial Officer and Principal Operations Officer qualify and register as Financial and Operations Principals or Introducing Broker-Dealer Financial and Operations Principals, as applicable.

Because the financial and operational activities of ETP Holders that neither self-clear nor provide clearing services are more limited, such ETP Holders may designate the same person as the Principal Financial Officer, Principal Operations Officer and Financial and Operations Principal or Introducing Broker-Dealer Financial and Operations Principal (that is, such ETP Holders are not required to designate different persons to function in these capacities).

Given the level of financial and operational responsibility at clearing and self-clearing members, the Exchange believes that it is necessary for such ETP Holders to designate separate persons to function as Principal Financial Officer and Principal Operations Officer. Such persons may also carry out the other responsibilities of a Financial and Operations Principal, such as supervision of individuals engaged in financial and operational activities. In addition, the proposed rule provides that a clearing or self-clearing ETP Holder that is limited in size and resources may request a waiver of the requirement to designate separate persons to function as Principal Financial Officer and Principal Operations Officer.

[42] The proposed rule is substantially similar to FINRA Rule 1220(a)(3).

[43] The proposed rule is substantially similar to FINRA Rule 1220(a)(4).

5. Proposed Rule 2.1220(a)(5)—Securities Trader Principal [44]

Proposed Rule 2.1220(a)(5) requires that a principal responsible for supervising the securities trading activities specified in proposed Rule 2.1220(b)(3) register as a Securities Trader Principal. The proposed rule requires that individuals registering as Securities Trader Principals must be registered as Securities Traders and pass the General Securities Principal qualification examination.

6. Proposed Rule 2.1220(a)(6)—General Securities Sales Supervisor [45]

Proposed Rule 2.1220(a)(6) provides that a principal may register with the Exchange as a General Securities Sales Supervisor if his or her supervisory responsibilities in the investment banking or securities business of an ETP Holder are limited to the securities sales activities of the ETP Holder, including the approval or customer accounts, training of sales and sales supervisory personnel and the maintenance of records of original entry or ledger accounts of the ETP Holder required to be maintained in branch offices by Exchange Act record-keeping rules.

A person registering as a General Securities Sales Supervisor must satisfy the General Securities Representative prerequisite registration and pass the General Securities Sales Supervisor examinations.[46] Moreover, a General Securities Sales Supervisor is precluded from performing any of the following activities: (1) Supervision of the origination and structuring of underwritings; (2) supervision of market-making commitments; (3) supervision of the custody of firm or customer funds or securities for purposes of SEA Rule 15c3–3; or (4) supervision of overall compliance with financial responsibility rules.

7. Proposed Rule 2.1220(b)(1)—Representative [47]

Proposed Rule 2.1220(b)(1) defines a representative as any person associated with an ETP Holder, including assistant officers other than principals, who is engaged in the ETP Holder's investment banking or securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with an ETP Holder for any of these functions.

8. Proposed Rule 2.1220(b)(2)—General Securities Representative [48]

Proposed Rule 2.1220(b)(2)(A) states that each representative as defined in proposed Rule 2.1220(b)(1) is required to register with the Exchange as a General Securities Representative, subject to the following exceptions. The proposed rule provides that if a representative's activities include the function of a Securities Trader, then the representative must appropriately register in that category.

The proposed rule further provides that, subject to the lapse of registration provisions in proposed Rule 2.1210, Commentary .07, each person registered with the Exchange as a General Securities Representative on October 1, 2018 and each person who was registered with the Exchange as a General Securities Representative within two years prior to October 1, 2018 would be qualified to register as a General Securities Representative without having to take any additional qualification examinations. Additionally, the proposed rule would require that individuals registering as General Securities Representatives after October 1, 2018 shall, prior to or concurrent with such registration, pass the SIE and the General Securities Representative examination.

9. Proposed Rule 2.1220(b)(3)—Securities Trader [49]

Proposed Rule 2.1220(b)(3) provides that each representative as defined in proposed Rule 2.1220(b)(1) is required to register as a Securities Trader if, with respect to transactions in equity (including equity options), preferred or convertible debt securities, such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities. The proposed rule provides an exception from the registration requirement for any associated person of an ETP Holder whose trading activities are conducted primarily on behalf of an investment company that is registered with the SEC pursuant to the Investment Company Act and that controls, is controlled by, or is under common control with an ETP Holder. The Exchange proposes to adopt FINRA's definition of Securities Trader in proposed Rule 2.1220(b)(3) in order to align the text of the rule to that adopted by FINRA and other exchanges.[50]

The proposed rule also requires that associated persons primarily responsible for the design, development or significant modification of algorithmic trading strategies (or responsible for the day-to-day supervision or direction of such activities) register as Securities Traders. Individuals registering as Securities Traders must pass the SIE and the Securities Trader examination.

Finally, the proposed rule provides that, subject to the lapse of registration provisions in proposed Rule 2.1210, Commentary .07, each person registered with the Exchange as a Securities Trader on October 1, 2018 and each person who was registered with the Exchange as a Securities Trader within two years prior to October 1, 2018 would be qualified to register as a Securities Trader without having to take any additional qualification examinations. Additionally, the proposed rule would require that individuals registering as Securities Traders after October 1, 2018 shall, prior to or concurrent with such registration, pass the SIE and the Securities Trader qualification examination.

10. Proposed Rule 2.1220, Commentary .01—Foreign Registrations [51]

Proposed Rule 2.1220, Commentary .01, states that individuals who are in good standing as representatives with the Financial Conduct Authority in the United Kingdom or with a Canadian stock exchange or securities regulator would be exempt from the requirement to pass the SIE, and thus would be required only to pass a specialized knowledge examination to register with the Exchange as a representative. The proposed approach would provide individuals with a United Kingdom or Canadian qualification more flexibility to obtain a representative-level registration. Additionally, proposed Rule 2.1220, Commentary .01, provides that, subject to the lapse of registration provisions in Rule 2.1210, Commentary .07, each person who is registered with the Exchange as a United Kingdom Securities Representative or a Canada Securities Representative on October 1, 2018 and each person who was registered with the Exchange in such categories within two years prior to October 1, 2018 would be eligible to maintain such registrations with the Exchange. However, if persons

[44] The proposed rule is substantially similar to FINRA Rule 1220(a)(7).

[45] The proposed rule is substantially similar to FINRA Rule 1220(a)(10).

[46] An individual may also register as a General Securities Sales Supervisor by passing a combination of other principal-level examinations.

[47] The proposed rule is substantially similar to FINRA Rule 1220(b)(1).

[48] The proposed rule is substantially similar to FINRA Rule 1220(b)(2).

[49] The proposed rule is substantially similar to FINRA Rule 1220(b)(4).

[50] *See e.g.,* MIAX International Stock Exchange, LLC Rule 203(d).

[51] The proposed rule is substantially similar to FINRA Rule 1220.01 and 1220.06.

registered in such categories subsequently terminate such registration(s) with the Exchange and the registration remains terminated for two or more years, they would not be eligible to re-register in such categories.

11. Proposed Rule 2.1220, Commentary .02—Additional Qualification Requirements for Persons Engaged in Security Futures [52]

Proposed Rule 2.1220, Commentary .02, states that each person who is registered with the Exchange as a General Securities Representative, United Kingdom Securities Representative, Canada Securities Representative, or General Securities Sales Supervisor shall be eligible to engage in security futures activities as a representative or principal, as applicable, provided that such individual completes a Firm Element program as set forth in Rule 2.2(e)(2) that addresses security futures products before such person engages in security futures activities.[53]

12. Proposed Rule 2.1220, Commentary .03—Scope of General Securities Sales Supervisor Registration Category [54]

Proposed Rule 2.1220, Commentary .03, explains the purpose of the General Securities Sales Supervisor registration category. The General Securities Sales Supervisor category is an alternate category of registration designed to lessen the qualification burdens on principals of general securities firms who supervise sales. Without this category of limited registration, such principals would be required to separately qualify pursuant to the rules of FINRA, the MSRB, the NYSE and the options exchanges. While persons may continue to separately qualify with all relevant self-regulatory organizations, the General Securities Sales Supervisor examination permits qualification as a supervisor of sales of all securities through one registration category. Persons registered as General Securities Sales Supervisors may also qualify in any other category of principal registration. Persons who are already qualified in one or more categories of principal registration may supervise sales activities of all securities by also qualifying as General Securities Sales Supervisors.

The proposed rule further provides that any person required to be registered as a principal who supervises sales activities in corporate, municipal and option securities, investment company products, variable contracts, and security futures (subject to the requirements of Rule 2.1220, Commentary .02) may be registered solely as a General Securities Sales Supervisor. In addition to branch office managers, other persons such as regional and national sales managers may also be registered solely as General Securities Sales Supervisors as long as they supervise only sales activities.

K. Proposed New Rule 2.1230—Associated Persons Exempt From Registration [55]

Proposed Rule 2.1230 provides an exemption from registration with the Exchange for certain associated persons. Specifically, the proposed rule provides that persons associated with an ETP Holder whose functions are solely and exclusively clerical or ministerial would be exempt from registration.[56]

1. Proposed Rule 2.1230, Commentary .01—Registration Requirements for Associated Persons Who Accept Customer Orders [57]

Proposed Rule 2.1230, Commentary .01, clarifies that the function of accepting customer orders is not considered clerical or ministerial and that associated persons who accept customer orders under any circumstances are required to be appropriately registered. However, the proposed rule provides that an associated person is not accepting a customer order where occasionally, when an appropriately Registered Person is unavailable, the associated person transcribes the order details and the Registered Person contacts the customer to confirm the order details before entering the order [sic]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[58] in general, and furthers the objectives of Section 6(b)(5),[59] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change will streamline, and bring consistency and uniformity to, the registration rules, which will, in turn, assist ETP Holders and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule change will also improve the efficiency of the examination program, without compromising the qualification standards. In addition, the proposed rule change will expand the scope of permissive registrations, which, among other things, will allow ETP Holders to develop a depth of associated persons with registrations to respond to unanticipated personnel changes and will encourage greater regulatory understanding. Further, the proposed rule change will provide a more streamlined and effective waiver process for individuals working for a financial services industry affiliate of an ETP Holder, and it will require such individuals to maintain specified levels of competence and knowledge while working in areas ancillary to the investment banking and securities business.

Finally, the Exchange believes that, with the introduction of the SIE and expansion of the pool of individuals who are eligible to take the SIE, the proposed rule change has the potential of enhancing the pool of prospective securities industry professionals by introducing them to securities laws, rules and regulations and appropriate conduct before they join the industry in a registered capacity.

[52] The proposed rule is substantially similar to FINRA Rule 1220.02.

[53] FINRA Rule 1220.02 also includes Options Representative and Registered Options Principal registration categories. NYSE National does not trade options and ETP Holders of NYSE National therefore would not be required to register with the Exchange in those categories and therefore the Exchange is not adopting those categories within proposed Rule 2.1220, Commentary .03 [sic].

[54] The proposed rule is substantially similar to FINRA Rule 1220.04.

[55] The proposed rule is substantially similar to FINRA Rule 1230.

[56] FINRA Rule 1230 provides an exemption from registration with FINRA to persons associated with a FINRA member whose functions are solely and exclusively clerical or ministerial and persons associated with a FINRA member whose functions are related solely and exclusively to (i) effecting transactions on the floor of a national securities exchange and who are appropriately registered with such exchange; (ii) effecting transactions in municipal securities; (iii) effecting transactions in commodities; or (iv) effecting transactions in security futures, provided that any such person is registered with a registered futures association. ETP Holders of NYSE National do not solely and exclusively engage in any of the foregoing transactions and therefore the Exchange is not adopting that portion of FINRA Rule 1230.

[57] The proposed rule is substantially similar to FINRA Rule 1230.01.

[58] 15 U.S.C. 78f(b).

[59] 15 U.S.C. 78f(b)(5).

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 proposed amendments are intended to promote transparency in the Exchange's rules, and consistency with the rules of other SROs with respect to the examination, qualification, and continuing education requirements applicable to ETP Holders and their registered personnel. The Exchange believes that in that regard that any burden on competition would be clearly outweighed by the important regulatory goal of ensuring clear and consistent requirements applicable across SROs, avoiding duplication, and mitigating any risk of SROs implementing different standards in these important areas.

Further, the Exchange does not believe that the proposed amendments will affect competition among securities markets since all SROs are expected to adopt similar rules with uniform standards for qualification, registration and continuing education requirements.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b–4(f)(6)(iii) [60] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative on October 1, 2018 to coincide with the effective date of FINRA's proposed rule change on which the proposal is based.[61] The waiver of the operative delay would make the Exchange's qualification requirements consistent with those of FINRA, as of October 1, 2018. Therefore, the Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposal operative on October 1, 2018.[62]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [63] 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–NYSENAT–2018–21 on the subject line.

Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2018–21. 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–NYSENAT–2018–21 and should be submitted on or before October 31, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21903 Filed 10–9–18; 8:45 am]

BILLING CODE 8011–01–P

[60] 17 CFR 240.19b–4(f)(6)(iii).

[61] *See supra* note 5.

[62] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[63] 15 U.S.C. 78s(b)(2)(B).

[64] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public of that submission.

DATES: Submit comments on or before November 9, 2018.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW, 5th Floor,

Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: SBA Form 2428 is used by Small Business Investment Companies (SBICs) requesting a determination of eligibility for SBA leverage in form of a deferred interest ''Energy Saving Debenture'' to be used only in making an ''Energy Saving Qualified Investment''. Eligibility is based on whether a Small Business to be financed with leverage proceeds is ''primarily engaged'' in Energy Savings Activities as defined in the SBIC program regulations. An SBIC must provide supporting evidence of Small Business eligibility, and the Small Business must certify the information is true and correct.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collections

Title: Financing Eligibility Statement for Usage of Energy Saving Debenture.

Description of Respondents: Small Business Investment Companies.

Form Number: SBA Form 2428.

Estimated Annual Respondents: 5.

Estimated Annual Responses: 5.

Estimated Annual Hour Burden: 50.

Curtis Rich,

Management Analyst.

[FR Doc. 2018–21975 Filed 10–9–18; 8:45 am]

BILLING CODE 8025–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 290 (Sub-No. 402X)]

Norfolk Southern Railway Company—Abandonment Exemption—in the City of Detroit, Mich.

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon rail service in NSR's Detroit Boat Yard.[1] Specifically, NSR seeks to abandon: (1) Approximately 0.63 miles of track extending from milepost D 1.38 (at switch) to a point without a milepost approximately 3,303 feet to the north; (2) NSR's common carrier operating interest over approximately 0.49 miles of connecting track jointly owned and operated by NSR and CSX Transportation, Inc. (CSXT), extending from milepost D 1.23 to milepost D 1.72 (near West Jefferson Ave.) in the City of Detroit, Mich. (collectively, Line). CSXT's right to operate over the jointly owned segment between milepost D 1.23 and milepost D 1.72 will be unaffected by NSR's abandonment. The Line traverses United States Postal Service Zip Codes 48216, 48222 and 48226.

NSR has certified that: (1) It has moved no local or overhead traffic over the Line for at least two years; (2) overhead traffic on the Line, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), 49 CFR 1152.50(d)(1) (notice to governmental agencies), 49 CFR 1105.11 (transmittal letter), and 49 CFR 1105.7 and 1105.8 (environment and historic report), have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[2] this exemption will be effective on November 9, 2018, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 22, 2018. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 30, 2018, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative, William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW, Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void ab initio.

NSR has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by October 15, 2018. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

[1] NSR states that it believes its Detroit Boat Yard track is excepted track under 49 U.S.C. 10906 but it is seeking abandonment authority for that track ''out of an abundance of caution, as some historical operation over the tracks may have exhibited some limited indicia of jurisdictional operations.''

[2] The Board modified its OFA procedures effective July 29, 2017. Among other things, the OFA process now requires potential offerors, in their formal expression of intent, to make a preliminary financial responsibility showing based on a calculation using information contained in the carrier's filing and publicly available information. *See Offers of Financial Assistance,* EP 729 (STB served June 29, 2017); 82 FR 30,997 (July 5, 2017).

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each OFA must be accompanied by the filing fee, which is currently set at $1,800. *See Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.—2017 Update,* EP 542 (Sub-No. 25), slip op. App. B at 13 (STB served Aug. 8, 2018).

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing of a notice of consummation by September 20, 2019, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *www.stb.gov.*

Decided: October 4, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2018–21999 Filed 10–9–18; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

TIME AND DATE: The meeting will occur on November 1, 2018, from 8:30 a.m. to 4:30 p.m., Eastern Daylight Time, and November 2, 2018, from 8:30 a.m. to 12:00 p.m., Eastern Daylight Time.

PLACE: The meeting will be held at the Fairfield Inn & Suites Cape Cod Hyannis, 867 Iyannough Road, Hyannis, MA 02601, and via conference call. Those who cannot attend the meeting in person may call toll-free (866) 210–1669, passcode 5253902#, to listen and participate.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Finance Subcommittee will continue developing and implementing the Unified Carrier Registration Plan and Agreement. An agenda for this meeting will be available no later than 5:00 p.m. Eastern Daylight Time, October 22, 2018, at *https://ucrplan.org.*

CONTACT PERSON FOR MORE INFORMATION: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors, at (505) 827–4565.

Issued on: October 3, 2018.

Larry W. Minor,

Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2018–22117 Filed 10–5–18; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

TIME AND DATE: The meeting will be held on October 25, 2018, from 12:00 to 3:00 p.m., Eastern Daylight Time.

PLACE: This meeting will be open to the public via conference call. Any interested person may call 1–866–210–1669, passcode 5253902#, to listen and participate in this meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board. An agenda for this meeting will be available no later than 5:00 p.m. Eastern Daylight Time, October 15, 2018, at: *https://ucrplan.org.*

CONTACT PERSON FOR MORE INFORMATION: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors, at (505) 827–4565.

Issued on: October 3, 2018.

Larry W. Minor,

Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2018–22123 Filed 10–5–18; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein

DATES: Comments must be received on or before November 9, 2018.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 02, 2018.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
SPECIAL PERMITS DATA—Granted			
11379–M	TRW AUTOMOTIVE INC.	173.301, 173.302a	To modify the special permit to authorize additional disposal options. (modes 1,2,3,4,5).

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
11526–M	LINDE GAS NORTH AMERICA LLC.	172.203(a), 173.302a(b), 180.205(a), 180.205(c), 180.205(f), 180.205(g), 180.209(a), 180.209(b), 180.209(g).	To modify the special permit to authorize the removal of annual gain linearity requirement, update RIN locations and update the language on area corrosion patch requirement. (modes 1,2,3,4,5).
11827–M	FUJIFILM ELECTRONIC MATERIALS U.S.A., INC..	180.605(c)(1), 180.352(b)(3)	To modify the special permit to authorize an additional hazardous material.
13220–M	ENTEGRIS, INC.	173.302(a), 173.302c(a)	To modify the special permit to include drawings and specifications for cylinders that have regional markings (e.g. European and China Markings) necessary for export into these regions.
14154–M	CARLETON TECHNOLOGIES, INC..	173.302a(a)(1), 173.304a(a)(1), 180.205.	To modify the special permit to authorize additional Division 2.2 gases.
14424–M	CHART, INC.	172.301(c), 177.834(h)	To update the permit with the most current tank drawings.
20383–M	SACRAMENTO EXECUTIVE HELICOPTERS, INC.	172.101(j), 172.200, 172.301(c), 173.315(j)(1)(i).	To modify the special permit to authorize additional 2.1 and 2.2 hazmat items.
20597–M	DEPARTMENT OF DEFENSE (MILITARY SURFACE DEPLOYMENT & DISTRIBUTION COMMAND).	173.220	To modify the special permit initially granted on an emergency basis to a permanent basis and to authorize an increase in the amount of fuel to be transported in the remotely piloted vehicles which are fueled while in transportation.
20599–N	ALAMEDA COUNTY OFFICES.	172.320(a), 173.56(b)	To transport certain lifesaving pyrotechnic marine signal devices to disposal by motor vehicle without the use of a manufacturers EX number.
20640–N	Insitu Inc	173.220(d)	To authorize the transportation in commerce of vehicles containing prototype lithium batteries via cargo-only aircraft.
20641–N	THERMO MF PHYSICS LLC	173.304a(a)(1)	To authorize the transportation in commerce of non-DOT specification cylinders containing sulfur hexafluoride gas.
20646–N	OMNI TANKER PTY. LTD.	107.503(b), 107.503(c), 172.102(c)(3), 172.203(a), 173.241, 173.242, 173.243, 178.348–1, 178.345–1, 178.347–1, 180.405, 180.413(d).	To authorize the manufacture, mark, sale, and use of non-DOT specification portable tanks.
20651–N	ATIEVA USA, INC	172.101(j)	To authorize the transportation in commerce of lithium ion batteries in excess of 35 kg by cargo-only aircraft.
20655–N	UTAH STATE UNIVERSITY RESEARCH FOUNDATION.	173.185(a)	To authorize the transportation in commerce of low production lithium ion batteries contained in equipment by cargo-only aircraft.
20659–N	NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	173.301(f), 173.302a(a)(1)	To authorize the transportation in commerce of non-DOT specification pressure vessels that are incorporated into spacecraft.
20661–N	SAFT AMERICA INC	172.400, 172.300, 173.301(g), 173.302a(a)(1), 173.185(b).	To authorize the transportation in commerce of large lithium battery assembly mounted within an ISO shipping container that also contains a securely mounted charged DOT specification cylinder as part of the fire suppression system.
20662–M	DEPARTMENT OF DEFENSE (MILITARY SURFACE DEPLOYMENT & DISTRIBUTION COMMAND).	173.219(b)	To modify the special permit to change it from emergency to permanent. (modes 1,2,3).
20685–N	TOYOTA MOTORSPORT GMBH.	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft.
20692–N	Tyvak Nano-Satellite Systems Inc..	173.185(a)	To authorize the transportation in commerce of low production lithium ion batteries contained in equipment (spacecraft).
20783–N	PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION.	172.700(a), 172.500, 172.200	To authorize the transportation in commerce of cylinders containing flammable gas without being required to use placards, shipping papers or requiring hazmat employees to be trained.
SPECIAL PERMITS DATA—Denied			
12412–M	RAGSDALE SERVICES INC		To modify the special permit to authorize hoses to be attached to discharge outlets during transportation while on private property.
12412–M	CLEAR VIEW ENTERPRISES LLC.		To modify the special permit to authorize transporting hazmat in manifolded IBCs on a flatbed trailer.
12412–M	MIDLANDS CUSTOM APPLICATORS, LLC.	172.203(a), 172.302(c), 177.834(h).	To modify the special permit to authorize hoses to be attached to discharge outlets during transportation while on private property.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20262–N	SHIJIAZHUANG ENRIC GAS EQUIPMENT CO., LTD..	173.302(a), 173.304(a)	To authorize the transportation of certain hazardous materials in non-DOT specification fiber reinforced composite cylinders.
20592–N	AEROJET ROCKETDYNE, INC..	173.56(b)	To authorize the one time transportation of Class 1 materials that no longer in the form previously approved under an EX approval.
20615–N	FSTI, INC.	172.102(c)(7)	To authorize the transportation in commerce of hydrochloric acid in portable tanks fitted with bottom outlets.
20683–N	SPACE EXPLORATION TECHNOLOGIES CORP..	172.504(a)	To authorize the transportation in commerce of explosives incorporated into an article without placarding.
20693–N	LANXESS SOLUTIONS US INC..	172.322, 172.101	To authorize the transportation in commerce of marine pollutants to their initial US destination without marking the packages as marine pollutants.
SPECIAL PERMITS DATA—Withdrawn			
12124–M	W. R. GRACE & CO.—CONN..	173.242, 173.244	To modify the special permit to authorize cargo vessel as an approved mode of transportation.
20657–N	NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	173.302a(a)(1)	To authorize the transportation in commerce of non-DOT specification pressure vessels incorporated into spacecraft via cargo vessel.

[FR Doc. 2018–22019 Filed 10–9–18; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 9, 2018.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 2, 2018.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20784–N	CHEMTRADE PHOSPHOROUS SPECIALTIES LLC.	173.1(b), 173.3(a), 173.24(b)(2), 173.24(c)(1)(i), 173.29(a), 173.35(a), 173.242(d).	To authorize the transportation in commerce of damaged IBCs for the purpose of cleaning, inspection, and repair. (mode 1).
20785–N	BAYER HEALTHCARE LLC	173.306(a)(5)	To authorize transportation in commerce of non-specification plastic aerosol container to expel a flammable liquid (ethanol solution) and a non-flammable liquid. (mode 1).
20786–N	LEMAN AIR	173.185(a)	To authorize the transportation in commerce of prototype lithium batteries by cargo-only aircraft. (mode 4).

[FR Doc. 2018–22017 Filed 10–9–18; 8:45 am]
BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 9, 2018.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 2, 2018.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
10867–M	MEGGITT SAFETY SYSTEMS, INC.	173.302a(a)	To modify the special permit to update current revision letters of cylinder drawings. (modes 1,2,4,5).
11670–M	SCHLUMBERGER TECHNOLOGY CORP.	173.301(f), 173.302a, 173.201(c), 173.202(c), 173.203(c).	To modify the special permit to authorize manufacture, mark and sell of the approved packaging. (modes 1,2,3,4).
15507–M	YIWU JINYU MACHINERY FACTORY.	173.304(a), 173.304(d)	To modify the special permit to authorize additional hazmat and to allow an increase in burst pressures. (modes 1,2,3,4).
20292–M	NUANCE SYSTEMS LLC	173.181, 173.302(a), 173.187, 173.201, 173.211.	To authorize a new design of the approved cylinders which will operate at higher temperatures and authorize additional new cylinders. (modes 1,2,3).
6769–M	CHEMOURS COMPANY FC LLC	173.314, 173.315	To modify the special permit to authorize additional tank cars as approved packaging. (modes 1,2).
10788–M	BEVIN BROS MANUFACTURING COMPANY.	173.302(a)	To modify the special permit to authorize brazing or welding of foot ring attachments to cylinders proceeding pressure testing. (modes 1,2,3,4,5).
11827–M	FUJIFILM ELECTRONIC MATERIALS U.S.A., INC.	180.605(c)(1), 180.352(b)(3)	To modify the special permit to authorize an additional hazardous material. (as authorized by the HMR).
11911–M	TRANSFER FLOW, INC	177.834(h), 178.700(c)(1)	To modify the special permit to authorize addition of better sealing refueling caps. (mode 1).
11970–M	UNIVATION TECHNOLOGIES, LLC.	173.242	To modify the special permit to authorize the pressure test being done pneumatically using nitrogen. (modes 1,2,3).
12124–M	W. R. GRACE & CO.—CONN	173.242, 173.244	To modify the special permit to authorize cargo vessel as an approved mode of transportation. modes 1,3).
13220–M	ENTEGRIS, INC	173.302(a), 173.302c(a)	To modify the special permit to include drawings and specifications for cylinders that have regional markings (e.g. European and China Markings) necessary for export into these regions. (modes 1,2,3).
14424–M	CHART, INC	172.301(c), 177.834(h)	To update the permit with the most current tank drawings. (mode 1).
20288–M	DEPARTMENT OF DEFENSE (MILITARY SURFACE DEPLOYMENT & DISTRIBUTION COMMAND).	175.10(a)(18)(ii)	To modify the special permit to authorize civilian as well as military personnel to carry on 2 CUPS units. (mode 5).
20351–M	ROEDER CARTAGE COMPANY, INCORPORATED.	180.407(c), 180.407(c), 180.407(e), 180.407(f).	To modify the special permit to remove the requirement for periodic internal visual inspections and to authorize an additional tank dedicated to acetonitrile transportation. (mode 1).
20383–M	SACRAMENTO EXECUTIVE HELICOPTERS, INC.	172.101(j), 172.200, 172.301(c), 173.315(j)(1)(i).	To modify the special permit to authorize additional 2.1 and 2.2 hazmat items. (mode 4).

[FR Doc. 2018–22018 Filed 10–9–18; 8:45 am]
BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

National Advisory Committee on Travel and Tourism Infrastructure; Notice of Public Meeting

AGENCY: Office of the Secretary of Transportation, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the National Advisory Committee on Travel and Tourism Infrastructure (NACTTI).

DATES: The meeting will be held on December 4, from 9:30 a.m. to 5:00 p.m.,

and December 5, 2018, from 9:30 a.m. to 12:00 p.m., EDT.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Individuals wishing for audio participation and any person requiring accessibility accommodations should contact the Official listed in the next section.

FOR FURTHER INFORMATION CONTACT: David Short, Designated Federal Officer, U.S. Department of Transportation, at *NACTTI@dot.gov* or (202) 366–8822. Also visit the NACTTI internet website at *http://www.transportation.gov/NACTTI.*

SUPPLEMENTARY INFORMATION:

I. Background

NACTTI was created in accordance with Section 1431 of the *Fixing America's Surface Transportation* (FAST) *Act* (Pub. L. 114–94: Dec. 4, 2015; 129 Stat. 1312) to provide information, advice, and recommendations to the Secretary of Transportation on matters related to the role of intermodal transportation in facilitating mobility related to travel and tourism activities.

II. Agenda

At the December 4–5, 2018, meeting, the agenda will cover the following topics:

- Recap of October meeting
- Subcommittee Discussion of Activities and Draft Recommendations
- Public Participation
- Review and Vote on Subcommittee Recommendations
- Presentation of NACTTI Recommendations

A final agenda will be posted on the NACTTI internet website at *http://www.transportation.gov/NACTTI* at least one week in advance of the meeting.

III. Public Participation

The meeting will be open to the public on a first-come, first served basis, as space is limited. Members of the public who wish to attend in-person are asked to register, including name and affiliation, to *NACTTI@dot.gov* by November 20, 2018. Individuals requesting accessibility accommodations, such as sign language, interpretation, or other ancillary aids, may do so via email at: *NACTTI@dot.gov* by November 20, 2018.

There will be 30 minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to five minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the Office of the Secretary may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks by 5:00 p.m. EDT on November 20, 2018, for inclusion in the meeting records and for circulation to NACTTI members. Written comments timely submitted from those not selected to speak will nonetheless be accepted and considered as part of the record.

Persons who wish to submit written comments for consideration by NACTTI during the meeting must submit them no later than 5:00 p.m. EDT on November 20, 2018, to ensure transmission to NACTTI prior to the meeting. Comments received after that date and time will be distributed to the members but may not be reviewed prior to the meeting.

Copies of the meeting minutes will be available on the NACTTI internet website at *http://www.transportation.gov/NACTTI.*

Dated: October 4, 2018.

Joel Szabat,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2018–22001 Filed 10–9–18; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

National Advisory Committee on Travel and Tourism Infrastructure; Notice of Public Meeting

AGENCY: Office of the Secretary of Transportation, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the National Advisory Committee on Travel and Tourism Infrastructure (NACTTI).

DATES: The meeting will be held on October 24, 2018, from 2:00 p.m. to 5:00 p.m., EDT.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Individuals wishing for audio participation and any person requiring accessibility accommodations should contact the Official listed in the next section.

FOR FURTHER INFORMATION CONTACT: David Short, Designated Federal Officer, U.S. Department of Transportation, at *NACTTI@dot.gov* or (202) 366–8822. Also visit the NACTTI internet website at *http://www.transportation.gov/NACTTI.*

SUPPLEMENTARY INFORMATION:

I. Background

NACTTI was created in accordance with Section 1431 of the *Fixing America's Surface Transportation* (FAST) *Act* (Pub. Law 114–94: Dec. 4, 2015; 129 Stat. 1312) to provide information, advice, and recommendations to the Secretary of Transportation on matters related to the role of intermodal transportation in facilitating mobility related to travel and tourism activities.

II. Agenda

At the October 24, 2018, meeting, the agenda will cover the following topics:

- Recap of June meeting
- Subcommittee Reports
- Public Participation
- Discussion of Next Steps

A final agenda will be posted on the NACTTI internet website at *http://www.transportation.gov/NACTTI* at least one week in advance of the meeting.

III. Public Participation

The meeting will be open to the public on a first-come, first served basis, as space is limited. Members of the public who wish to attend in-person are asked to register, including name and affiliation, to *NACTTI@dot.gov* by October 15, 2018. Individuals requesting accessibility accommodations, such as sign language, interpretation, or other ancillary aids, may do so via email at: *NACTTI@dot.gov* by October 15, 2018.

There will be 30 minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to five minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the Office of the Secretary may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared

remarks by 5:00 p.m. EDT on October 15, 2018, for inclusion in the meeting records and for circulation to NACTTI members. Written comments timely submitted from those not selected to speak will nonetheless be accepted and considered as part of the record.

Persons who wish to submit written comments for consideration by NACTTI during the meeting must submit them no later than 5:00 p.m. EDT on October 15, 2018, to ensure transmission to NACTTI prior to the meeting. Comments received after that date and time will be distributed to the members but may not be reviewed prior to the meeting.

Copies of the meeting minutes will be available on the NACTTI internet website at *http://www.transportation.gov/NACTTI.*

Dated: October 4, 2018.

Joel Szabat,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2018–21998 Filed 10–9–18; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is updating the entries of 462 persons on OFAC's Specially Designated National and Blocked Persons List (SDN List).

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The Specially Designated Nationals and Blocked Persons (SDN) List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On September 20, 2017, the President issued Executive Order 13810 (E.O. 13810), ''Imposing Additional Sanctions With Respect to North Korea.'' Section 4 of E.O. 13810 authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to impose sanctions on foreign financial institutions upon determining that the foreign financial institution has, on or after the effective date of E.O. 13810, knowingly conducted or facilitated any significant transaction, among others, on behalf of any person whose property and interests in property are blocked pursuant to Executive Order 13551 of August 30, 2010, Executive Order 13687 of January 2, 2015, Executive Order 13722 of March 15, 2016, or E.O. 13810, or of any person whose property and interests in property are blocked pursuant to Executive Order 13382 in connection with North Korea-related activities. Accordingly, OFAC has added the reference ''Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210'' to the SDN list entries for the 462 persons listed below.

Individuals

1. CHA, Sung Jun (a.k.a. CH'A, Su'ng-chun), Beijing, China; DOB 04 Jun 1966; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 472434355 (individual) [DPRK4].

2. CHANG, Chang-ha (a.k.a. JANG, Chang Ha); DOB 10 Jan 1964; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; President of Second Academy of Natural Sciences (individual) [DPRK2] (Linked To: SECOND ACADEMY OF NATURAL SCIENCES).

3. CHANG, Kyong-hwa (a.k.a. JANG, Kyong Hwa); DOB 13 Nov 1951; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Official at Second Academy of Natural Sciences (individual) [DPRK2] (Linked To: SECOND ACADEMY OF NATURAL SCIENCES).

4. CHANG, Myong-Chin (a.k.a. JANG, Myong-Jin); DOB 1966; alt. DOB 1965; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (individual) [NPWMD].

5. CHANG, Wen-Fu (a.k.a. CHANG, Tony; a.k.a. ZHANG, Wen-Fu); DOB 01 Apr 1965; nationality Taiwan; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 211606395 (Taiwan) (individual) [NPWMD].

6. CHI, Yupeng, Room 301, Unit 1, No. 129 Jiangcheng Street, Yuanbao District, Dandong City, Liaoning Province, China; DOB 22 May 1969; nationality China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport E27979708 (China); National ID No. 210602196905220510 (China); Chairman and Majority Owner, Dandong Zhicheng Metallic Material Co., Ltd. (individual) [DPRK3] (Linked To: DANDONG ZHICHENG METALLIC MATERIAL CO., LTD.).

7. CHO, Chun-ryong (a.k.a. JO, Chun Ryong); DOB 04 Apr 1960; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Chairman of the Second Economic Committee (individual) [DPRK2] (Linked To: SECOND ECONOMIC COMMITTEE).

8. CHO, Il-U (a.k.a. CHO, Ch'o'l; a.k.a. CHO, Il Woo; a.k.a. JO, Chol), Korea, North; DOB 10 May 1945; POB Musan, North Hamgyo'ng Province, North Korea; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 736410010 (Korea, North); Director of the Fifth Bureau of the Reconnaissance General Bureau (individual) [DPRK2].

9. CHO, Yon Chun (a.k.a. JO, Yon Jun), Korea, North; DOB 28 Sep 1937; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; First Vice Director of the Organization and Guidance Department (individual) [DPRK2].

10. CHOE, Chang Pong, Korea, North; DOB 02 Jun 1964; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 381320227 (Korea, North) expires 29 Jul 2016; Director of the Investigation Bureau of the Ministry of People's Security (individual) [DPRK2].

11. CHOE, Chun Yong (a.k.a. CH'OE, Ch'un-yo'ng), Moscow, Russia; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 654410078 (Korea, North); Ilsim International Bank representative (individual) [DPRK3] (Linked To: ILSIM INTERNATIONAL BANK).

12. CHOE, Chun-sik (a.k.a. CHOE, Chun Sik; a.k.a. CH'OE, Ch'un-sik), Korea, North; DOB 12 Oct 1954; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (individual) [NPWMD] (Linked To: SECOND ACADEMY OF NATURAL SCIENCES).

13. CHOE, Hwi, Korea, North; DOB 01 Jan 1954 to 31 Dec 1955; Secondary

sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; First Vice Director of the Workers' Party of Korea Propaganda and Agitation Department (individual) [DPRK2].

14. CHOE, Pu Il (a.k.a. CH'OE, Pu-il; a.k.a. CHOI, Bu-il), Korea, North; DOB 06 Mar 1944; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Minister of People's Security (individual) [DPRK3] (Linked To: MINISTRY OF PEOPLE'S SECURITY).

15. CH'OE, So'k-min, Shenyang, China; DOB 25 Jul 1978; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Foreign Trade Bank of the Democratic People's Republic of Korea representative (individual) [DPRK2].

16. CHOE, Song Il, Vietnam; DOB 08 Jun 1973; citizen Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 472320665 (Korea, North) expires 26 Sep 2017; alt. Passport 563120356 (Korea, North) issued 19 Mar 2018; Tanchon Commercial Bank Representative in Vietnam (individual) [NPWMD] (Linked To: TANCHON COMMERCIAL BANK).

17. CHOE, Song Nam (a.k.a. CH'OE, So'ng-nam), Shenyang, China; DOB 07 Jan 1979; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 563320192 expires 09 Aug 2018; Korea Daesong Bank Representative (individual) [DPRK4].

18. CHU, Hyo'k (a.k.a. JU, Hyok), Vladivostok, Russia; DOB 23 Nov 1986; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 836420186 (Korea, North) issued 28 Oct 2016 expires 28 Oct 2021; Foreign Trade Bank of the Democratic People's Republic of Korea representative (individual) [DPRK4].

19. CHU, Kyu-Chang (a.k.a. CHU, Kyu-Ch'ang; a.k.a. JU, Kyu-Chang); DOB 25 Nov 1928; POB Hamju County, South Hamgyong Province, Democratic People's Republic of Korea; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (individual) [NPWMD].

20. HAN, Jang Su (a.k.a. HAN, Chang-su), Moscow, Russia; DOB 08 Nov 1969; POB Pyongyang; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 745420176 expires 19 Oct 2020; Foreign Trade Bank chief representative (individual) [NPWMD].

21. HAN, Kwon U (a.k.a. HAN, Kon U; a.k.a. HAN, Ko'n-u; a.k.a. HAN, Kwo'n-u), Zhuhai, China; DOB 21 Aug 1962; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 745434880; Korea Ryonbong General Corporation Representative in Zhuhai, China (individual) [DPRK2].

22. HO, Yong Il (a.k.a. HO', Yo'ng-il), Dandong, China; DOB 09 Sep 1968; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (individual) [DPRK4].

23. HONG, Jinhua, China; DOB 19 Jan 1972; nationality China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; National Foreign ID Number 210604197201190322 (China); Deputy General Manager, Dandong Hongxiang Industrial Development Co Ltd (individual) [NPWMD] (Linked To: DANDONG HONGXIANG INDUSTRIAL DEVELOPMENT CO LTD).

24. HUISH, Irina Igorevna (a.k.a. BURLOVA, Irina), Russia; South Africa; DOB 18 Jan 1973; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Female (individual) [DPRK3] (Linked To: VELMUR MANAGEMENT PTE LTD).

25. HUSSAIN, Mavungal; DOB 03 Jun 1961; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (individual) [DPRK2] (Linked To: KOREA MINING DEVELOPMENT TRADING CORPORATION).

26. HWANG, Pyong So (a.k.a. HWANG, Pyo'ng-so'), Korea, North; DOB 1940; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vice Chairman of the National Defense Commission (individual) [DPRK2] (Linked To: NATIONAL DEFENSE COMMISSION).

27. HWANG, Su Man (a.k.a. HWANG, Kyong Nam); DOB 06 Apr 1955; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 472220033 (Korea, North) (individual) [DPRK2] (Linked To: KOREA MINING DEVELOPMENT TRADING CORPORATION).

28. HYON, Gwang Il (a.k.a. HYON, Kwang Il), Korea, North; DOB 27 May 1961; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Department Director at the National Aerospace Development Administration (individual) [NPWMD] (Linked To: NATIONAL AEROSPACE DEVELOPMENT ADMINISTRATION).

29. JANG, Bom Su (a.k.a. JANG, Hyon U; a.k.a. JANG, Pom Su), Syria; DOB 15 Apr 1957; alt. DOB 22 Feb 1958; citizen Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Diplomatic Passport 836110034 expires 01 Jan 2020; Tanchon Commercial Bank Representative in Syria (individual) [NPWMD] (Linked To: TANCHON COMMERCIAL BANK).

30. JANG, Song Chol; DOB 12 Mar 1967; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; KOMID representative in Russia (individual) [DPRK2].

31. JANG, Sung Nam, Dalian, China; DOB 14 Jul 1970; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 563120368 (Korea, North) issued 22 Mar 2013 expires 22 Mar 2018; Chief of the Tangun Trading Corporation branch in Dalian, China (individual) [NPWMD] (Linked To: KOREA TANGUN TRADING CORPORATION).

32. JANG, Yong Son; DOB 20 Feb 1957; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; KOMID Representative in Iran (individual) [DPRK2].

33. JI, Sang Jun (a.k.a. CHI, Sang-chun), Moscow, Russia; DOB 03 May 1971; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (individual) [DPRK4].

34. JO, Chol Song (a.k.a. CHO, Ch'o'l-so'ng), Dandong, China; DOB 25 Sep 1984; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 654320502 expires 16 Sep 2019; Korea Kwangson Banking Corporation Deputy Representative (individual) [NPWMD] (Linked To: KOREA KWANGSON BANKING CORP).

35. JO, Kyong-Chol (a.k.a. CHO, Kyo'ng-ch'o'l), Korea, North; DOB 1944 to 1945; POB Korea, North; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; DPRK Director of Military Security Command (individual) [DPRK2].

36. JO, Yong Chol (a.k.a. CHO, Yong Chol), Syria; DOB 30 Sep 1973; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; North Korea's Ministry of State Security Official (individual) [DPRK2].

37. JO, Yong-Won (a.k.a. CHO, Yongwon), Korea, North; DOB 24 Oct 1957; Secondary sanctions risk: North

Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Vice Director of the Organization and Guidance Department (individual) [DPRK2].

38. JON, Myong Guk (a.k.a. CHO'N, Myo'ng-kuk; a.k.a. JON, Yong Sang), Syria; DOB 18 Oct 1976; alt. DOB 25 Aug 1976; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 4721202031 (Korea, North) expires 21 Feb 2017; Diplomatic Passport 836110035 expires 01 Jan 2020; Tanchon Commercial Bank Representative in Syria (individual) [NPWMD] (Linked To: TANCHON COMMERCIAL BANK).

39. JONG, Man Bok (a.k.a. CHO'NG, Man-pok), Dandong, China; DOB 23 Dec 1958; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Korea Ryonbong General Corporation Representative in Dandong, China (individual) [DPRK2].

40. JONG, Song Hwa (Korean: 정성화); DOB 05 Feb 1970; nationality Korea, North; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 927220230 (Korea, North) issued 11 May 2017 expires 11 May 2022 (individual) [DPRK4].

41. JONG, Yong Su, Korea, North; DOB 15 Dec 1950; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 563310172; Minister of Labor (individual) [DPRK2].

42. KANG, Chol Su, Linjiang, China; DOB 13 Feb 1969; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 472234895 (Korea, North); Korea Ryonbong General Corporation Official (individual) [NPWMD] (Linked To: KOREA RYONBONG GENERAL CORPORATION).

43. KANG, Min, Beijing, China; DOB 07 May 1980; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 563132918 expires 04 Feb 2018; Korea Daesong Bank representative (individual) [DPRK4].

44. KANG, Mun-kil (a.k.a. JIAN, WenJi), Korea, North; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport PS 472330208 (Korea, North) expires 04 Jul 2017 (individual) [NPWMD] (Linked To: NAMCHONGANG TRADING CORPORATION).

45. KANG, P'il-Hun (a.k.a. KANG, Phil Hun; a.k.a. KANG, Pil Hoon), Korea, North; DOB 11 Jun 1943; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Director of the General Political Bureau of the Ministry of People's Security (individual) [DPRK2].

46. KANG, Ryong; DOB 21 Aug 1968; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; KOMID official in Syria (individual) [DPRK2].

47. KANG, Song Nam, Korea, North; DOB 28 Jul 1962; POB North P'yo'ngan Province, North Korea; citizen Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 654410025 (Korea, North) expires 14 Oct 2019; Bureau Director (individual) [DPRK3] (Linked To: MINISTRY OF STATE SECURITY).

48. KIL, Jong Hun; DOB 20 Feb 1972; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 472410022; KOMID Representative in Namibia (individual) [DPRK2].

49. KIM, Chol (a.k.a. KIM, Ch'o'l), Dalian, China; DOB 27 Sep 1964; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Korea United Development Bank Representative (individual) [DPRK4].

50. KIM, Chol Nam, Korea, North; DOB 19 Feb 1970; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 563120238 (Korea, North); President of Korea Kumsan Trading Corporation (individual) [NPWMD] (Linked To: KOREA KUMSAN TRADING CORPORATION).

51. KIM, Chol Sam; DOB 11 Mar 1971; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Treasurer, Daedong Credit Bank (individual) [NPWMD].

52. KIM, Ho Kyu (a.k.a. KIM, Ho Gyu; a.k.a. KIM, Ho'-kyu; a.k.a. KIM, Ho-Kyu; a.k.a. PARK, Aleksei), Nakhodka, Russia; DOB 15 Sep 1970; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Korea Ryonbong General Corporation Official (individual) [DPRK2].

53. KIM, Hyok Chol (a.k.a. KIM, Hyo'k-ch'o'l), Zhuhai, China; DOB 09 Jul 1978; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 472235761 expires 06 Jun 2017; Korea United Development Bank representative (individual) [DPRK4].

54. KIM, Il-Nam (a.k.a. KIM, Il Nam), Korea, North; DOB 09 Apr 1958; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Chief, South Hamgyong Province, Ministry of State Security (individual) [DPRK2].

55. KIM, Jong Man (a.k.a. KIM, Cho'ng-man), Korea, North; Zhuhai, China; DOB 16 Jul 1956; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 918320780; Korea United Development Bank representative (individual) [DPRK4].

56. KIM, Jong Sik (a.k.a. KIM, Cho'ng-sik), Korea, North; DOB 01 Jan 1967 to 31 Dec 1969; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Deputy Director of the Workers' Party of Korea Military Industry Department (individual) [DPRK2].

57. KIM, Jong Un, Korea, North; DOB 08 Jan 1984; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Chairman of the Workers' Party of Korea (individual) [DPRK3].

58. KIM, Jung Jong (a.k.a. KIM, Chung Chong), Vietnam; DOB 07 Nov 1966; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 199421147 (Korea, North) expires 29 Dec 2014; alt. Passport 381110042 (Korea, North) expires 25 Jan 2016; alt. Passport 563210184 (Korea, North) expires 18 Jun 2018; Tanchon Commercial Bank Representative in Vietnam (individual) [NPWMD] (Linked To: TANCHON COMMERCIAL BANK).

59. KIM, Kang Jin (a.k.a. KIM, Kang-chin), Korea, North; DOB 22 Apr 1961; POB Pyongyang, North Korea; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions

Regulations sections 510.201 and 510.210; Gender Male; Director, External Construction Bureau (individual) [DPRK2].

60. KIM, Ki Nam, Korea, North; DOB 28 Aug 1929; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Director of the Workers' Party of Korea Propaganda and Agitation Department (individual) [DPRK2].

61. KIM, Kwang Chun; DOB 20 Apr 1967; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Korea Ryungseng Trading Corporation Representative in Shenyang, China (individual) [DPRK2].

62. KIM, Kwang Hyok, Burma; DOB 20 Apr 1970; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 654210025 (Korea, North); Korean Mining Development Trading Corporation Representative in Burma (individual) [DPRK2] (Linked To: KOREA MINING DEVELOPMENT TRADING CORPORATION).

63. KIM, Kwang Yon; DOB 30 Jul 1966; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 563210059 (individual) [DPRK2].

64. KIM, Kwang-Il, Beijing, China; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Tanchon Commercial Bank Deputy Representative to Beijing, China (individual) [NPWMD].

65. KIM, Kyong Hak (a.k.a. KIM, Kyo'ng-hak), Zhuhai, China; DOB 27 Nov 1973; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 654231856; Korea Ryonbong General Corporation Representative in Zhuhai, China (individual) [DPRK2].

66. KIM, Kyong Hyok (a.k.a. KIM, Kyo'ng-hyo'k), Shanghai, China; DOB 05 Nov 1985; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Cheil Credit Bank representative (individual) [DPRK4].

67. KIM, Kyong Il (a.k.a. KIM, Kyo'ng-il), Libya; DOB 01 Aug 1979; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 836210029; Foreign Trade Bank of the Democratic People's Republic of Korea deputy chief representative in Libya (individual) [DPRK2].

68. KIM, Kyong Nam (a.k.a. KIM, Kyo'ng-Nam), Russia; DOB 11 Jul 1976; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Foreign Trade Bank of the Democratic People's Republic of Korea Representative in Russia (individual) [NPWMD] (Linked To: FOREIGN TRADE BANK OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA).

69. KIM, Kyong Ok (a.k.a. KIM, Kyong Ok), Korea, North; DOB 01 Jan 1937 to 31 Dec 1938; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; First Vice Director of the Organization and Guidance Department (individual) [DPRK2].

70. KIM, Kyu; DOB 30 Jul 1968; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; KOMID External Affairs Officer (individual) [DPRK2].

71. KIM, Man Chun (a.k.a. KIM, Man-ch'un), No. 567 Xinshi Street, Linjiang City, China; DOB 25 May 1966; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport PS654320308; Korea Ryonbong General Corporation Representative in Linjiang, China (individual) [DPRK2].

72. KIM, Min Chol, Vietnam; DOB 21 Sep 1967; POB North Korea; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Diplomat at North Korean Embassy (individual) [DPRK2].

73. KIM, Mun Chol (a.k.a. KIM, Mun-ch'o'l), Dandong, China; DOB 25 Mar 1957; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Korea United Development Bank representative (individual) [DPRK3] (Linked To: KOREA UNITED DEVELOPMENT BANK).

74. KIM, Nam Ung, Moscow, Russia; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 654110043 (Korea, North); Ilsim International Bank representative (individual) [DPRK3] (Linked To: ILSIM INTERNATIONAL BANK).

75. KIM, Pyong Chan (a.k.a. KIM, Pyo'ng-ch'an), Korea, North; Zhuhai, China; DOB 09 Jun 1961; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Workers' Party of Korea Official (individual) [DPRK2].

76. KIM, Sang-ho, Yanji, China; DOB 16 May 1957; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 563337601; Korea Daesong Bank representative (individual) [DPRK4].

77. KIM, Se Gon; DOB 13 Nov 1969; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 472310104 (Korea, North); Representative of Ministry of Atomic Energy Industry (individual) [NPWMD] (Linked To: MINISTRY OF ATOMIC ENERGY INDUSTRY).

78. KIM, Sok Chol, Burma; DOB 08 May 1955; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 472310082; North Korean Ambassador to Burma (individual) [DPRK2].

79. KIM, Song (a.k.a. KIM, So'ng), Linjiang, China; DOB 11 Jan 1964; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Representative of the Korea Ryonbong General Corporation in Linjiang, China (individual) [DPRK2].

80. KIM, Song Chol (a.k.a. KIM, Hak Song); DOB 26 Mar 1968; alt. DOB 15 Oct 1970; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 654120219 (Korea, North) expires 24 Feb 2019; alt. Passport 381420565 (Korea, North) expires 23 Nov 2016 (individual) [NPWMD] (Linked To: KOREA MINING DEVELOPMENT TRADING CORPORATION).

81. KIM, Su-Kwang (a.k.a. KIM, Son-gwang; a.k.a. KIM, Son-kwang; a.k.a. KIM, Sou-gwang; a.k.a. KIM, Sou-kwang; a.k.a. KIM, Su-gwang); DOB 18 Aug 1976; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male (individual) [DPRK2].

82. KIM, Tong Chol (a.k.a. KIM, Tong-ch'o'l), Shenyang, China; DOB 28 Jan 1966; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Foreign Trade Bank of the Democratic People's Republic of Korea official (individual) [DPRK2].

83. KIM, Tong-chol, 34 Herbst Street, Windhoek, Namibia; DOB 07 Aug 1968; POB North Korea; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 472336944 issued 10 Sep 2012 expires 10 Sep 2017; Managing Director, Mansudae Overseas Projects; Director, Mansudae Overseas Projects Architectural and Technical Services (PTY) Ltd.; Deputy Managing Director, Qingdao Construction (Namibia) CC (individual) [DPRK3] (Linked To: MANSUDAE OVERSEAS PROJECT

GROUP OF COMPANIES; Linked To: MANSUDAE OVERSEAS PROJECTS ARCHITECTURAL AND TECHNICAL SERVICES (PTY) LIMITED; Linked To: QINGDAO CONSTRUCTION (NAMIBIA) CC).

84. KIM, Tong-ho, Vietnam; DOB 18 Aug 1969; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 745310111 (Korea, North); Tanchon Commercial Bank representative (individual) [DPRK3].

85. KIM, Tong-Myo'ng (a.k.a. KIM, CHIN-SO'K; a.k.a. KIM, HYOK CHOL; a.k.a. KIM, TONG MYONG; a.k.a. ''KIM, JIN SOK''); DOB 1964; alt. DOB 28 Aug 1962; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 290320764 (individual) [NPWMD] (Linked To: TANCHON COMMERCIAL BANK).

86. KIM, Won Hong (a.k.a. KIM, Wo'n-hong), Korea, North; DOB 17 Jul 1945; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Minister of State Security (individual) [DPRK2].

87. KIM, Yo Jong (a.k.a. KIM, Yo'-cho'ng), Korea, North; DOB 26 Sep 1989; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Female; Vice Director of the Workers' Party of Korea Propaganda and Agitation Department (individual) [DPRK2].

88. KIM, Yong Chol (a.k.a. KIM, Yong-Chol; a.k.a. KIM, Young-Cheol; a.k.a. KIM, Young-Chol; a.k.a. KIM, Young-Chul); DOB circa 1947; alt. DOB circa 1946; alt. POB Pyongan-Pukto, North Korea; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (individual) [DPRK].

89. KIM, Yong Chol; DOB 18 Feb 1962; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; KOMID Representative in Iran (individual) [DPRK2].

90. KIM, Yong Su (a.k.a. KIM, Yo'ng-su), Vietnam; DOB 09 Feb 1969; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 654435458 expires 26 Nov 2019; Chief Representative of the Marine Transport Office in Vietnam (individual) [DPRK2].

91. KIRAKOSYAN, Ruben Ruslanovich, Russia; DOB 03 Mar 1980; citizen Russia; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulation section 510.210 (individual) [NPWMD] (Linked To: GEFEST-M LLC; Linked To: KOREA TANGUN TRADING CORPORATION).

92. KO, Chol Man (a.k.a. KO, Ch'o'l-man), Shenyang, China; DOB 30 Sep 1967; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 472420180; Foreign Trade Bank of the Democratic People's Republic of Korea representative (individual) [DPRK2].

93. KO, Ch'o'l-Chae, Dalian, China; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Deputy Representative, KOMID (individual) [NPWMD].

94. KO, Il Hwan (a.k.a. KO, Il-hwan), Shenyang, China; DOB 28 Aug 1967; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 927220424 expires 12 Jun 2022; Korea Daesong Bank Official (individual) [DPRK4].

95. KO, Tae Hun (a.k.a. KIM, Myong Gi); DOB 25 May 1972; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 563120630 (Korea, North) expires 20 Mar 2018; Tanchon Commercial Bank Representative (individual) [NPWMD] (Linked To: TANCHON COMMERCIAL BANK).

96. KOLCHANOV, Vasili Aleksandrovich (Cyrillic:) (a.k.a. KOLCHANOV, Vasiliy Aleksandrovich; a.k.a. KOLCHANOV, Vasily); DOB 25 Mar 1946; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Profinet Director General (individual) [DPRK4] (Linked To: PROFINET PTE. LTD.).

97. KU, Ja Hyong (a.k.a. KU, Cha-hyo'ng), Libya; DOB 08 Sep 1957; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Foreign Trade Bank of the Democratic People's Republic of Korea chief representative in Libya (individual) [DPRK2].

98. KU, Sung Sop (a.k.a. KU, Seung Sub; a.k.a. KU, Su'ng-so'p; a.k.a. KU, Young Hyok), Shenyang, China; DOB 07 Nov 1959; POB Pyongan-bukdo, North Korea; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 321233 (Korea, North); Consul General, Shenyang, China (individual) [DPRK2].

99. KWAK, Chong-chol (a.k.a. KWAK, Jong-chol), Dubai, United Arab Emirates; DOB 01 Jan 1975; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 563220533 (Korea, North) (individual) [DPRK4].

100. LAI, Leonard (a.k.a. LAI, Yong Chian); DOB 16 Jun 1958; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport E3251534E (Singapore) expires 20 Mar 2018 (individual) [DPRK].

101. LI, Hong Ri (Chinese Simplified: 李红日) (a.k.a. LI, Hongri; a.k.a. RI, Hong-il), China; DOB 05 Jul 1964; nationality China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male (individual) [DPRK3] (Linked To: RI, Song-hyok).

102. LUO, Chuanxu, China; DOB 15 Jan 1986; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; National Foreign ID Number 210621198601152385 (China); Financial Manager, Dandong Hongxiang Industrial Development Co Ltd (individual) [NPWMD] (Linked To: DANDONG HONGXIANG INDUSTRIAL DEVELOPMENT CO LTD).

103. MA, Xiaohong, China; DOB 15 Dec 1971; nationality China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport G31122619 (China) issued 02 Sep 2008 expires 01 Sep 2018; National Foreign ID Number 210603197112150023 (China); Director of Dandong Hongxiang Industrial Development Co Ltd (individual) [NPWMD] (Linked To: DANDONG HONGXIANG INDUSTRIAL DEVELOPMENT CO LTD).

104. MICHURIN, Igor Aleksandrovich, Russia; DOB 27 Jun 1978; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 8908104469 (individual) [NPWMD] (Linked To: KOREA TANGUN TRADING CORPORATION; Linked To: ARDIS-BEARINGS LLC).

105. MIN, Byong Chol (a.k.a. MIN, Byong Chun; a.k.a. MIN, Byong-chol; a.k.a. MIN, Pyo'ng-ch'o'l), Korea, North; DOB 10 Aug 1948; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Member of the Worker's Party of Korea's Organization and Guidance Department (individual) [DPRK2].

106. MUN, Cho'ng-Ch'o'l, C/O Tanchon Commercial Bank, Saemaeul 1-Dong, Pyongchon District, Pyongyang, Korea, North; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Tanchon Commercial Bank Representative (individual) [NPWMD].

107. MUN, Kyong Hwan (a.k.a. MUN, Kyo'ng-hwan), Korea, North; Dandong, China; DOB 22 Aug 1967; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 381120660 expires 25 Mar 2016; Bank of East Land representative (individual) [DPRK4].

108. O, Chong Ok (a.k.a. O, Chong Euk; a.k.a. O, Chong-kuk), Korea, North; DOB 01 Jan 1953 to 31 Dec 1953; POB North Hamgyo'ng Province, North Korea; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Director of the First Bureau of the Reconnaissance General Bureau (individual) [DPRK2].

109. O, Kuk-Ryol (a.k.a. O, Ku'k-ryo'l), Korea, North; DOB 07 Jan 1930; POB Onso'ng County, North Hambuk Province, Democratic People's Republic of Korea; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vice Chairman of the National Defense Commission (individual) [NPWMD] [DPRK2] (Linked To: NATIONAL DEFENSE COMMISSION).

110. PAE, Won Uk (a.k.a. PAE, Wo'n-uk), Beijing, China; DOB 22 Aug 1969; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 472120208 (Korea, North) expires 22 Feb 2017; Korea Daesong Bank representative (individual) [DPRK4].

111. PAEK, Chang-Ho (a.k.a. PAEK, Ch'ang-Ho; a.k.a. PAK, Chang-Ho); DOB 18 Jun 1964; POB Kaesong, DPRK; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 381420754 issued 07 Dec 2011 expires 07 Dec 2016 (individual) [NPWMD].

112. PAEK, Jong Sam (a.k.a. PAEK, Chong-sam), Shenyang, China; DOB 17 Jan 1964; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (individual) [DPRK4].

113. PAEK, Se-Bong (a.k.a. PAEK, Se Pong); DOB 21 Mar 1938; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Chairman, Second Economic Committee (individual) [NPWMD].

114. PAK, Bong Nam (a.k.a. LUI, Wai Ming; a.k.a. PAK, Pong Nam; a.k.a. PAK, Pong-nam), Shenyang, China; DOB 06 May 1969; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; ILSIM International Bank Representative in Shenyang, China (individual) [DPRK4].

115. PAK, Chol Nam (a.k.a. PAK, Ch'o'l-nam), Beijing, China; DOB 16 Jun 1971; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 745420413 expires 19 Nov 2020; Cheil Credit Bank representative in Beijing (individual) [DPRK4].

116. PAK, Chun Il, Egypt; DOB 28 Jul 1954; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 563410091 (Korea, North); North Korean Ambassador to Egypt (individual) [DPRK2].

117. PAK, Han Se (a.k.a. KANG, Myong Chol), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 290410121 (Korea, North); Vice Chairman of the Second Economic Committee (individual) [NPWMD] (Linked To: SECOND ECONOMIC COMMITTEE).

118. PAK, Il-Kyu (a.k.a. PAK, Il-Gyu), Shenyang, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 563120235; Korea Ryonbong General Corporation Official (individual) [NPWMD] (Linked To: KOREA PUGANG TRADING CORPORATION).

119. PAK, Kwang Hun (a.k.a. BAK, Gwang Hun; a.k.a. PAK, Gwang Hun; a.k.a. PAK, Kwang-hun), Vladivostok, Russia; DOB 01 Jan 1970 to 31 Dec 1970; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Representative of Korea Ryonbong General Corporation in Vladivostok, Russia (individual) [DPRK2].

120. PAK, Mun Il (a.k.a. PAK, Mun-il), Yanji, China; DOB 01 Jan 1965; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 563335509 expires 27 Aug 2018; Korea Daesong Bank official (individual) [DPRK4].

121. PAK, To-Chun (a.k.a. PAK, Do Chun; a.k.a. PAK, To'-Ch'un); DOB 09 Mar 1944; POB Nangim County, Chagang Province, Democratic People's Republic of Korea; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (individual) [NPWMD].

122. PAK, Tong Sok (a.k.a. PAK, Tong-So'k), Abkhazia, Georgia; DOB 15 Apr 1965; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 745120209 (Korea, North) expires 26 Feb 2020; Korea Ryonbong General Corporation Official (individual) [DPRK2].

123. PAK, Yong Sik (a.k.a. PAK, Yo'ng-sik), Korea, North; DOB 1950; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Member of the Workers' Party of Korea Central Military Commission (individual) [DPRK2] (Linked To: WORKERS' PARTY OF KOREA CENTRAL MILITARY COMMISSION).

124. PANG, Su Nam (a.k.a. PANG, So-nam; a.k.a. PANG, Sunam), Zhuhai, China; DOB 01 Oct 1964; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 472110138; ILSIM International Bank representative in Zhuhai, China (individual) [DPRK2] [DPRK4].

125. PARK, Jin Hyok (a.k.a. DAVID, Andoson; a.k.a. HENNY, Watson; a.k.a. KIM, Hyon U; a.k.a. KIM, Hyon Woo; a.k.a. KIM, Hyon Wu; a.k.a. PAK, Ch'in-hyo'k; a.k.a. PAK, Jin Hek; a.k.a. PAK, Jin Hyok); DOB 15 Aug 1984; alt. DOB 18 Oct 1984; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 290333974 (Korea, North) (individual) [DPRK3].

126. PISKLIN, Mikhail Yur'evich, Russia; DOB 01 Dec 1980; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 71 0588176 (individual) [DPRK3].

127. RA, Kyong-Su (a.k.a. CHANG, MYONG HO; a.k.a. CHANG, MYONG–HO; a.k.a. CHANG, MYO'NG–HO), Beijing, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Tanchon Commercial Bank Representative to Beijing, China (individual) [NPWMD] (Linked To: TANCHON COMMERCIAL BANK).

128. RI, Chong Chol (a.k.a. RI, Jong Chol); DOB 12 Apr 1970; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 199110092 (Korea, North) expires 17 Mar 2014; alt.

Passport 472220503 (Korea, North) expires 06 Jun 2018; alt. Passport 654220197 (Korea, North) expires 07 May 2019 (individual) [DPRK2] (Linked To: KOREA MINING DEVELOPMENT TRADING CORPORATION).

129. RI, Chun Hwan (a.k.a. RI, Ch'un-hwan), Zhuhai, China; DOB 21 Aug 1957; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 563233049 expires 09 May 2018; Foreign Trade Bank of the Democratic People's Republic of Korea representative (individual) [DPRK2].

130. RI, Chun Song (a.k.a. RI, Ch'un-so'ng), Beijing, China; DOB 30 Oct 1965; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 654133553 expires 11 Mar 2019; Foreign Trade Bank of the Democratic People's Republic of Korea representative (individual) [DPRK2].

131. RI, Ho Nam (a.k.a. RI, Ho-nam), Beijing, China; DOB 03 Jan 1967; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 654120210 expires 21 Feb 2019; Ryugyong Commercial Bank representative (individual) [DPRK4].

132. RI, Hong-Sop, c/o General Bureau of Atomic Energy, Haeudong, Pyongchen District, Pyongyang, Korea, North; DOB 1940; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (individual) [NPWMD].

133. RI, Jae Il (a.k.a. RI, Chae-Il), Korea, North; DOB 01 Jan 1934 to 31 Dec 1934; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; First Vice Director of the Workers' Party of Korea Propaganda and Agitation Department (individual) [DPRK2].

134. RI, Je-Son (a.k.a. RI, Che-Son), c/o General Bureau of Atomic Energy, Haeudong, Pyongchen District, Pyongyang, Korea, North; DOB 1938; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (individual) [NPWMD].

135. RI, Jong Won (a.k.a. RI, Cho'ng-Wo'n; a.k.a. RI, Jung Won), Moscow, Russia; DOB 22 Apr 1971; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport PS654320421 expires 11 Mar 2019 (individual) [DPRK2].

136. RI, Man Gon, Korea, North; DOB 1945; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (individual) [DPRK2].

137. RI, Myong Hun (a.k.a. RI, Myo'ng-hun), Korea, North; DOB 14 Mar 1969; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 381420089 expires 11 Oct 2016 (individual) [DPRK2].

138. RI, Pyong Chol (a.k.a. RI, Pyo'ng-ch'o'l), Korea, North; DOB 01 Jan 1948 to 31 Dec 1948; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; First Vice Department Director of the Workers' Party of Korea Central Committee (individual) [DPRK2].

139. RI, Song Chol (a.k.a. RI, So'ng-ch'o'l), Korea, North; DOB 15 Aug 1959; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 290210124 (Korea, North) expires 24 May 2015; Ministry of People's Security Counselor (individual) [DPRK3] (Linked To: MINISTRY OF PEOPLE'S SECURITY).

140. RI, Song-hyok (a.k.a. LI, Cheng He), Beijing, China; DOB 19 Mar 1965; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 654234735 (Korea, North) (individual) [DPRK3].

141. RI, Su Yong, Cuba; DOB 25 Jun 1968; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 654310175; Korea Ryonbong General Corporation Official (individual) [NPWMD] (Linked To: KOREA RYONBONG GENERAL CORPORATION).

142. RI, Thae Chol (a.k.a. RI, Tae-Chol; a.k.a. RI, T'ae-Ch'o'l); DOB 01 Jan 1947 to 31 Dec 1947; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; DPRK First Vice Minister of People's Security (individual) [DPRK2] (Linked To: KOREAN PEOPLE'S ARMY).

143. RI, Tok Jin (a.k.a. RI, To'k-chin), Ji'an, China; DOB 26 Jul 1957; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Korea Ryonbong General Corporation Representative in Ji'an, China (individual) [DPRK2].

144. RI, U'n-so'ng (a.k.a. RI, Eun Song; a.k.a. RI, Un Song), Moscow, Russia; DOB 23 Jul 1969; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Korea United Development Bank representative (individual) [DPRK4].

145. RI, Won Ho, Egypt; DOB 17 Jul 1964; citizen Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 381310014 (Korea, North) expires 12 Jul 2016; North Korea's Ministry of State Security Official (individual) [DPRK2].

146. RI, Yong Mu (a.k.a. RI, Yong-Mu), Korea, North; DOB 25 Jan 1925; POB South Pyo'ngan Province, Pyo'ngso'ng; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vice Chairman of the National Defense Commission (individual) [DPRK2] (Linked To: NATIONAL DEFENSE COMMISSION).

147. RYANG, Tae Chol (a.k.a. RYANG, Tae-ch'o'l), Tumen, China; DOB 07 Jan 1969; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Representative of the Korea Ryonbong General Corporation in Tumen, China (individual) [DPRK2].

148. RYOM, Hui-bong (a.k.a. RYO'M, Hu'i-pong), Dubai, United Arab Emirates; DOB 18 Sep 1961; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 745120026 (Korea, North) (individual) [DPRK4].

149. RYU, Jin; DOB 07 Aug 1965; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 563410081; KOMID official in Syria (individual) [DPRK2].

150. SERBIN, Andrey, Russia; DOB 01 Nov 1986; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male (individual) [DPRK3].

151. SIN, Yong Il (a.k.a. SHIN, Yong Il; a.k.a. SIN, Yo'ng Il), Korea, North; DOB 28 Feb 1948; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport PD654210116 (Korea, North); Deputy Director of the Military Security Command (individual) [DPRK2].

152. SON, Jong Hyok (a.k.a. SON, Min), Egypt; DOB 20 May 1980; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (individual) [NPWMD] (Linked To: KOREA MINING DEVELOPMENT TRADING CORPORATION).

153. SON, Mun San; DOB 23 Jan 1951; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; External Affairs Bureau Chief, General Bureau of Atomic Energy (individual) [NPWMD].

154. STEIGER, Jakob, c/o KOHAS AG, Fribourg, FR, Switzerland; DOB 27 Apr 1941; POB Altstatten, SG, Switzerland; Secondary sanctions risk: North Korea

Sanctions Regulations sections 510.201 and 510.210 (individual) [NPWMD].

155. SU, Lu-Chi (a.k.a. TSAI SU, Lu-Chi), C/O TRANS MERITS CO. LTD., Taipei, Taiwan; C/O GLOBAL INTERFACE COMPANY INC., Taipei, Taiwan; DOB 07 Feb 1950; alt. DOB Nov 1950; POB Yun Lin Hsien, Taiwan; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 210215095 (Taiwan); Corporate Officer (individual) [NPWMD].

156. SUN, Sidong, Liaoning, China; DOB 11 May 1976; POB Dandong, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport G55296890 (China) issued 15 Sep 2011 expires 14 Sep 2021; National ID No. 210623197605112215 (individual) [DPRK4].

157. SUN, Wei (Chinese Simplified: 孙伟), 224-4 Shifu Da Lu, RM 1305, Heping District, Sheyang City, Liaoning Province, China; 200-69 Yinhe East Road, Tianfu County, Benxi Manchurian Autonomous Region, Liaoning Province, China; DOB 01 Jul 1982; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; National ID No. 210521198207010412 (China) expires 13 Aug 2029 (individual) [NPWMD] (Linked To: FOREIGN TRADE BANK OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA).

158. TSAI, Hsein Tai (a.k.a. TSAI, ALEX H.T.), C/O TRANS MERITS CO. LTD, Taipei, Taiwan; C/O GLOBAL INTERFACE COMPANY INC., Taipei, Taiwan; DOB 08 Aug 1945; POB Tainan, Taiwan; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport 131134049 (Taiwan); General Manager—GLOBAL INTERFACE COMPANY INC. (individual) [NPWMD].

159. TSANG, Yung Yuan (Chinese Traditional: 張永源) (a.k.a. TSANG, Neil; a.k.a. TSANG, Niel; a.k.a. TSANG, Yun Yuan), 8th Floor, Number 466, Sec. 2, Neihu Road, Taipei, Taiwan; DOB 20 Oct 1957; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Gender Male; Passport 302001581 (Taiwan) (individual) [DPRK3].

160. YO'N, Cho'ng-Nam, Dalian, China; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Chief Representative, KOMID (individual) [NPWMD].

161. YU, Chol U, Korea, North; DOB 08 Aug 1959; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Director, National Aerospace Development Administration (individual) [DPRK2] (Linked To: NATIONAL AEROSPACE DEVELOPMENT ADMINISTRATION).

162. YU, Kwang Ho; DOB 18 Oct 1956; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (individual) [DPRK2].

163. YUN, Ho-Jin (a.k.a. YUN, Ho-Chin), c/o Namchongang Trading Corporation, Pyongyang, Korea, North; DOB 13 Oct 1944; nationality Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (individual) [NPWMD].

164. ZHOU, Jianshu (a.k.a. CHOW, Tony), China; DOB 15 Jul 1971; nationality China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Passport E09598913 (China) issued 14 Apr 2014 expires 13 Apr 2024; National Foreign ID Number 210602197107153012 (China); General Manager, Dandong Hongxiang Industrial Development Co Ltd (individual) [NPWMD] (Linked To: DANDONG HONGXIANG INDUSTRIAL DEVELOPMENT CO LTD).

Entities

1. 7–28 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8898831 (vessel) [DPRK4] (Linked To: YUSONG SHIPPING CO).

2. ACADEMY OF NATIONAL DEFENSE SCIENCE, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

3. AGRICULTURAL DEVELOPMENT BANK, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK4].

4. AIR KORYO (a.k.a. AIRKORYO), Sunan District, Pyongyang, Korea, North; Swissotel, Hongkong-Macau Center, Dong Si Shi Tiao Li Jiao Qiao, Beijing 10027, China; Chilbosan Hotel, No 81, Shyiwei Road, Heping District, Shenyang, China; Room 412, XinHui Bldg, No 1197 Rd Husong, District SongJiang, Shanghai, China; Soon Vijai Conominun, Room 208, Floor 2, New Petchburi Road, Khwaeng Bangkapi, Huai Khwang, Bangkok 10310, Thailand; Airport, 45, Portovaya Street, Artyom, Primorski Krai 692760, Russia; Mosfilimovskaya 72, Moscow 101000, Russia; Friedrichstr 106B, Berlin 10117, Germany; 20–114, Level 20, Menara Safuan, No.80, Jalan Ampang, Kuala Lumpur 50450, Malaysia; Office 10, 2nd floor, Mghateer complex 31, Block 40, Al Farwaniyah, Kuwait; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

5. AM NOK GANG (a.k.a. AP ROK GANG) General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8132835 (vessel) [DPRK].

6. AMROGGANG DEVELOPMENT BANK (a.k.a. AMNOKKANG DEVELOPMENT BANK), Tongan-dong, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

7. AN SAN 1 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 7303803 (vessel)

[DPRK4] (Linked To: KOREA ANSAN SHIPPING COMPANY).

8. AO NNK–PRIMORNEFTEPRODUCT (a.k.a. IPC–PRIMORNEFTEPRODUCT JSC; a.k.a. NNK–PRIMORNEFTEPRODUKT, AO; a.k.a. OAO PRIMORNEFTEPRODUCT), 55 Ul. Fontannaya, Vladivostok, Primorskiy Krai 690091, Russia; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3] (Linked To: INDEPENDENT PETROLEUM COMPANY).

9. ARDIS–BEARINGS LLC, Office 35, Number2, 1/13/6 Pokrovka Street, Moscow 101000, Russia; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD] (Linked To: KOREA TANGUN TRADING CORPORATION).

10. ASIA BRIDGE 1 8,015DWT; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8916580 (vessel) [DPRK4] (Linked To: HUAXIN SHIPPING HONGKONG LTD).

11. BAEK MA KANG General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 7944683 (vessel) [DPRK].

12. BANK OF EAST LAND (a.k.a. DONGBANG BANK; a.k.a. TONGBANG BANK; a.k.a. TONGBANG U'NHAENG), PO Box 32, BEL Building, Jonseung-Dong, Moranbong District, Pyongyang, Korea, North; SWIFT/BIC BOELKPPY; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK].

13. BEIJING CHENGXING TRADING CO. LTD. (Chinese Simplified: 北京成兴贸易有限公司), Room 2206 Floor 19, 602 Wangjing Yuan, Zhaoyang District, Beijing, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK4].

14. BELLA Russia flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8808264 (vessel) [DPRK4] (Linked To: GUDZON SHIPPING CO LLC).

15. BOGATYR Russia flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9085730 (vessel) [DPRK4] (Linked To: GUDZON SHIPPING CO LLC).

16. CENTRAL BANK OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, 58–1 Mansu-dong, Sungri Street, Central District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

17. CHANG AN SHIPPING & TECHNOLOGY (Chinese Traditional: 長安海運技術有限公司) (a.k.a. CHANG AN SHIPPING AND TECHNOLOGY), Room 2105, DL1849, Trend Centre, 29-31 Cheung Lee Street, Chai Wan, Hong Kong, China; Secondary sanctions risk: North Korea Sanctions Regulation section 510.210; Company Number IMO 5938411 [DPRK4].

18. CHEIL CREDIT BANK (a.k.a. FIRST CREDIT BANK; f.k.a. ''KYONGYONG CREDIT BANK''), 3–18 Pyongyang Information Center, Potonggang District, Pyongyang, Korea, North; Beijing, China; Shenyang, China; Shanghai, China; SWIFT/BIC KYCBKPPY; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK4].

19. CH'OLHYO'N OVERSEAS CONSTRUCTION COMPANY, Kuwait; Algeria; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

20. CHON MA SAN Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8660313 (vessel) [DPRK4] (Linked To: KOREA ACHIM SHIPPING CO).

21. CHON MYONG 1 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8712362 (vessel) [DPRK4] (Linked To: CHONMYONG SHIPPING CO).

22. CHONG BONG Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8909575 (vessel) [DPRK3] (Linked To: CHONGBONG SHIPPING CO LTD).

23. CHONG CHON GANG General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 7937317 (vessel) [DPRK].

24. CHONG RIM 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8916293 (vessel) [DPRK3] (Linked To: OCEAN BUNKERING JV CO).

25. CHONGBONG SHIPPING CO LTD, Room 502, 90, Ponghak-dong, Pyongchon-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 5878589 [DPRK3].

26. CHONGCHONGANG SHIPPING COMPANY LIMITED (a.k.a. CHONG CHON GANG SHIPPING CO. LTD; a.k.a. CHONGCHONGANG SHIPPING CO LTD), 817, Haeun, Donghung-dong, Central District, Pyongyang, Korea, North; 817, Haeun, Tonghun-dong, Chung-gu, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Identification Number IMO 5342883 [DPRK].

27. CHONMYONG SHIPPING CO (a.k.a. CHON MYONG SHIPPING COMPANY LIMITED), Kalrimgil 2-dong, Mangyongdae-guyok,

Pyongyang, Korea, North; Saemaul 2-dong, Pyongchon-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5571322 [DPRK4].

28. CK INTERNATIONAL LTD, c/o Korea Uljibong Shipping Co., Jongbaek 1-dong, Rakrang-guyok, Pyongyang, Korea, North; Room 9, Unit A, 3rd Floor, Cheong Sun Tower, 116–118, Wing Lok Street, Sheung Wan, Hong Kong; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5980332 [DPRK4].

29. COMMERCIAL BANK AGROSOYUZ (Cyrillic:) (a.k.a. AGROSOYUZ (Cyrillic:); a.k.a. AGROSOYUZ LLC (Cyrillic: ; a.k.a. LLC COMMERCIAL BANK AGROSOYUZ (Cyrillic:)), Ulanskiy pereulok, number 13 building 1, Moscow 101000, Russia; SWIFT/BIC AGSZRU31; alt. SWIFT/BIC AGSZRU33; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK4].

30. DAEDONG CREDIT BANK (a.k.a. DAE–DONG CREDIT BANK; a.k.a. DCB; a.k.a. TAEDONG CREDIT BANK), Suite 401, Potonggang Hotel, Ansan-Dong, Pyongchon District, Pyongyang, Korea, North; Ansan-dong, Botongang Hotel, Pongchon, Pyongyang, Korea, North; SWIFT/BIC DCBKKPPY; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

31. DAEWON INDUSTRIES (a.k.a. DAEWON INDUSTRY COMPANY; a.k.a. TAEWO'N INDUSTRIES), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

32. DAI HONG DAN General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 7944695 (vessel) [DPRK].

33. DALIAN GLOBAL UNITY SHIPPING CO., LTD. (Chinese Simplified: 大连宁联船务有限公司) (a.k.a. DALIAN GLOBAL UNITY SHIPPING AGENCY), Dalian, China; Pyongyang, Korea, North; Chongjin, Korea, North; Najin, Korea, North; Hungnam, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

34. DALIAN SUN MOON STAR INTERNATIONAL LOGISTICS TRADING CO., LTD (Chinese Simplified: 大连天宝国际物流有限公司) (a.k.a. DALIAN TIANBAO INTERNATIONAL LOGISTICS CO., LTD.), Room 1801, Chenggong Building, No. 72 Luxun Road, Zhongshan District, Dalian, Liaoning 116000, China; 49 Zhonghsan Road, Shahekou District, Dalian 116021, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK4].

35. DANDONG DONGYUAN INDUSTRIAL CO., LTD. (a.k.a. DANDONG DONGYUAN INDUSTRIAL CO.; a.k.a. DANDONG DONGYUAN INDUSTRY CO., LTD.), No. 34–7, Zhenba Street, Zhenxing District, Dandong 118001, China; Rm 3002 No 99 3 1 Binjiang Middle Rd, Zhenxing District, Dandong, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; D–U–N–S Number 542957624 [DPRK4].

36. DANDONG HONGDA TRADE CO. LTD., China; Room 301, No. 1 Building, Business & Tourist Section, Dandong, Liaoning, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK4].

37. DANDONG HONGXIANG INDUSTRIAL DEVELOPMENT CO LTD, Dandong, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

38. DANDONG JINXIANG TRADE CO., LTD. (a.k.a. CHINA DANDONG KUMSANG TRADE COMPANY, LIMITED; a.k.a. DANDONG METAL COMPANY; a.k.a. JINXIANG TRADING COMPANY), Room 303, Unit 2, Building Number 3, Number 99 Binjiang Lu (Road), Zhenxing District, Dandong, China; Room 303–01, Number 99–3, Binjiang Zhong Lu (Road), Dandong, China; Number 5, Tenth Street, Zhenxing District, Dandong, Liaoning, China; 245–11, Number 1 Wanlian Road, Shenhe District, Shenyang, China; Room 1101, No B, Jiadi Building, Business and Tourist, China; Room 303, Unit 2, 3 Haolou, Building 99 Binjiang Middle Rd., Zhenxing, Dandong, Liaoning 118000, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Nationality of Registration China [DPRK4].

39. DANDONG KEHUA ECONOMY & TRADE CO., LTD. (a.k.a. DANDONG KEHUA ECONOMIC AND TRADE CO. LTD.), China; Room 102, 1/F, Antai Garden, Zhenxing District, Dandong, Liaoning 118000, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK4].

40. DANDONG RICH EARTH TRADING CO., LTD., Jiadi Square, Number 64, Binjiang Middle Road, Room 1001, Building B, Dandong City, Liaoning, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD] (Linked To: KOREA KUMSAN TRADING CORPORATION).

41. DANDONG TIANFU TRADE CO., LTD. (Chinese Simplified: 丹东天富贸易有限公司), No. 5, Shiwei Road, Zhenxing District, Dandong City, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

42. DANDONG XIANGHE TRADING CO., LTD. (a.k.a. DANDONG XIANGHE TRADING CORPORATION; a.k.a. DANDONG XIANGHE TRADING LTD. CO; a.k.a. XIANGHE TRADE CO., LTD.), China; No. 603, 2F, Jiadi Square, Developing Zone, Dandong, Liaoning, China; Beida Rd., Pingxiang City, Chongzuo, Guangxi 532600, China;

Room 703, No. 7 Building, Fangba, Yanjiang Development Zone, Dandong, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK4].

43. DANDONG ZHICHENG METALLIC MATERIAL CO., LTD. (Chinese Simplified: 丹东至诚金属材料有限公司) (a.k.a. DANDONG CHENGTAI; a.k.a. DANDONG CHISONG METAL MATERIALS COMPANY; a.k.a. DANDONG ZHICHENG METAL MATERIALS CO., LTD; a.k.a. DANDONG ZHICHENG METALLIC MINERAL CO., LIMITED), Dandong, Liaoning, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

44. DANDONG ZHONGSHENG INDUSTRY & TRADE CO., LTD. (Chinese Simplified: 丹东中盛工贸有限公司) (a.k.a. DANDONG ZHONGSENG INDUSTRY & TRADE; a.k.a. DANDONG ZHONGSENG INDUSTRY AND TRADE; a.k.a. DANDONG ZHONGSHENG INDUSTRY AND TRADE CO., LTD.; a.k.a. DANDONG ZHONGSHONG INDUSTRY & TRADE; a.k.a. DANDONG ZHONGSHONG INDUSTRY & TRADE CORPORATION LTD.; a.k.a. DANDONG ZHONGSHONG INDUSTRY AND TRADE; a.k.a. DANDONG ZHONGSHONG INDUSTRY AND TRADE CORPORATION LTD.), Building 34, Chengjian Zone, Shiwei Road, Zhenxing District, Dandong, Liaoning, China; Zhenxing District, Building 34, Dandong, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Business Registration Number 312106037714354404 (China) [NPWMD] (Linked To: FOREIGN TRADE BANK OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA).

45. DAWN MARINE MANAGEMENT CO LTD, Changgyong 2-dong, Sosong-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Nationality of Registration Korea, North; Company Number 5926921 [DPRK4].

46. DAWNLIGHT General Cargo Mongolia flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9110236 (vessel) [DPRK].

47. DCB FINANCE LIMITED, Akara Building, 24 de Castro Street, Wickhams Cay I, Road Town, Tortola, Virgin Islands, British; Dalian, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

48. DOK CHON General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 7411260 (vessel) [DPRK].

49. DONG FENG 6 5,515DWT Tanzania flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9008201 (vessel) [DPRK4] (Linked To: SHANGHAI DONGFENG SHPG CO LTD).

50. EKO DEVELOPMENT AND INVESTMENT COMPANY (a.k.a. EKO DEVELOPMENT & INVESTMENT FOOD COMPANY; a.k.a. EKO IMPORT AND EXPORT COMPANY), 35 St. Abd al-Aziz al-Sud, al-Manial, Cairo, Egypt; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK2].

51. EVER BRIGHT 88 Sierra Leone flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8914934 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

52. EVER GLORY Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8909915 (vessel) [DPRK4] (Linked To: KOREA MARINE & INDUSTRIAL TRDG).

53. EXTERNAL CONSTRUCTION BUREAU (a.k.a. EXTERNAL CONSTRUCTION GENERAL COMPANY; a.k.a. EXTERNAL CONSTRUCTION GUIDANCE BUREAU), Korea, North; Kuwait; Qatar; United Arab Emirates; Oman; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

54. FIRST OIL JV CO LTD, Jongbaek 1-dong, Rakrang-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5963351 [DPRK4].

55. FOREIGN TRADE BANK OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (a.k.a. KOREA TRADE BANK; a.k.a. MOOYOKBANK; a.k.a. NORTH KOREA'S FOREIGN TRADE BANK), FTB Building, Jungsong-dong, Central District, Pyongyang, Korea, North; SWIFT/BIC FTBDKPPY; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD] [DPRK3].

56. GEFEST–M LLC, Office 401, Structure 1, Building 1, Chermyanskaya Street, Moscow 127081, Russia; Office Space 5, Room 18, Building 5/7 Rozhdestvenka Street, Moscow 107031, Russia; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD] (Linked To: KOREA TANGUN TRADING CORPORATION).

57. GENERAL BUREAU OF ATOMIC ENERGY (a.k.a. GBAE; a.k.a. GENERAL DEPARTMENT OF ATOMIC ENERGY), Haeudong, Pyongchen District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

58. GLOBAL INTERFACE COMPANY INC. (f.k.a. TRANS SCIENTIFIC CORP.), 9F–1, No. 22, Hsin Yi Rd., Sec. 2, Taipei, Taiwan; 1st Floor, No. 49, Lane 280, Kuang Fu S. Road, Taipei, Taiwan; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Business Registration Document # 12873346 (Taiwan) [NPWMD].

59. GOLD STAR 3 Cambodia flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8405402 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

60. GOO RYONG Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8201870 (vessel) [DPRK4] (Linked To: GOORYONG SHIPPING CO LTD).

61. GOORYONG SHIPPING CO LTD (f.k.a. GOORYONG SHIPPING BANGKOK), Changgyong 2-dong, Sosong-guyok, Pyongyang, Korea, North; Warranton Ville 458Soi 5Pattanakan Soi 44Suanluang, Bangkok 10250, Thailand; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5055293 [DPRK4].

62. GRAND KARO Cambodia flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8511823 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

63. GREEN PINE ASSOCIATED CORPORATION (a.k.a. CHO'NGSONG UNITED TRADING COMPANY; a.k.a. CHONGSONG YONHAP; a.k.a. CH'O'NGSONG YO'NHAP; a.k.a. CHOSUN CHAWO'N KAEBAL T'UJA HOESA; a.k.a. JINDALLAE; a.k.a. KU'MHAERYONG COMPANY LTD; a.k.a. NATURAL RESOURCES DEVELOPMENT AND INVESTMENT CORPORATION; a.k.a. SAENGP'IL COMPANY), c/o Reconnaissance General Bureau Headquarters, Hyongjesan-Guyok, Pyongyang, Korea, North; Nungrado, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK].

64. GUDZON SHIPPING CO LLC (a.k.a. LLC GUDZON SHIPPING CO; a.k.a. OOO GUDZON SHIPPING CO; a.k.a. SK GUDZON, OOO), ul Tigorovaya 20A, Vladivostok, Primorskiy kray 690091, Russia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5753988 [DPRK4].

65. HAEJIN SHIP MANAGEMENT COMPANY LIMITED, Tonghung-dong, Chung-guyok, Pyongyang, Korea, North; Tonghung-dong, Central District, Pyongyang, Korea, North; Email Address *haejinsm@silibank.net.kp;* Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Identification Number IMO 5814866 [DPRK].

66. HANA BANKING CORPORATION LTD (a.k.a. BRILLIANCE BANKING CORPORATION, LTD.; a.k.a. GORGEOUS BANK OF NORTH KOREA; a.k.a. HUALI BANK (Chinese Simplified: 朝鲜华丽银行); a.k.a. HWARYO BANK (Korean: 화려은행)), Haebangsan Hotel, Jungsong-Dong, Sungri Street, Central District, Pyongyang, Korea, North; Dandong, China; SWIFT/BIC BRBKKPP1; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

67. HANA ELECTRONICS JVC (a.k.a. HANA ELECTRONIC JV COMPANY; a.k.a. HANA ELECTRONICS), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK4].

68. HAO FAN 2 11,658DWT; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8747604 (vessel) [DPRK4] (Linked To: SHEN ZHONG INTERNATIONAL SHPG).

69. HAO FAN 6 13,500DWT; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8628597 (vessel) [DPRK4] (Linked To: SHEN ZHONG INTERNATIONAL SHPG).

70. HAP JANG GANG 6 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9066540 (vessel) [DPRK4] (Linked To: HAPJANGGANG SHIPPING CORP).

71. HAPJANGGANG SHIPPING CORP, Kumsong 3-dong, Mangyongdae-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5787684 [DPRK4].

72. HESONG TRADING CORPORATION, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

73. HOE RYONG Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9041552 (vessel) [DPRK3] (Linked To: HOERYONG SHIPPING CO LTD).

74. HOERYONG SHIPPING CO LTD, 108, Pongnam-dong, Pyongchon-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 5817786 [DPRK3].

75. HONG KONG ELECTRONICS (a.k.a. HONG KONG ELECTRONICS KISH CO), Sanaee St., Kish Island, Iran; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

76. HONGXIANG MARINE HONG KONG LTD (Chinese Traditional: 鴻祥海運(香港)有限公司), Room 1502, 15th Floor, Keen Hung Commercial Building, 80, Queen's Road East, Wan Chai, Hong Kong, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5857588 [DPRK4].

77. HUA FU 10,030DWT Panama flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9020003 (vessel) [DPRK4] (Linked To: CHANG AN SHIPPING & TECHNOLOGY).

78. HUAXIN SHIPPING HONGKONG LTD (Chinese Traditional: 華信船務(香港)有限公司), Room 2105, Trend Centre, 29-31 Chueng Lee Street, Chai Wan, Hong Kong, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5758476 [DPRK4].

79. HWA SONG Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8217685 (vessel) [DPRK4] (Linked To: HWASONG SHIPPING CO LTD).

80. HWANG GUM SAN 2 General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8405270 (vessel) [DPRK].

81. HWASONG SHIPPING CO LTD, Changgyong dong, Sosong-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 543400 [DPRK4].

82. HYOK SIN 2 Bulk Carrier Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8018900 (vessel) [DPRK].

83. ILSIM INTERNATIONAL BANK, Pyongyang, Korea, North; SWIFT/BIC ILSIKPPY; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

84. INDEPENDENT PETROLEUM COMPANY (a.k.a. AKTSIONERNOE OBSHCHESTVO 'NEZAVISIMAYA NEFTEGAZOVAYA KOMPANIYA'; a.k.a. ''NNK, AO''), 1 Arbatskaya Square, Moscow 119019, Russia; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

85. INTERNATIONAL INDUSTRIAL DEVELOPMENT BANK, Jongpyong-Dong, Pyong Chon District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK4].

86. JANG GYONG Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8203933 (vessel) [DPRK4] (Linked To: DAWN MARINE MANAGEMENT CO LTD).

87. JANG JA SAN CHONG NYON HO Bulk Carrier Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8133530 (vessel) [DPRK].

88. JH 86 Cambodia flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8602531 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

89. JI SONG 6 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8898740 (vessel) [DPRK4] (Linked To: PHYONGCHON SHIPPING & MARINE).

90. JI SONG 8 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8503228 (vessel) [DPRK4] (Linked To: PHYONGCHON SHIPPING & MARINE).

91. JIN TAI Sierra Leone flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9163154 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

92. JIN TENG Sierra Leone flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9163166 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

93. JINHOU INTERNATIONAL HOLDINGS CO., LTD. (Chinese Simplified: 金猴集团国际控股有限公司), No. 106, Heping Road, Weihai, Shandong, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

94. JINMYONG JOINT BANK, Korea, North; Dalian, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK4].

95. JINSONG JOINT BANK, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK4].

96. JON JIN 2 Bulk Carrier Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8018912 (vessel) [DPRK].

97. KANG SONG 1 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 6908096 (vessel) [DPRK4] (Linked To: KOREA KUMBYOL TRADING COMPANY).

98. KANGBONG TRADING CORPORATION, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

99. KINGLY WON INTERNATIONAL CO., LTD., Marshall Islands; Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH 96960, Marshall Islands; Taiwan; 8th Floor, Number 466, Section 2, Neihu Road, Taipei, Taiwan; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Commercial Registry Number 90132 (Marshall Islands) [DPRK3] (Linked To: TSANG, Yung Yuan).

100. KOHAS AG, Route des Arsenaux 15, Fribourg, FR 1700, Switzerland; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; C.R. No. CH–217.0.135.719–4 (Switzerland) [NPWMD].

101. KOREA ACHIM SHIPPING CO, Sochang-dong, Chung-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5936312 [DPRK4].

102. KOREA ANSAN SHIPPING COMPANY (a.k.a. KOREA ANSAN SHPG CO), Pyongchon 1-dong, Pyongchon-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5676084 [DPRK4].

103. KOREA COMPLEX EQUIPMENT IMPORT CORPORATION, Rakwon-dong, Pothonggang District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

104. KOREA COMPUTER CENTER (a.k.a. CHOSON COMPUTER CENTER; a.k.a. CHUNG SUN COMPUTER CENTER; a.k.a. KOREA COMPUTER COMPANY), Pyongyang, Korea, North; Germany; China; Syria; India; United Arab Emirates; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

105. KOREA DAEBONG SHIPPING CO, Ansan 1-dong, Pyongchon-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Nationality of Registration Korea, North; Company Number 5145243 [DPRK4].

106. KOREA DAESONG BANK (a.k.a. CHOSON TAESONG UNHAENG; a.k.a. TAESONG BANK), Segori-dong, Gyongheung St., Potonggang District, Pyongyang, Korea, North; SWIFT/BIC KDBKKPPY; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; PHONE 850 2 381 8221; PHONE 850 2 18111 ext. 8221; FAX 850 2 381 4576; TELEX 360230 and 37041 KDP KP; TGMS daesongbank; EMAIL *kdb@co.chesin.com* [DPRK].

107. KOREA DAESONG GENERAL TRADING CORPORATION (a.k.a. DAESONG TRADING; a.k.a. DAESONG TRADING COMPANY; a.k.a. KOREA DAESONG TRADING COMPANY; a.k.a. KOREA DAESONG TRADING CORPORATION), Pulgan Gori Dong 1, Potonggang District, Pyongyang City, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; PHONE 850 2 18111 8204/8208; PHONE 850 2 381 8208/4188; FAX 850 2 381 4431/4432; EMAIL *daesong@co.chesin.com* [DPRK].

108. KOREA EXPO JOINT VENTURE (a.k.a. CHOSUN EXPO; a.k.a. CHOSUN EXPO JOINT VENTURE; a.k.a. KOREA EXPO JOINT VENTURE CORPORATION), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

109. KOREA FOREIGN TECHNICAL TRADE CENTER, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

110. KOREA GENERAL CORPORATION FOR EXTERNAL CONSTRUCTION, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

111. KOREA HAEGUMGANG TRADING CORPORATION (a.k.a. HAEGU'MGANG TRADING COMPANY; a.k.a. KOREA RIMYONGSU TRADING CORPORATION; a.k.a. NAEGU'NGANG TRADING COMPANY), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK2].

112. KOREA HEUNGJIN TRADING COMPANY (a.k.a. HUNJIN TRADING CO.), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

113. KOREA HYOKSIN TRADING CORPORATION (a.k.a. KOREA HYOKSIN EXPORT AND IMPORT CORPORATION), Rakwon-dong, Pothonggang District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

114. KOREA INTERNATIONAL CHEMICAL JOINT VENTURE COMPANY (a.k.a. CHOSON INTERNATIONAL CHEMICALS JOINT OPERATION COMPANY; a.k.a. CHOSUN INTERNATIONAL CHEMICALS JOINT OPERATION COMPANY; a.k.a. INTERNATIONAL CHEMICAL JOINT VENTURE CORPORATION), Hamhung, South Hamgyong Province, Korea, North; Man gyongdae-kuyok, Pyongyang, Korea, North; Mangyungdae-gu, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

115. KOREA KUMBYOL TRADING COMPANY (a.k.a. KUMBYOL TRADING; a.k.a. KUMBYOL TRADING COMPANY OF NORTH KOREAN WORKERS' PARTY), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK4].

116. KOREA KUMSAN TRADING CORPORATION, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD] (Linked To: GENERAL BUREAU OF ATOMIC ENERGY).

117. KOREA KUMUNSAN SHIPPING CO, Pongnam-dong, Pyongchon-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5110478 [DPRK4].

118. KOREA KWANGSON BANKING CORP (a.k.a. KKBC), Jungson-dong, Sungri Street, Central District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

119. KOREA KWANGSONG TRADING CORPORATION, Rakwon-dong, Pothonggang District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

120. KOREA MARINE & INDUSTRIAL TRDG (a.k.a. KOREA MARINE AND INDUSTRIAL TRDG), Changgyong 2-dong, Sosong-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5928635 [DPRK4].

121. KOREA MINING DEVELOPMENT TRADING CORPORATION (a.k.a. CHANGGWANG SINYONG CORPORATION; a.k.a. DPRKN MINING DEVELOPMENT TRADING COOPERATION; a.k.a. EXTERNAL TECHNOLOGY GENERAL CORPORATION; a.k.a. KOREA KUMRYONG TRADING COMPANY; a.k.a. KOREAN MINING AND INDUSTRIAL DEVELOPMENT CORPORATION; a.k.a. NORTH KOREAN MINING DEVELOPMENT TRADING CORPORATION; a.k.a. ''KOMID''), Central District, Pyongyang, Korea, North; Beijing, China; Moscow, Russia; Tehran, Iran; Damascus, Syria; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD] [DPRK2].

122. KOREA MYONGDOK SHIPPING CO, Chilgol 2-dong, Mangyongdae-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5985863 [DPRK4].

123. KOREA NATIONAL INSURANCE CORPORATION (a.k.a. KOREA FOREIGN INSURANCE

COMPANY; a.k.a. KOREA NATIONAL INSURANCE COMPANY), Central District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

124. KOREA OCEAN SHIPPING AGENCY, Moranbong District, Pyongyang, Korea, North; Namp'o Branch, Namp'o, South P'yo'ngan Province, Korea, North; Hungnam Branch, Hungnam, South Hamgyong Province, Korea, North; Chongjin Branch, Songphyong District, Chongjin, North Hamgyong Province, Korea, North; Haeju Branch, Haeju, South Hwanghae Province, Korea, North; Songnim Branch, Songnim, North Hwanghae Province, Korea, North; Wonsan Branch, Wonsan, Kangwon Province, Korea, North; Rason Branch, Rason, North Hamgyong Province, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

125. KOREA OIL EXPLORATION CORPORATION (a.k.a. CHOSUN OIL EXPLORATION COMPANY; a.k.a. KOREA OIL EXPLORATION COMPANY; a.k.a. ''KOEC''), Ulam Dong, Taedonggang District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

126. KOREA PUGANG TRADING CORPORATION, Rakwon-dong, Pothonggang District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

127. KOREA RUNGRADO GENERAL TRADING CORPORATION (a.k.a. RUNGRADO TRADE COMPANY), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

128. KOREA RUNGRADO RYONGAK TRADING CO, Pulgunkori 2-dong, Potonggang-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Nationality of Registration Korea, North; Company Number 5787653 [DPRK4].

129. KOREA RUNGRADO SHIPPING CO, Pulgunkori 1-dong, Potonggang-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Nationality of Registration Korea, North; Company Number 1414592 [DPRK4].

130. KOREA RYONBONG GENERAL CORPORATION (a.k.a. KOREA YONBONG GENERAL CORPORATION; f.k.a. LYONGAKSAN GENERAL TRADING CORPORATION), Pot'onggang District, Pyongyang, Korea, North; Rakwon-dong, Pothonggang District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

131. KOREA RYONGWANG TRADING CORPORATION (a.k.a. KOREA RYENGWANG TRADING CORPORATION), Rakwon-dong, Pothonggang District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

132. KOREA RYONHA MACHINERY JOINT VENTURE CORPORATION (a.k.a. CHOSUN YUNHA MACHINERY JOINT OPERATION COMPANY; a.k.a. KOREA RYENHA MACHINERY J/V CORPORATION; a.k.a. RYONHA MACHINERY JOINT VENTURE CORPORATION), Mangungdae-gu, Pyongyang, Korea, North; Mangyongdae District, Pyongyang, Korea, North; Central District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

133. KOREA SAMILPO SHIPPING CO, Tonghung-dong, Chung-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 1701459 [DPRK3].

134. KOREA SAMJONG SHIPPING CO, Tonghung-dong, Chung-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5954061 [DPRK4].

135. KOREA SAMMA SHPG CO (a.k.a. KOREA SAMMA SHIPPING CO), Rakrang 3-dong, Rakrang-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5145892 [DPRK4].

136. KOREA SOUTH-SOUTH COOPERATION CORPORATION (a.k.a. NAM NAM GENERAL CORPORATION; a.k.a. NAM-NAM (SOUTH-SOUTH) COOPERATIVE GENERAL COMPANY), Central District, Pyongyang, Korea, North; China; Russia; Poland; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

137. KOREA TAESONG TRADING COMPANY, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

138. KOREA TANGUN TRADING CORPORATION (a.k.a. KOREA KURYONGGANG TRADING CORPORATION; a.k.a. RYUNG SENG TRADING CORPORATION; a.k.a. RYUNGSENG TRADING CORPORATION; a.k.a. RYUNGSONG TRADING CORPORATION), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD] [DPRK2].

139. KOREA UNGUM CORPORATION (a.k.a. KOREA UNGUM COMPANY), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3].

140. KOREA UNITED DEVELOPMENT BANK, Pyongyang, Korea, North; SWIFT/BIC KUDBKPPY; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

141. KOREA UNPHA SHIPPING & TRADING (a.k.a. KOREA UNPHA SHIPPING AND TRADING), Puksong-dong, Pyongchon-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 6005935 [DPRK4].

142. KOREA YUJONG SHIPPING CO LTD, Puksong 2-dong, Pyongchon-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5434358 [DPRK4].

143. KOREA ZINC INDUSTRIAL GROUP (a.k.a. KOREA ZINC INDUSTRY GENERAL CORPORATION; a.k.a. KOREA ZINC INDUSTRY GROUP; a.k.a. NORTH KOREAN ZINC INDUSTRY GROUP), Korea, North; Dalian, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

144. KOREA ZUZAGBONG MARITIME LTD, Kinmaul-dong, Moranbong-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 1991835 [DPRK3].

145. KOREAN BUYON SHIPPING CO. LTD. (a.k.a. KOREA BUYON SHIPPING CO; a.k.a. KOREAN BUYON SHIPPING COMPANY LIMITED), Wonsan, Kangwon-do, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 5057119 [DPRK3].

146. KOREAN COMMITTEE FOR SPACE TECHNOLOGY (a.k.a. COMMITTEE FOR SPACE TECHNOLOGY; a.k.a. DEPARTMENT OF SPACE TECHNOLOGY OF NORTH KOREA; a.k.a. DPRK COMMITTEE FOR SPACE TECHNOLOGY; a.k.a. KCST), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions

Regulations sections 510.201 and 510.210 [NPWMD].

147. KOREAN PEOPLE'S ARMY, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

148. KOREAN POLISH SHPG CO LTD, Kinmaul-dong, Moranbong-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 1267131 [DPRK3].

149. KOREAN WORKERS PARTY, PROPAGANDA AND AGITATION DEPARTMENT (a.k.a. PROPAGANDA AND AGITATION DEPARTMENT; a.k.a. PROPAGANDA AND AGITATION DEPARTMENT, WORKERS PARTY OF KOREA), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

150. KORYO BANK, Koryo Bank Building, Pulgun Street, Pyongyang, Korea, North; SWIFT/BIC KORBKPPY; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; all offices worldwide [DPRK3].

151. KORYO COMMERCIAL BANK LTD., Pyongyang, Korea, North; Beijing, China; Shenyang, China; SWIFT/BIC KCBKKPP1; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK4].

152. KORYO CREDIT DEVELOPMENT BANK (a.k.a. DAESONG CREDIT DEVELOPMENT BANK; a.k.a. KORYO GLOBAL CREDIT BANK; a.k.a. KORYO GLOBAL TRUST BANK), Yanggakdo International Hotel, RYUS, Pyongyang, Korea, North; SWIFT/BIC KGCBKPPY; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; all offices worldwide [DPRK3].

153. KOTI CORP, Panama City, Panama; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5982254 [DPRK4].

154. KOTI Panama flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9417115 (vessel) [DPRK4] (Linked To: KOTI CORP).

155. KU BONG RYONG Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8983404 (vessel) [DPRK4] (Linked To: KOREA KUMBYOL TRADING COMPANY).

156. KUM GANG 3 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8966535 (vessel) [DPRK4] (Linked To: KOREA UNPHA SHIPPING & TRADING).

157. KUM SONG 3 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8661850 (vessel) [DPRK4] (Linked To: DAWN MARINE MANAGEMENT CO LTD).

158. KUM SONG 5 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8661719 (vessel) [DPRK4] (Linked To: DAWN MARINE MANAGEMENT CO LTD).

159. KUM SONG 7 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8739396 (vessel) [DPRK4] (Linked To: DAWN MARINE MANAGEMENT CO LTD).

160. KUM UN SAN 3 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8705539 (vessel) [DPRK4] (Linked To: DAWN MARINE MANAGEMENT CO LTD).

161. KUM UN SAN Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8720436 (vessel) [DPRK4] (Linked To: KOREA KUMUNSAN SHIPPING CO).

162. KUMGANG BANK, Kumgang Bank Building, Jungsong-don, Pyongyang, Korea, North; SWIFT/BIC KMBKKPPY; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; all offices worldwide [DPRK3].

163. LEADER (HONG KONG) INTERNATIONAL TRADING LIMITED (a.k.a. LEADER INTERNATIONAL TRADING LIMITED), Room 1610 Nan Fung Tower, 173 Des Voeux Road, Hong Kong; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

164. LIBERTY SHIPPING CO LTD (Chinese Traditional: 利百船務有限公司), Room D, 3rd Floor, Thomson Commercial Building, 8-10 Thomson Road, Wan Chai, Hong Kong, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5513586 [DPRK4].

165. MANSUDAE OVERSEAS PROJECT GROUP OF COMPANIES (a.k.a. MANSUDAE ART STUDIO), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

166. MANSUDAE OVERSEAS PROJECTS ARCHITECTURAL AND TECHNICAL SERVICES (PTY) LIMITED, Namibia; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Registration ID 2001/044 (Namibia) [DPRK3] (Linked To: MANSUDAE OVERSEAS PROJECT GROUP OF COMPANIES).

167. MARITIME ADMINISTRATION OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (a.k.a. MARITIME ADMINISTRATION BUREAU), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

168. MI RIM 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9361407 (vessel) [DPRK3] (Linked To: MIRIM SHIPPING CO LTD).

169. MI RIM Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8713471 (vessel) [DPRK3] (Linked To: MIRIM SHIPPING CO LTD).

170. MILITARY SECURITY COMMAND (a.k.a. KOREAN PEOPLE'S ARMY SECURITY BUREAU; a.k.a. MILITARY SECURITY BUREAU), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

171. MINGZHENG INTERNATIONAL TRADING LIMITED, Flat/RM A30 9/F, Silvercorp International Tower, 707–713 Nathan Road, Kowloon, Mong Kok, Hong Kong; 224–4 Shifa Da Lu, RM 1305, Heping District, Shenyang City, Liaoning Province, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD] (Linked To: FOREIGN TRADE BANK OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA; Linked To: SUN, Wei).

172. MINISTRY OF ATOMIC ENERGY INDUSTRY, Haeun 2-Dong, Pyongchon District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

173. MINISTRY OF CRUDE OIL INDUSTRY (a.k.a. CRUDE OIL INDUSTRY MINISTRY; a.k.a. GENERAL BUREAU OF PETROLEUM INDUSTRY; a.k.a. MINISTRY OF CRUDE OIL), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

174. MINISTRY OF LABOR, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

175. MINISTRY OF LAND AND MARITIME TRANSPORTATION OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (a.k.a. MINISTRY OF LAND AND MARINE TRANSPORT), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

176. MINISTRY OF PEOPLE'S ARMED FORCES, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

177. MINISTRY OF PEOPLE'S SECURITY (a.k.a. MINISTRY OF PUBLIC SECURITY; a.k.a. ''MPS''), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

178. MINISTRY OF PEOPLE'S SECURITY CORRECTIONAL BUREAU (a.k.a. MINISTRY OF PEOPLE'S SECURITY CORRECTIONAL MANAGEMENT BUREAU; a.k.a. MINISTRY OF PEOPLE'S SECURITY PRISON BUREAU), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

179. MINISTRY OF STATE SECURITY (a.k.a. STATE SECURITY DEPARTMENT), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

180. MINISTRY OF STATE SECURITY PRISONS BUREAU (a.k.a. MINISTRY OF STATE SECURITY FARM BUREAU; a.k.a. MINISTRY OF STATE SECURITY FARM GUIDANCE BUREAU; a.k.a. MINISTRY OF STATE SECURITY FARMING BUREAU; a.k.a. STATE SECURITY DEPARTMENT PRISONS BUREAU), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

181. MIRIM SHIPPING CO LTD, Tonghung-dong, Chung-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 5647684 [DPRK3].

182. MU DU BONG General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8328197 (vessel) [DPRK].

183. MUNITIONS INDUSTRY DEPARTMENT (a.k.a. MILITARY SUPPLIES INDUSTRY DEPARTMENT), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

184. MYOHYANG SHIPPING CO, Kumsong 3-dong, Mangyongdae-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5988369 [DPRK4].

185. NAM SAN 8 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8122347 (vessel) [DPRK4] (Linked To: HAPJANGGANG SHIPPING CORP).

186. NAMCHONGANG TRADING CORPORATION (a.k.a. KOREA NAMHUNG TRADING CORPORATION; a.k.a. KOREA TAERYONGGANG TRADING CORPORATION; a.k.a. NAM CHON GANG CORPORATION; a.k.a. NAMCHONGANG TRADING; a.k.a. NAMHUNG; a.k.a. NOMCHONGANG TRADING CO.; a.k.a. ''NCG''), Pyongyang, Korea, North; Chilgol, Mangyongdae District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

187. NAMGANG CONSTRUCTION, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

188. NATIONAL AEROSPACE DEVELOPMENT ADMINISTRATION (a.k.a. ''NADA''), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

189. NATIONAL DEFENSE COMMISSION, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK2].

190. NEPTUN Russia flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 8404991 (vessel) [DPRK4] (Linked To: GUDZON SHIPPING CO LLC).

191. NORTH EAST ASIA BANK, Haebangsan-dong, Central District, Pyongyang, Korea, North; SWIFT/BIC NEABKPPY; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; all offices worldwide [DPRK3].

192. O UN CHONG NYON HO General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8330815 (vessel) [DPRK].

193. OCEAN BUNKERING JV CO, Otan-dong, Chung-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 4199470 [DPRK3].

194. OCEAN MARITIME MANAGEMENT COMPANY LIMITED (a.k.a. EAST SEA SHIPPING COMPANY; a.k.a. HAEYANG CREW MANAGEMENT COMPANY; a.k.a. KOREA MIRAE SHIPPING CO. LTD.), Dongheung-dong Changgwang Street, Chung-ku, PO Box 125, Pyongyang, Korea, North; Donghung Dong, Central District, PO Box 120, Pyongyang, Korea, North; No. 10, 10th Floor, Unit 1, Wu Wu Lu 32–1, Zhong Shan Qu, Dalian City, Liaoning Province, China; 22 Jin Cheng Jie, Zhong Shan Qu, Dalian City, Liaoning Province, China; 43–39 Lugovaya, Vladivostok, Russia; CPO Box 120, Tonghung-dong, Chung-gu, Pyongyang, Korea, North; Bangkok, Thailand; Lima, Peru; Port Said, Egypt; Singapore; Brazil; Hong Kong, China; Shenzhen, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Identification Number IMO 1790183 [DPRK].

195. OFFICE 39 (a.k.a. BUREAU 39; a.k.a. CENTRAL COMMITTEE BUREAU 39; a.k.a. DIVISION 39; a.k.a. OFFICE #39; a.k.a. OFFICE NO. 39; a.k.a. ''THIRD FLOOR''), Second KWP Government Building (Korean-

Ch'o'ngsa), Chungso'ng, Urban Town (Korean-Dong), Chung Ward, Pyongyang, Korea, North; Chung-Guyok (Central District), Sosong Street, Kyongrim-Dong, Pyongyang, Korea, North; Changgwang Street, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK].

196. ORGANIZATION AND GUIDANCE DEPARTMENT, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK2].

197. ORIENTAL TREASURE 9,038DWT Comoros flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9115028 (vessel) [DPRK4] (Linked To: HONGXIANG MARINE HONG KONG LTD).

198. ORION STAR; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9333589 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

199. P–532; Aircraft Manufacture Date 1974; Aircraft Model AN24–RV; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (aircraft) [DPRK3].

200. P–533; Aircraft Manufacture Date 1974; Aircraft Model AN24–RV; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (aircraft) [DPRK3].

201. P–537; Aircraft Manufacture Date 1966; Aircraft Model AN24–B; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (aircraft) [DPRK3].

202. P–552; Aircraft Manufacture Date 1976; Aircraft Model T154–B; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (aircraft) [DPRK3].

203. P–561; Aircraft Manufacture Date 1983; Aircraft Model T154–B; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (aircraft) [DPRK3].

204. P–632; Aircraft Manufacture Date 1994; Aircraft Model T204–300; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (aircraft) [DPRK3].

205. P–633; Aircraft Manufacture Date 2009; Aircraft Model T204–100; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (aircraft) [DPRK3].

206. P–671; Aircraft Manufacture Date 2012; Aircraft Model A148–100; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (aircraft) [DPRK3].

207. P–672; Aircraft Manufacture Date 2015; Aircraft Model A148–100; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (aircraft) [DPRK3].

208. P–813; Aircraft Manufacture Date 1983; Aircraft Model T134–B; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (aircraft) [DPRK3].

209. P–835; Aircraft Manufacture Date 1969; Aircraft Model IL18–D; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (aircraft) [DPRK3].

210. P–881; Aircraft Manufacture Date 1986; Aircraft Model IL62–M; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (aircraft) [DPRK3].

211. P–885; Aircraft Manufacture Date 1979; Aircraft Model IL62–M; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (aircraft) [DPRK3].

212. P–912; Aircraft Manufacture Date 1990; Aircraft Model IL76–TD; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (aircraft) [DPRK3].

213. P–913; Aircraft Manufacture Date 1990; Aircraft Model IL76–TD; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (aircraft) [DPRK3].

214. P–914; Aircraft Manufacture Date 1990; Aircraft Model IL76–TD; Aircraft Operator Air Koryo; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 (aircraft) [DPRK3].

215. PAEK MA Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9066978 (vessel) [DPRK4] (Linked To: PAEKMA SHIPPING CO; Linked To: FIRST OIL JV CO LTD).

216. PAEKMA SHIPPING CO, Care of First Oil JV Co Ltd, Jongbaek 1-dong, Rakrang-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5999479 [DPRK4].

217. PAEKSOL TRADING CORPORATION (a.k.a. BAEKSOL TRADING; a.k.a. BAEKSUL TRADING; a.k.a. KOREA PAEK SOL TRADING; a.k.a. PAEK SOL TRADING CORPORATION; a.k.a. PAEKSO'L CORPORATION; a.k.a. PAEKSO'L TRADING CORPORATION), Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

218. PARTIZAN Russia flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9113020 (vessel) [DPRK4] (Linked To: GUDZON SHIPPING CO LLC).

219. PATRIOT Russia flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9003550 (vessel) [DPRK4] (Linked To: PRIMORYE MARITIME LOGISTICS CO LTD; Linked To: GUDZON SHIPPING CO LLC).

220. PHO THAE General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 7632955 (vessel) [DPRK].

221. PHYONGCHON SHIPPING & MARINE (a.k.a. PHYONGCHON SHIPPING AND MARINE), Otan-dong, Chung-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5878561 [DPRK4].

222. PI RUY GANG General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8829593 (vessel) [DPRK].

223. PO CHON Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8848276 (vessel) [DPRK4] (Linked To: POCHON SHIPPING & MANAGEMENT).

224. PO THONG GANG General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8829555 (vessel) [DPRK].

225. POCHON SHIPPING & MANAGEMENT (a.k.a. POCHON SHIPPING AND MANAGEMENT),

Sonnae-dong, Mangyongdae-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5990271 [DPRK4].

226. PRIMORYE MARITIME LOGISTICS CO LTD (a.k.a. ''PML CO LTD''), 01 ul Tigorovaya 20A, Vladivostok, Primorskiy kray 690091, Russia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Company Number IMO 5993381 [DPRK4].

227. PROFINET PTE. LTD. (Cyrillic: ООО ПРОФИНЕТ) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU PROFINET; a.k.a. PROFINET AGENCY; a.k.a. PROFINET, OOO), 46, ul. Malinovskogo, Nakhodka, Primorski Kr. 692919, Russia; office 2, 30, Pogranichnaya Street, Nakhodka, Primorskiy Region 692922, Russia; Pogranichnaya str. 30–2, Nakhodka 692922, Russia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK4].

228. PRO–GAIN GROUP CORPORATION, 8th Floor, Number 466, Section 2, Neihu Road, Taipei, Taiwan; Le Sanalele Complex, Ground Floor, Vaea Street, Saleufi, Apia, Samoa; Taiwan; Samoa; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3] (Linked To: TSANG, Yung Yuan).

229. PU HUNG 1 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8703933 (vessel) [DPRK4] (Linked To: KOREA RUNGRADO SHIPPING CO).

230. PYONGJIN SHIP MANAGEMENT COMPANY LIMITED, Ryukkyo 1-dong, Pyongchon-guyok, Pyongyang, Korea, North; 102 Ryuggyo 1-dong, Pyongchon District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Identification Number IMO 5817790 [DPRK].

231. QINGDAO CONSTRUCTION (NAMIBIA) CC, ERF 338, Platinum Street, Prosperita, Windhoek, Namibia; P.O. Box 26774, Windhoek, Namibia; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Registration ID 2008/0598 (Namibia) [DPRK3] (Linked To: MANSUDAE OVERSEAS PROJECTS ARCHITECTURAL AND TECHNICAL SERVICES (PTY) LIMITED; Linked To: MANSUDAE OVERSEAS PROJECT GROUP OF COMPANIES).

232. RA NAM 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8625545 (vessel) [DPRK3] (Linked To: KOREA SAMILPO SHIPPING CO).

233. RA NAM 3 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9314650 (vessel) [DPRK3] (Linked To: KOREA SAMILPO SHIPPING CO).

234. RAK RANG Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 7506118 (vessel) [DPRK4] (Linked To: KOREA DAEBONG SHIPPING CO).

235. RAK WON 2 General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8819017 (vessel) [DPRK].

236. RASON INTERNATIONAL COMMERCIAL BANK, Rason, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; all offices worldwide [DPRK3].

237. RECONNAISSANCE GENERAL BUREAU (a.k.a. CHONGCH'AL CH'ONGGUK; a.k.a. KPA UNIT 586; a.k.a. ''RGB''), Hyongjesan-Guyok, Pyongyang, Korea, North; Nungrado, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK] [DPRK2].

238. RUNG RA 1 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8713457 (vessel) [DPRK4] (Linked To: KOREA RUNGRADO RYONGAK TRADING CO).

239. RUNG RA 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9020534 (vessel) [DPRK4] (Linked To: KOREA RUNGRADO RYONGAK TRADING CO).

240. RUNG RA DO Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8989795 (vessel) [DPRK4] (Linked To: KOREA RUNGRADO SHIPPING CO).

241. RYE SONG GANG 1 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 7389704 (vessel) [DPRK4] (Linked To: KOREA KUMBYOL TRADING COMPANY).

242. RYO MYONG Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8987333 (vessel) [DPRK3] (Linked To: KOREAN POLISH SHPG CO LTD).

243. RYONG GANG 2 General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 7640378 (vessel) [DPRK].

244. RYONG GUN BONG General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification 8606173 (vessel) [DPRK].

245. RYUGYONG COMMERCIAL BANK, Korea, North; Beijing, China; Dandong, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK4].

246. SAM JONG 1 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8405311 (vessel) [DPRK4] (Linked To: KOREA SAMJONG SHIPPING CO).

247. SAM JONG 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 7408873 (vessel) [DPRK4] (Linked To: KOREA SAMJONG SHIPPING CO).

248. SAM MA 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8106496 (vessel) [DPRK4] (Linked To: KOREA SAMMA SHPG CO).

249. SECOND ACADEMY OF NATURAL SCIENCES (a.k.a. 2ND ACADEMY OF NATURAL SCIENCES; a.k.a. ACADEMY OF NATURAL SCIENCES; a.k.a. CHAYON KWAHAK–WON; a.k.a. CHE 2 CHAYON KWAHAK–WON; a.k.a. KUKPANG KWAHAK–WON; a.k.a. NATIONAL

DEFENSE ACADEMY; a.k.a. SANSRI; a.k.a. SECOND ACADEMY OF NATURAL SCIENCES RESEARCH INSTITUTE), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

250. SECOND ECONOMIC COMMITTEE, Kangdong, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

251. SENAT SHIPPING LIMITED (a.k.a. SENAT SHIPPING & TRADING PTE LTD; a.k.a. SENAT SHIPPING AGENCY LTD; a.k.a. SENAT SHIPPING AND TRADING LTD; a.k.a. SENAT SHIPPING AND TRADING PRIVATE LIMITED), 36–02 A, Suntec Tower, 9, Temasek Boulevard, Singapore 038989, Singapore; 9 Temasek Boulevard, 36–02A, Singapore 038989, Singapore; Panama City, Panama; PO Box 957, Offshore Incorporations Centre Road Town, Tortola, Virgin Islands, British; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Identification Number IMO 5179245; alt. Identification Number IMO 5405737 [DPRK].

252. SEVASTOPOL Russia flag; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Vessel Registration Identification IMO 9235127 (vessel) [DPRK4] (Linked To: GUDZON SHIPPING CO LLC).

253. SHANGHAI DONGFENG SHPG CO LTD, Room 601, 433, Chifeng Lu, Hongkou Qu, Shanghai 200083, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5721069 [DPRK4].

254. SHEN ZHONG INTERNATIONAL SHPG (Chinese Traditional: 沈忠國際海運有限公司), Unit 503, 5th Floor, Silvercord Tower 2, 30, Canton Road, Tsim Sha Tsui, Kowloon, Hong Kong, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5604962 [DPRK4].

255. SINGWANG ECONOMICS AND TRADING GENERAL CORPORATION, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

256. SINSMS PTE. LTD. (a.k.a. SUN MOON STAR (SINGAPORE) LTD.), 24 Mohamed Sultan Road, Singapore 239012, Singapore; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Registration Number 201318227N (Singapore) [DPRK4].

257. SO BAEK SAN Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8658267 (vessel) [DPRK4] (Linked To: KOREA KUMBYOL TRADING COMPANY).

258. SONG WON Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8613360 (vessel) [DPRK4] (Linked To: SONGWON SHIPPING & MANAGEMENT).

259. SONGI TRADING COMPANY, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

260. SONGWON SHIPPING & MANAGEMENT (a.k.a. SONGWON SHIPPING AND MANAGEMENT), Somun-dong, Chung-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5990268 [DPRK4].

261. SOUTH HILL 2 Sierra Leone flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8412467 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

262. SOUTH HILL 5 Palau flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9138680 (vessel) [DPRK] (Linked To: OCEAN MARITIME MANAGEMENT COMPANY LIMITED).

263. STATE AFFAIRS COMMISSION, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

264. STATE PLANNING COMMISSION, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

265. STRATEGIC ROCKET FORCE OF THE KOREAN PEOPLE'S ARMY (a.k.a. STRATEGIC ROCKET FORCE; a.k.a. THE STRATEGIC ROCKET FORCE COMMAND OF KPA; a.k.a. ''STRATEGIC FORCE''; a.k.a. ''STRATEGIC FORCES''), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

266. TAE DONG GANG General Cargo Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 7738656 (vessel) [DPRK].

267. TANCHON COMMERCIAL BANK (f.k.a. CHANGGWANG CREDIT BANK; f.k.a. KOREA CHANGGWANG CREDIT BANK), Saemul 1-Dong Pyongchon District, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

268. THAE PYONG SAN Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9009085 (vessel) [DPRK3] (Linked To: THAEPHYONGSAN SHIPPING CO LTD).

269. THAEPHYONGSAN SHIPPING CO LTD, Room 402, 90, Sochon-dong, Sosong-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 5878575 [DPRK3].

270. TONG HUNG 1 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8661575 (vessel) [DPRK3] (Linked To: KOREA ZUZAGBONG MARITIME LTD).

271. TONG HUNG 5 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8151415 (vessel) [DPRK4] (Linked To: TONGHUNG SHIPPING & TRADING CO).

272. TONGHUNG SHIPPING & TRADING CO (a.k.a. TONGHUNG SHIPPING AND TRADING CO), Kinmaul-dong, Moranbong-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 1991835 [DPRK4].

273. TOSONG TECHNOLOGY TRADING CORPORATION, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations

sections 510.201 and 510.210 [NPWMD].

274. TRANS MERITS CO. LTD., 1F, No. 49, Lane 280, Kuang Fu S. Road, Taipei, Taiwan; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Business Registration Document # 16316976 (Taiwan) [NPWMD].

275. TRANS MULTI MECHANICS CO. LTD. (a.k.a. FENG SHENG CO., LTD.), 19, Chin Ho Lane, Chung Cheng Rd., Taya District, Taichung City, Taiwan; No 19, Jinhe Lane, Zhongzheng Road, Daya District, Taichung City, Taiwan; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [NPWMD].

276. TRANSATLANTIC PARTNERS PTE. LTD., 10 Anson Road, #29–05A, International Plaza 079903, Singapore; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3].

277. UL JI BONG 6 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9114555 (vessel) [DPRK4] (Linked To: CK INTERNATIONAL LTD).

278. UN RYUL Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8514409 (vessel) [DPRK4] (Linked To: KOREA MARINE & INDUSTRIAL TRDG).

279. VELMUR MANAGEMENT PTE LTD, 2 Marina Blvd., No. 66–08, The Sail at Marina Bay 018987, Singapore; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK3] (Linked To: TRANSATLANTIC PARTNERS PTE. LTD.).

280. VICTORY 2 Mongolia flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8312227 (vessel) [DPRK3] (Linked To: KOREAN BUYON SHIPPING CO. LTD.).

281. VOLASYS SILVER STAR, 41 Ulitsa Klary Tsetskin, Vladivostok, Russia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3] [DPRK4].

282. WEIHAI WORLD–SHIPPING FREIGHT, 419–201, Tongyi Lu, Huancui Qu, Weihai, Shandong 264200, China; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5905801 [DPRK4].

283. WON SAN 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9159787 (vessel) [DPRK4] (Linked To: YUSONG SHIPPING CO).

284. WOORY STAR Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8408595 (vessel) [DPRK4] (Linked To: PHYONGCHON SHIPPING & MARINE).

285. WORKERS' PARTY OF KOREA CENTRAL MILITARY COMMISSION, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210 [DPRK2].

286. XIN GUANG HAI 7,067DWT; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9004700 (vessel) [DPRK4] (Linked To: WEIHAI WORLD–SHIPPING FREIGHT).

287. YANBIAN SILVERSTAR NETWORK TECHNOLOGY CO., LTD. (Chinese Simplified: 延边银星网络科技有限公司; Korean: 은성인터네트기술회사) (a.k.a. CHINA SILVER STAR INTERNET TECHNOLOGY COMPANY; a.k.a. SILVER STAR INTERNET TECHNOLOGY CORPORATION; a.k.a. UNSONG INTERNET TECHNOLOGY CORPORATION; a.k.a. YANBIAN SILVER STAR; a.k.a. YANBIAN SILVERSTAR), 20998B-26 Changbaishan East Road, Yanji, Jilin, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3] [DPRK4].

288. YANG GAK DO Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 6401828 (vessel) [DPRK4] (Linked To: KOREA RUNGRADO SHIPPING CO).

290. YU JONG 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8604917 (vessel) [DPRK4] (Linked To: KOREA YUJONG SHIPPING CO LTD).

291. YU PHYONG 5 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8605026 (vessel) [DPRK4] (Linked To: KOREA MYONGDOK SHIPPING CO).

292. YU SON Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8691702 (vessel) [DPRK4] (Linked To: MYOHYANG SHIPPING CO).

293. YU SONG 12 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9096791 (vessel) [DPRK4] (Linked To: YUSONG SHIPPING CO).

294. YU SONG 7 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8400854 (vessel) [DPRK4] (Linked To: YUSONG SHIPPING CO).

295. YUK TUNG ENERGY PTE LTD, 17–22, UOB Plaza 2, Raffles Place 048624, Singapore; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Company Number IMO 5987860 [DPRK4].

296. YUK TUNG; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 9030591 (vessel) [DPRK4] (Linked To: YUK TUNG ENERGY PTE LTD).

297. YUSONG SHIPPING CO, Uiam-dong, Taedonggang-guyok, Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210;

Nationality of Registration Korea, North; Company Number 5146578 [DPRK4].

298. ZA RYOK 2 Democratic People's Republic of Korea flag; Secondary sanctions risk: North Korea Sanctions Regulations sections 510.201 and 510.210; Vessel Registration Identification IMO 8898738 (vessel) [DPRK4] (Linked To: YUSONG SHIPPING CO).

Dated: October 4, 2018.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2018–21955 Filed 10–9–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On October 4, 2018, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked pursuant to the relevant sanctions authority listed below.

Individuals

1. CULHA, Erhan; DOB 17 Oct 1954; POB Istanbul, Turkey; nationality Turkey; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport U09787534 (Turkey) issued 12 Sep 2014 expires 12 Sep 2024; Personal ID Card 10589535602; General Manager (individual) [DPRK] (Linked To: SIA FALCON INTERNATIONAL GROUP).

Designated pursuant to section 1(a)(ii)(F) of Executive Order 13551 of August 30, 2010, ''Blocking Property of Certain Persons With Respect to North Korea,'' (E.O. 13551) for having acted or purported to act for or on behalf of, directly or indirectly, SIA Falcon International Group, a person whose property and interests in property are blocked pursuant to E.O. 13551.

2. SAHIN, Huseyin, Adnan Saygun, Cad Canan SK N1 Mercan St K 4 D 9 ULUS, Istanbul, Turkey; DOB 01 Apr 1957; POB Gumusova, Turkey; nationality Turkey; citizen Turkey; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport U00618757 (Turkey) issued 12 Aug 2010 expires 11 Aug 2020; National ID No. 31202133364; Chief Executive Officer (individual) [DPRK] (Linked To: SIA FALCON INTERNATIONAL GROUP).

Designated pursuant to section 1(a)(ii)(F) of E.O. 13551 for having acted or purported to act for or on behalf of, directly or indirectly, SIA Falcon International Group, a person whose property and interests in property are blocked pursuant to E.O. 13551.

3. RI, Song Un, Ulaanbaatar, Mongolia; DOB 16 Dec 1955; POB N. Hwanghae, North Korea; nationality Korea, North; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport 836110063 (Korea, North) issued 04 Feb 2016 expires 04 Feb 2021; Economic and Commercial Counsellor at DPRK Embassy in Mongolia (individual) [DPRK2].

Designated pursuant to section 1(a)(ii) of Executive Order 13687 of January 2, 2015, ''Imposing Additional Sanctions With Respect to North Korea,'' (E.O. 13687) for being an official of the Government of North Korea.

Entity

1. SIA INTERNATIONAL GROUP (f.k.a. ATACAR OTOMOTIV DIS TICARET VE SAVUNMA SANAYI LIMITED SIRKETI; a.k.a. FALCON INTERNATIONAL SIA; f.k.a. MURAT INSAAT DIS TICARET VE SAVUNMA SANAYI LIMITED SIRKETI; a.k.a. SABIEDRIBA AR IEROBEZOTU ATBILDIBU 'FALCON INTERNATIONAL'; a.k.a. SIA FALCON INTERNATIONAL TARIM VE HAYVANCILIK LIMITED SIKRETI), Fulya Mah. Buyukdere Cad. Akabe Ticaret Merkezi 78–80A Kat: 1 D: 1 Mecidiyekoy, Sisli, Istanbul, Turkey; Akabe Is Hani, 78–80 A/1, Fulya Mahallesi Buyukdere Caddesi Sisli, Istanbul, Turkey; Varpas Baldones pagasts Baldones novads LV 2125, Latvia; Istanbul, Turkey; Riga, Latvia; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Tax ID No. 6240194059 (Turkey); Registration Number 464933 (Turkey); alt. Registration Number 45403041088 (Latvia) [DPRK].

Designated pursuant to Section 1(a)(ii)(G) of E.O. 13551 for having attempted to, directly or indirectly, import, export, or reexport to, into, or from North Korea any arms or related materiel.

Also designated pursuant to Section 1(a)(ii)(G) of E.O. 13551 for having attempted to, directly or indirectly, import, export, or reexport luxury goods to or into North Korea.

Dated: October 4, 2018.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2018–21956 Filed 10–9–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8908

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Energy Efficient Home Credit.

DATES: Written comments should be received on or before December 10, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the form and instructions should be directed to Martha R. Brinson, at (202)317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Energy Efficient Home Credit.

OMB Number: 1545–1979.

Form Number: 8908.

Abstract: Under current law, the energy efficient home credit is not available for qualified new energy efficient homes sold or leased after 2017 [IRC 45L(g)]. It is, of course, possible that this credit will be extended and available for 2018. Regardless, however, a partner in a fiscal year partnership or shareholder of a fiscal year S corporation may receive an energy efficient home credit that must be reported on a 2018 return [IRC 706(a); IRC 1366(a)]. Recipients of these ''pass-through'' credits who are partnerships or S corporations must report these amounts on Form 8908, line 3. All others can report these amounts directly on Form 3800, Part III, line 1p.

Current Actions:

1. The text for lines 1a, 1b, 2a, and 2b is replaced with ''Reserved for future use'' and the entry boxes are gray shaded, impacting programming and processing of paper returns. (In focus group testing, almost all participants were confused with a line that just had the text ''Reserved'' and wanted to know why it was reserved. Testing ''Reserved for future use'' allayed those concerns.)

2. For electronic programming of lines 1a through 2b, the Schema/Stylesheet Data Element and Element Name for MeF needn't change; a Business Rule for MeF may be added so that any entry other than zero is invalid and isn't allowed.

3. The instructions for lines 1a through 2b will tell filers to treat the amounts on those lines as zero when any form, worksheet, or instruction refers to those lines (for example, line 4 asks filers to add lines 1b, 2b, and 3).

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 198,000.

Estimated Time per Respondent: 2 hours., 35 minutes.

Estimated Total Annual Burden Hours: 512,820.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 3, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–21997 Filed 10–9–18; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 83 Wednesday,

No. 196 October 10, 2018

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Guidance Related to Section 951A (Global Intangible Low-Taxed Income); Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104390–18]

RIN 1545–BO54

Guidance Related to Section 951A (Global Intangible Low-Taxed Income)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations implementing section 951A of the Internal Revenue Code. Section 951A was added to the Internal Revenue Code by the Tax Cuts and Jobs Act, which was enacted on December 22, 2017. This document also contains proposed regulations under sections 951, 1502, and 6038. These proposed regulations would affect United States shareholders of controlled foreign corporations.

DATES: Written or electronic comments and requests for a public hearing must be received by November 26, 2018.

ADDRESSES: Send submissions to: Internal Revenue Service, CC:PA:LPD:PR (REG–104390–18), Room 5203, Post Office Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (indicate REG–104390–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–104390–18).

FOR FURTHER INFORMATION CONTACT: Concerning proposed regulations §§ 1.951–1, 1.951A–0 through 1.951A–7, 1.6038–2, and 1.6038–5, Melinda E. Harvey or Michael Kaercher at (202) 317–6934; concerning proposed regulations §§ 1.1502–12, 1.1502–13, 1.1502–32, and 1.1502–51, Austin Diamond-Jones at (202) 317–6847 or Kevin M. Jacobs at (202) 317–5332; concerning submissions of comments or requests for a public hearing, Regina L. Johnson at (202) 317–6901 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under sections 951, 951A, 1502, and 6038 (the ''proposed regulations''). Added to the Internal Revenue Code (''Code'') by section 14201(a) of the Tax Cuts and Jobs Act, Public Law 115–97 (2017) (''the Act''), section 951A requires a United States shareholder (''U.S. shareholder'') of any controlled foreign corporation (''CFC'') for any taxable year to include in gross income the shareholder's global intangible low-taxed income (''GILTI'') for such taxable year. Section 14201(d) of the Act provides that section 951A applies to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end. The proposed regulations under section 951A provide guidance for U.S. shareholders to determine the amount of GILTI to include in gross income (''GILTI inclusion amount'').

Section 14201(b) of the Act added two new foreign tax credit provisions relating to GILTI—section 960(d) provides a foreign tax credit for taxes properly attributable to tested income taken into account by a domestic corporation under section 951A, and section 904(d)(1)(A) provides that any amount included in gross income under section 951A (other than passive category income) is treated as a separate category of income for purposes of section 904. In addition, section 14202(a) of the Act added section 250 to the Code providing domestic corporations a deduction equal to a percentage of their GILTI inclusion amount and foreign-derived intangible income, subject to a taxable income limitation. The proposed regulations do not include any rules relating to foreign tax credits or the deduction under section 250. Rules relating to foreign tax credits and the deduction under section 250 will be included in separate notices of proposed rulemaking. It is anticipated that the proposed regulations relating to foreign tax credits will provide rules for assigning the section 78 gross-up attributable to foreign taxes deemed paid under section 960(d) to the separate category described in section 904(d)(1)(A).

Before the Act, section 951(b) defined a U.S. shareholder of a foreign corporation as a United States person (''U.S. person'') that holds at least 10 percent of the total combined voting power of all classes of stock entitled to vote in a foreign corporation. Section 14214(a) of the Act amended this definition to include a U.S. person that holds at least 10 percent of the total value of shares of all classes of stock of the foreign corporation. Section 14215(a) of the Act amended section 951(a)(1) to eliminate the requirement that a foreign corporation must be a CFC for an uninterrupted period of 30 days or more in order to give rise to an inclusion under section 951(a)(1) (the ''30-day requirement''). These amendments apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end. See sections 14214(b) and 14215(b) of the Act. The proposed regulations under section 951 incorporate these amendments into the regulations and provide other guidance necessary for U.S. shareholders to coordinate subpart F and GILTI.

Explanation of Provisions

I. Section 951A

A. Overview

The Act established a participation exemption system under which certain earnings of a foreign corporation can be repatriated to a corporate U.S. shareholder without U.S. tax. See section 14101(a) of the Act and section 245A. However, Congress recognized that, without any base protection measures, the participation exemption system could incentivize taxpayers to allocate income—in particular, mobile income from intangible property—that would otherwise be subject to the full U.S. corporate tax rate to CFCs operating in low- or zero-tax jurisdictions. See Senate Committee on the Budget, 115th Cong., Reconciliation Recommendations Pursuant to H. Con. Res. 71, at 365 (Comm. Print 2017) (''Senate Explanation''). Therefore, Congress enacted section 951A in order to subject intangible income earned by a CFC to U.S. tax on a current basis, similar to the treatment of a CFC's subpart F income under section 951(a)(1)(A). However, in order to not harm the competitive position of U.S. corporations relative to their foreign peers, GILTI of a corporate U.S. shareholder is taxed at a reduced rate by reason of the deduction under section 250 (with the resulting U.S. tax further reduced by a portion of foreign tax credits under section 960(d)). Id. Also, due to the administrative difficulty in identifying income attributable to intangible assets, in contrast to income from tangible assets, intangible income (and thus GILTI) is determined for purposes of section 951A based on a formulaic approach, under which a 10-percent return is attributed to certain tangible assets (''qualified business asset investment'' or ''QBAI'') and then each dollar of certain income above such ''normal return'' is effectively treated as intangible income. Id. at 366.

Section 951A(a) provides that a U.S. shareholder of any CFC for a taxable year must include in gross income its GILTI for that year. A GILTI inclusion is treated in a manner similar to a section 951(a)(1)(A) inclusion of a CFC's subpart F income for many purposes of the Code. See section 951A(f)(1). However, a GILTI inclusion is determined in a manner that is fundamentally different from that of an inclusion under section 951(a)(1)(A). Subpart F income is determined at the level of a CFC, and then a U.S. shareholder that owns stock directly or indirectly in the CFC generally includes in gross income its pro rata share of the CFC's subpart F income. The amount of the shareholder's section 951(a)(1)(A) inclusion with respect to one CFC is not taken into account in determining the shareholder's section 951(a)(1)(A) inclusion with respect to another CFC. A U.S. shareholder's pro rata share of a CFC's subpart F income is generally the final step in determining its section 951(a)(1)(A) inclusion.

Similar to an inclusion under section 951(a)(1)(A), the determination of a U.S. shareholder's GILTI inclusion amount begins with the calculation of certain items of each CFC owned by the shareholder, such as tested income, tested loss, or QBAI. A U.S. shareholder then determines its pro rata share of each of these CFC-level items in a manner similar to a shareholder's pro rata share of subpart F income under section 951(a)(2). See section 951A(e)(1). However, in contrast to an inclusion under section 951(a)(1)(A), the U.S. shareholder's pro rata shares of these items are not amounts included in gross income, but rather amounts taken into account by the shareholder in determining the GILTI included in the shareholder's gross income. The U.S. shareholder aggregates (and then nets or multiplies) its pro rata share of each of these items into a single shareholder-level amount—for example, aggregate tested income reduced by aggregate tested loss becomes net CFC tested income and aggregate QBAI multiplied by 10 percent becomes deemed tangible income return. A shareholder's GILTI inclusion amount for a taxable year is then calculated by subtracting one aggregate shareholder-level amount from another—the shareholder's net deemed tangible income return (''net DTIR'') is the excess of deemed tangible income return over certain interest expense, and, finally, its GILTI inclusion amount is the excess of its net CFC tested income over its net DTIR.

As explained above, a U.S. shareholder does not compute a separate GILTI inclusion amount with respect to each CFC for a taxable year, but rather computes a single GILTI inclusion amount by reference to all its CFCs. Cf. section 951A(f)(2) (allocating the U.S. shareholder's GILTI inclusion amount to each tested income CFC for purposes of various sections of the Code). Because a U.S. shareholder's GILTI inclusion amount is determined based on the relevant items of all the CFCs of which it is a U.S. shareholder, the effect of the provision is generally to ensure that a U.S. shareholder is taxed on its GILTI wherever (and through whichever CFC) derived. See, for example, Senate Explanation at 366 (''The Committee believes that calculating GILTI on an aggregate basis, instead of on a CFC-by-CFC basis, reflects the interconnected nature of a U.S. corporation's global operations and is a more accurate way of determining a U.S. corporation's global intangible income.'').

The proposed regulations under section 951A follow an outline similar to the description in this overview. Proposed §§ 1.951A–2 through 1.951A–4 provide detailed guidance on items determined at the CFC level—that is, tested income and tested loss, QBAI, and the items necessary to determine the amount of certain interest expense that reduces net DTIR. Proposed § 1.951A–1(d) provides rules for determining the U.S. shareholder's pro rata share of these CFC-level items. Finally, proposed § 1.951A–1(c) provides rules describing the aggregation of the U.S. shareholder's pro rata share amounts to determine the shareholder's GILTI inclusion amount.

B. General Rules and Definitions

1. Inclusion of GILTI in Gross Income

Proposed § 1.951A–1 provides general rules to determine a U.S. shareholder's GILTI inclusion amount and associated definitions. Some of the definitions distinguish between a CFC's taxable year and a U.S. shareholder's taxable year. For example, a ''U.S. shareholder inclusion year'' refers to the relevant taxable year of the U.S. shareholder and is defined as a taxable year of the U.S. shareholder that includes a CFC inclusion date (as that term is defined in the proposed regulations) of the CFC. See proposed § 1.951A–1(e)(4). A ''CFC inclusion year'' refers to the relevant taxable year of the CFC beginning after December 31, 2017 (the effective date of section 951A for a foreign corporation that is a CFC). See proposed § 1.951A–1(e)(2).

2. Determination of Net DTIR

Proposed § 1.951A–1(c)(3) defines net DTIR, which is computed at the U.S. shareholder level based on QBAI (as defined in proposed § 1.951A–3(b)) held by the shareholder's CFCs and offsets the shareholder's net CFC tested income for purposes of determining the shareholder's GILTI inclusion amount. A CFC's QBAI is equal to its aggregate average adjusted bases in specified tangible property, which is defined as tangible property used in the production of tested income. See section 951A(d)(2)(A) and proposed § 1.951A–3(c)(1). Consistent with the statute and the conference report accompanying the Act (''Conference Report''), the proposed regulations clarify that a tested loss CFC does not have specified tangible property. See H.R. Rep. No. 115–466, at 642, fn. 1536 (2017) (Conf. Rep.) and proposed § 1.951A–3(b), (c)(1), and (g)(1). Accordingly, for purposes of calculating its GILTI inclusion amount, a U.S. shareholder does not take into account the tangible property of a tested loss CFC in calculating its aggregate pro rata share of QBAI, its deemed tangible income return, or its net DTIR.

3. Determination of Pro Rata Share

Section 951A(e)(1) provides that, for purposes of determining a U.S. shareholder's GILTI inclusion amount, the shareholder's pro rata share of a CFC's tested income, tested loss, and QBAI ''shall be determined under the rules of section 951(a)(2) in the same manner as such section applies to subpart F income.'' Accordingly, the proposed regulations incorporate the pro rata share rules of section 951(a)(2) and § 1.951–1(b) and (e), with appropriate modifications to account for the differences between subpart F income, on the one hand, and tested income, tested loss, and QBAI, on the other. Similar to the determination of a U.S. shareholder's pro rata share of subpart F income, proposed § 1.951A–1(d)(1) provides that a U.S. shareholder's pro rata share of any CFC item necessary for calculating its GILTI inclusion amount is determined by reference to the stock such shareholder owns (within the meaning of section 958(a)) in the CFC (''section 958(a) stock'') as of the close of the CFC's taxable year, including section 958(a) stock treated as owned by the U.S. shareholder through a domestic partnership under proposed § 1.951A–5(c). See section I.F of this Explanation of Provisions for an explanation of proposed rules for domestic partnerships and their partners.

In several places, the provisions of proposed § 1.951A–1(d) reference section 951(a)(2) and proposed § 1.951–1(e), which amends existing § 1.951–1(e). See section II.A of this Explanation of Provisions for an explanation of the proposed modifications to § 1.951–1(e). Comments requested guidance on how to determine a preferred shareholder's pro rata share of CFC items for purposes of GILTI. Rules relating to the allocation of tested income to preferred stock are included in proposed § 1.951A–1(d)(2) by cross-reference to proposed § 1.951–1(e). In addition, the proposed regulations provide rules relating to a preferred shareholder's pro rata share of tested loss and QBAI.

A U.S. shareholder's pro rata share of tested income generally is determined in the same manner as its pro rata share of subpart F income under section 951(a)(2) and § 1.951–1(b) and (e) (that is, based on the relative amount that would be received by the shareholder in a year-end hypothetical distribution of all the CFC's current year earnings). See proposed § 1.951A–1(d)(2)(i). For purposes of determining a U.S. shareholder's pro rata share of a CFC's QBAI, the amount of QBAI distributed in the hypothetical distribution of section 951(a)(2)(A) and § 1.951–1(e) is generally proportionate to the amount of the CFC's tested income distributed in the hypothetical distribution. See proposed § 1.951A–1(d)(3)(i). However, a special rule in the proposed regulations provides that if a CFC's QBAI exceeds 10 times its tested income, so that the amount of QBAI allocated to preferred stock would exceed 10 times the tested income allocated to the preferred stock under the general proportionate allocation rule, the excess amount of QBAI is allocated solely to the CFC's common stock. See proposed § 1.951A–1(d)(3)(ii). The proposed cap on QBAI allocated to a preferred shareholder (10 times tested income) is derived from the statutory cap on the amount of QBAI that may be used to compute GILTI (10 percent of aggregate QBAI). These rules in the proposed regulations ensure that the notional ''normal return'' associated with the CFC's QBAI generally flows to the shareholders in a manner consistent with their economic rights in the earnings of the CFC. For illustration, see proposed § 1.951A–1(d)(3)(iii), *Examples 1* and *2.*

For purposes of determining a U.S. shareholder's pro rata share of a CFC's tested loss, the amount distributed in the hypothetical distribution is the amount of the tested loss, rather than the CFC's current earnings and profits, and the tested loss is distributed solely with respect to the CFC's common stock, except in certain cases involving dividend arrearages with respect to preferred stock and common stock with no liquidation value. See proposed § 1.951A–1(d)(4)(i) through (iii). In the latter case, the proposed regulations provide that any amount of tested loss that would otherwise be distributed in the hypothetical distribution to a class of common stock that has no liquidation value is instead distributed to the most junior class of equity with a positive liquidation value to the extent of the liquidation value. See proposed § 1.951A–1(d)(4)(iii). In subsequent years, tested income is allocated to any class of stock to the extent that tested loss was allocated to such class in prior years under this special rule. See proposed § 1.951A–1(d)(2)(ii). In addition, the proposed regulations provide that section 951(a)(2)(B) is applied to reduce tested losses, but modified to treat the amount of a dividend received by another person as equal to the amount of the tested loss, without regard to whether an actual dividend is made by the tested loss CFC. See proposed § 1.951A–1(d)(4)(i)(D). The effect of this rule is to reduce a shareholder's pro rata share of tested loss in proportion to the number of days the shareholder did not own the stock of the tested loss CFC within the meaning of section 958(a). Each of these modifications is intended to ensure that the tested loss of a CFC is allocated to each U.S. shareholder in an amount commensurate with the economic loss borne by the shareholder by reason of the tested loss.

Proposed § 1.951A–1(d)(5) and (6) provide rules for determining a shareholder's pro rata share of ''tested interest expense'' and ''tested interest income.'' Tested interest expense and tested interest income are defined in proposed § 1.951A–4, which is discussed in section I.E of this Explanation of Provisions. A U.S. shareholder's pro rata share of a CFC's tested interest expense for a taxable year equals the amount by which the CFC's tested interest expense reduces the shareholder's pro rata share of tested income, increases the shareholder's pro rata share of tested loss, or both. Conversely, a U.S. shareholder's pro rata share of tested interest income for a taxable year equals the amount by which the CFC's tested interest income increases the shareholder's pro rata share of tested income, reduces the shareholder's pro rata share of tested loss, or both. For example, tested interest income could both increase a U.S. shareholder's pro rata share of tested income and decrease its pro rata share of tested loss if a CFC with tested income for a taxable year would have, without regard to the tested interest income, a tested loss for the taxable year.

The Department of the Treasury (''Treasury Department'') and the IRS request comments on the proposed approaches for determining a U.S. shareholder's pro rata share of a CFC's QBAI and tested loss, including how (or whether) to allocate tested loss of a CFC when no class of CFC stock has positive liquidation value.

4. Foreign Currency Translation

Because GILTI is computed at the U.S. shareholder level, the tested income, tested loss, tested interest expense, tested interest income, and QBAI of a CFC that uses a functional currency other than the U.S. dollar must be translated into U.S. dollars. The appropriate exchange rate under section 989(b)(3) for income inclusions under section 951(a)(1)(A) is the average exchange rate for the taxable year of the foreign corporation. GILTI inclusion amounts are similar to section 951(a)(1)(A) inclusions in that both inclusions are determined based on certain income (and, in the case of GILTI, certain losses) of the CFC for the taxable year of the CFC that ends with or within the taxable year of the U.S. shareholder. Therefore, the proposed regulations prescribe the same translation rule that is used for subpart F income for translating a pro rata share of tested income, tested loss, tested interest expense, tested interest income, and QBAI. See proposed § 1.951A–1(d)(1). Similarly, a U.S. shareholder's GILTI inclusion amount that is allocated to a tested income CFC under section 951A(f)(2) is translated from U.S. dollars into the CFC's functional currency using the average exchange rate for the taxable year of the tested income CFC. See proposed § 1.951A–6(b)(2)(iii).

C. Tested Income and Tested Loss

1. Determination of Gross Income and Allowable Deductions

Under section 951A(c)(2), tested income and tested loss are determined by beginning with a CFC's gross income, excluding certain items (gross income after exclusions, ''gross tested income''), and then subtracting properly allocable deductions determined using rules similar to the rules of section 954(b)(5). While section 951A does not specifically address which expenses of a CFC are allowable as a deduction, existing rules under § 1.952–2 apply to determine the gross income and

deductions of a CFC taken into account in determining its subpart F income. The Treasury Department and the IRS have determined that due to the similarities between gross tested income and subpart F income (for example, gross tested income and subpart F income are both determined at the CFC level and taxed to a U.S. shareholder on a current basis), and the overlap between CFCs impacted by GILTI and subpart F (since a CFC can have both tested income and subpart F income), the determinations of gross income and allowable deductions for GILTI should be made in a manner similar to the determination of subpart F income. Accordingly, the proposed regulations require that the gross income and allowable deduction determinations are made under the rules of § 1.952–2. See proposed § 1.951A–2(c)(2). Under § 1.952–2(a)(1) and proposed § 1.951A–2(c)(2), subject to the special rules in § 1.952–2(c), tested income or tested loss of a CFC is determined by treating the CFC as a domestic corporation taxable under section 11 and by applying the principles of section 61 and the regulations thereunder. Therefore, only items of deduction that would be allowable in determining the taxable income of a domestic corporation may be taken into account for purposes of determining a CFC's tested income or tested loss. If an item of a CFC would be disallowed as a deduction in determining the CFC's taxable income if the CFC were a domestic corporation, the item cannot be taken into account for purposes of determining the tested income or tested loss of the CFC even if the item reduces the CFC's earnings and profits.

The Treasury Department and the IRS request comments on the application of the rules under § 1.952–2 for purposes of determining subpart F income, tested income, and tested loss. In particular, comments are requested as to whether these rules should allow a CFC a deduction, or require a CFC to take into account income, that is expressly limited to domestic corporations under the Code. For example, questions have arisen as to whether a CFC could be entitled to a dividends received deduction under section 245A, even though section 245A by its terms applies only to dividends received by a domestic corporation. See Conf. Rep. at 599, fn. 1486. The Treasury Department and the IRS also welcome comments on other approaches to determining tested income or tested loss, including whether additional modifications should be made to § 1.952–2 for purposes of calculating GILTI.

Comments have also requested guidance on the interactions of section 163(j) and section 267A with section 951A. Issues related to sections 163(j), 245A, and 267A will be addressed in future guidance.

2. Income Excluded From Foreign Base Company Income and Insurance Income by Reason of Section 954(b)(4)

As noted in section I.C.1 of this Explanation of Provisions, section 951A(c)(2) requires that the gross income of the CFC for the taxable year be determined without regard to certain items. One of these items is gross income excluded from foreign base company income (as defined in section 954) or insurance income (as defined in section 953) of the CFC by reason of electing the exception under section 954(b)(4) (''high-tax exception''). In response to comments, the proposed regulations clarify that this exclusion applies only to income that is excluded from foreign base company income and insurance income *solely* by reason of an election made to exclude the income under the high-tax exception of section 954(b)(4). Accordingly, the exclusion does not apply to income that would not otherwise be subpart F income or to categories of income that do not constitute subpart F income due to exceptions other than the high-tax exception (for example, as a result of an exception to foreign personal holding company income under section 954(c)(6) or section 954(h)).

3. Gross Income Taken Into Account in Determining Subpart F Income

Another item excluded from gross tested income is gross income taken into account in determining a corporation's subpart F income. Comments have requested guidance on the interaction between the earnings and profits limitation to subpart F income under section 952(c), including the recapture rule in section 952(c)(2), and the determination of gross tested income for purposes of section 951A. The Treasury Department and the IRS have determined that any income described in section 952(a) is ''taken into account in determining subpart F income'' regardless of whether the section 952(c) limitation applies, and therefore should not be included in gross tested income. Conversely, the recapture of subpart F income under section 952(c)(2), even if by reason of earnings and profits attributable to gross tested income, does not result in excluding any amount from gross tested income. Therefore, the proposed regulations provide that tested income and tested loss are determined without regard to the application of section 952(c). See proposed § 1.951A–2(c)(4).

4. Determination of Allowable Deductions Properly Allocable to Gross Tested Income

Section 951A(c)(2)(A)(ii) provides that tested income and tested loss are determined by subtracting from a CFC's gross tested income ''the deductions (including taxes) properly allocable to such gross income under rules similar to the rules of section 954(b)(5) (or to which such deductions would be allocable if there were such gross income).'' Regulations under section 954(b)(5) require taxpayers to determine net subpart F income by properly allocating and apportioning deductions to the various categories of subpart F income. For this purpose, § 1.954–1(c) provides that taxpayers must first determine the gross amount of each item of income in a category of income (as described in § 1.954–1(c)(1)(iii)) and then allocate and apportion expenses to these categories under the principles of sections 861, 864, and 904(d). Accordingly, in order to apply the principles of section 954(b)(5) to section 951A (as required under section 951A(c)(2)(A)(ii)), the proposed regulations provide that allowable deductions determined under the principles of § 1.952–2 are allocated and apportioned to gross tested income under the principles of section 954(b)(5) and § 1.954–1(c), treating gross tested income that falls within a single separate category (as defined in § 1.904–5(a)(1)) as an additional category of income for this purpose. See proposed § 1.951A–2(c)(3).

Section I.D.5 of this Explanation of Provisions describes a rule that disregards basis in specified tangible property created in certain taxable transfers occurring before the effective date of section 951A for purposes of calculating QBAI. See § 1.951A–3(h)(2). These rules are cross-referenced in proposed § 1.951A–2(c)(5) to disallow any loss or deduction related to such stepped up-basis in any depreciable or amortizable property (including, for example, intangible property) for purposes of calculating tested income or tested loss.

D. QBAI

1. QBAI and Specified Tangible Property

Proposed § 1.951A–3(b) provides that a tested income CFC's QBAI for any taxable year is the average of the CFC's aggregate adjusted bases as of the close of each quarter in specified tangible property that is used in a trade or

business of the corporation and of a type with respect to which a deduction is allowable under section 167. In general, specified tangible property is tangible property used in the production of tested income. See proposed § 1.951A–3(c)(1). Tangible property is defined as property for which the depreciation deduction provided by section 167(a) is eligible to be determined under section 168 (even if the CFC has elected not to apply section 168). See proposed § 1.951A–3(c)(2). The proposed regulations define tangible property by reference to whether the property can be depreciated under section 168 because, unlike section 167, section 168 applies only to tangible property, and there is a substantial amount of guidance delineating property subject to section 168.

Property that is used in the production of both gross tested income and gross income that is not gross tested income (''dual use property'') is proportionately treated as specified tangible property. See proposed § 1.951A–3(d)(1). Generally, the proportion is determined based on the relative amount of gross tested income to income other than gross tested income that the property generates for the taxable year. See proposed § 1.951A–3(d)(2)(i). A special rule is provided for determining the proportion of the property treated as specified tangible property if the property generates no directly identifiable income (for example, because the property is used in general and administrative functions that contribute to the generation of all the income of the CFC). See proposed § 1.951A–3(d)(2)(ii).

Under § 1.167(a)–2, the depreciation allowance for tangible property applies only to that part of the property which is subject to wear and tear, to decay or decline from natural causes, to exhaustion, and to obsolescence. Accordingly, for purposes of section 951A, property that may be in part depreciable qualifies as specified tangible property to the extent it is depreciable. For example, precious metal used in a manufacturing process may be considered specified tangible property in part because it is depreciable in part. See Rev. Rul. 2015–11, 2015–21 I.R.B. 975.

2. Determination of Adjusted Basis of Specified Tangible Property

Proposed § 1.951A–3(e) provides rules to determine the adjusted basis of specified tangible property for purposes of determining QBAI. The general rule in proposed § 1.951A–3(e)(1), like section 951A(d)(3), provides that the adjusted basis in any property is determined by using the alternative depreciation system under section 168(g) (''ADS'') and allocating the depreciation deduction with respect to the property ratably to each day during the period in the taxable year to which the depreciation relates. ADS applies for purposes of determining QBAI irrespective of whether the basis of the property is determined using another depreciation method for other purposes of the Code.

The Treasury Department and the IRS recognize that taxpayers may hold specified tangible property that was acquired before December 22, 2017, that was not depreciated using ADS. Section 951A(d) does not distinguish between property acquired before December 22, 2017, and property acquired on or after December 22, 2017. The Treasury Department and the IRS have concluded that, regardless of the date acquired, the adjusted basis in specified tangible property should be determined under ADS in order for the U.S. shareholder's pro rata share of QBAI to be properly determined and not distorted. Therefore, the proposed regulations provide that when determining QBAI, the adjusted basis in property placed in service before December 22, 2017, is determined using ADS as if this system had applied from the date that the property was placed in service. See proposed § 1.951A–3(e)(3).

3. Short Taxable Year

Net DTIR is intended to reduce a U.S. shareholder's GILTI inclusion amount by an annual return on specified tangible property. To ensure that the net DTIR of a CFC with a taxable year of less than 12 months (a ''short taxable year'') reflects an annual return, the proposed regulations provide a methodology to reduce the QBAI of a CFC with a short taxable year to an amount that, if annualized, would produce an amount equal to the QBAI for a 12-month taxable year. See proposed § 1.951A–3(f).

4. Specified Tangible Property Held Through a Partnership

Section 951A(d)(3) [1] (the ''partnership QBAI paragraph'') states that if a CFC holds an interest in a partnership at the close of the CFC's taxable year, the CFC takes into account under section 951A(d)(1) its ''distributive share of the aggregate of the partnership's adjusted bases (determined as of such date in the hands of the partnership)'' in specified tangible property in computing its QBAI. The partnership QBAI paragraph further provides that a CFC's ''distributive share of the adjusted basis of any property shall be the controlled foreign corporation's distributive share of income with respect to such property.''

The statutory language ''distributive share of the aggregate of the partnership's adjusted basis'' is ambiguous because the term ''distributive share'' is used in subchapter K of the Code with respect to income, gain, loss, and credits of a partnership, but not the bases of assets. A partner of a partnership has a basis in its partnership interest (''outside basis''), while the partnership has a separate basis in the assets of the partnership (''inside basis''). The proposed regulations therefore use the term ''share'' (rather than ''distributive share'') when referring to the amount of the inside basis of a partnership asset that a partner that is a CFC may include in its QBAI.

The partnership QBAI paragraph provides that a CFC ''shall take into account'' under section 951A(d)(1) the CFC's distributive share of the basis in partnership specified tangible property. Because section 951A(d)(1) requires an averaging of basis over the close of each quarter of the taxable year of the CFC, and the term ''distributive share'' as it pertains to basis is ambiguous, it is unclear based on the statute how a CFC determines its distributive share of the basis of partnership specified tangible property for purposes of determining its QBAI. One interpretation of the partnership QBAI paragraph is that a CFC partner's QBAI is increased by an amount equal to the CFC partner's share of the basis that the partnership has in its specified tangible property as of the close of the CFC partner's taxable year. However, that interpretation would be contrary to the requirement in section 951A(d)(1) that the CFC's bases in specified tangible property be averaged over four quarters. Furthermore, giving the term ''distributive share'' effect, the amount determined at the end of the CFC partner's taxable year should be reduced for any period during the taxable year when the partnership did not own the property, whereas a CFC partner of a partnership that disposed of property before the close of the CFC's taxable year would receive no QBAI benefit if there were a single measurement date. In addition, a requirement that a partnership's basis in specified tangible property be measured on the last day of a CFC partner's taxable year could be burdensome for partnerships that have one or more CFC partners with taxable years that do not coincide with the partnership's taxable

[1] As enacted, section 951A(d) contains two paragraphs designated as paragraph (3).

year and, in those cases, would have the effect of decoupling the CFC partner's share of the basis of partnership property used to compute the CFC partner's QBAI from the CFC partner's distributive share of the partnership's income from the property that is taken into account in computing the CFC partner's tested income. Moreover, because depreciation is treated as reducing the adjusted basis of property on each day during the taxable year, calculating a partnership's basis on the final day of the CFC partner's taxable year will generally result in an artificially low basis relative to calculating average adjusted basis over the course of the partnership's taxable year. For the foregoing reasons, the proposed regulations determine a CFC partner's share of the partnership's adjusted basis in specified tangible property by reference to the partnership's average adjusted basis in the property as of the close of each quarter of the partnership's taxable year that ends with or within the CFC's taxable year. See proposed § 1.951A–3(g)(3).

A partner that is a CFC takes into account its share of the adjusted basis of specified tangible property held by a partnership in computing QBAI if, among other things, the property ''is used in the production of tested income (determined with respect to such controlled foreign corporation's distributive share of income with respect to such property).'' Section 951A(d)(3)(C). Consistent with the general rule for QBAI, only a tested income CFC can increase its QBAI by reason of specified tangible property owned by a partnership. See proposed § 1.951A–3(g)(1). Further, consistent with the parenthetical in the partnership QBAI paragraph, the proposed regulations provide that a CFC partner determines its share of the partnership's average adjusted basis in specified tangible property based on the amount of its distributive share of the gross income produced by the property that is included in the CFC partner's gross tested income relative to the total amount of gross income produced by the property. See proposed § 1.951A–3(g)(2). The proposed regulations incorporate the dual use property rule of section 951A(d)(2)(B) in the context of specified tangible property owned indirectly through a partnership and include similar rules for addressing specified tangible property that does not produce any directly identifiable income. The calculation is performed separately for each item of specified tangible property held by the partnership, taking into account the CFC partner's distributive share of income with respect to such property.

The Treasury Department and the IRS request comments on the proposed approach to specified tangible property held through a partnership, including the rules addressing specified tangible property that does not produce directly identifiable income.

5. Anti-Abuse Provisions

Section 951A(d)(4) provides that ''[t]he Secretary shall issue such regulations or other guidance as the Secretary determines appropriate to prevent the avoidance of the purposes of this subsection, including regulations or other guidance which provide for the treatment of property if—(A) such property is transferred, or held, temporarily, or (B) the avoidance of the purposes of this paragraph is a factor in the transfer or holding of such property.'' The Conference Report describes the scope of section 951A(d)(4), stating that ''[t]he conferees intend that non-economic transactions intended to affect tax attributes of CFCs and their U.S. shareholders (including amounts of tested income and tested loss, tested foreign income taxes, net deemed tangible income return, and QBAI) to minimize tax under this provision be disregarded.'' Conf. Rep. at 645. One specific example illustrated in the Conference Report is a transaction that occurs after the measurement date of post-1986 earnings and profits under section 965 but before the first taxable year for which section 951A is effective in order to increase a CFC's QBAI. Id.

Consistent with section 951A(d)(4) and the Conference Report, as well as the Secretary's broad authority under section 7805(a) to ''prescribe all needful rules and regulations for the enforcement of'' the Code, the proposed regulations provide that specified tangible property of a tested income CFC is disregarded for purposes of determining the tested income CFC's average aggregate basis in specified tangible property if the tested income CFC acquires the property with a principal purpose of reducing the GILTI inclusion amount of a U.S. shareholder and holds the property temporarily but over at least one quarter end. See proposed § 1.951A–3(h)(1). For this purpose, property held for less than a twelve month period that includes at least one quarter end during the taxable year of a tested income CFC is treated as temporarily held and acquired with a principal purpose of reducing the GILTI inclusion amount of a U.S. shareholder. Id.

The Treasury Department and the IRS are aware that taxpayers are engaging in transactions like the ones described in the Conference Report involving taxable transfers of property from one CFC to another CFC before the first taxable year of the transferor CFC to which section 951A applies in order to provide the transferee CFC with a stepped-up basis in the transferred property that, for example, may increase a U.S. shareholder's amount of QBAI with respect to the CFC for periods when it is subject to section 951A. See Conf. Rep. at 645. The stepped-up basis may also reduce the transferee CFC's tested income or increase its tested loss (for example, due to increased depreciation or amortization deductions) during periods when it is subject to section 951A. The Treasury Department and the IRS have determined that it would be inappropriate for a taxpayer to reduce its GILTI inclusion amount for any taxable year by reason of a stepped-up basis in CFC assets attributable to transactions between related CFCs during the period after December 31, 2017, but before the effective date of section 951A. Accordingly, the proposed regulations disallow the benefit of a stepped-up basis in specified tangible property transferred between related CFCs during the period before the transferor CFC's first inclusion year for purposes of calculating the transferee CFC's QBAI. See proposed § 1.951A–3(h)(2). As discussed in section I.C.4 of this Explanation of Provisions, these rules are also cross-referenced in proposed § 1.951A–2(c)(5) to disregard a stepped-up basis in any property that is depreciable or amortizable for purposes of calculating tested income and tested loss.

The U.S. tax results claimed with respect to transactions that fall outside the scope of the anti-abuse rules in the proposed regulations may, nonetheless, be challenged under other statutory provisions or judicial doctrines.

E. Specified Interest Expense

To calculate a U.S. shareholder's net DTIR, section 951A(b)(2)(B) provides that 10 percent of the aggregate of the shareholder's pro rata share of the QBAI of each CFC (defined as ''deemed tangible income return'' in proposed § 1.951A–1(c)(3)(ii)) is reduced by ''the amount of interest expense taken into account under subsection (c)(2)(A)(ii) in determining such shareholder's net CFC tested income for the taxable year to the extent the interest income attributable to such expense is not taken into account in determining such shareholder's net CFC tested income.'' Deductions taken

into account under section 951A(c)(2)(A)(ii) are deductions (including taxes) that are properly allocable to gross tested income for purposes of calculating tested income and tested loss. Thus, only a U.S. shareholder's pro rata share of interest expense that is currently deductible and properly allocable to gross tested income is taken into account for purposes of determining the interest expense described in section 951A(b)(2)(B). For purposes of the proposed regulations, interest expense described in section 951A(b)(2)(B) is referred to as ''specified interest expense.'' See proposed § 1.951A–1(c)(3)(iii).

Specified interest expense is a U.S. shareholder-level determination which is net of ''attributable'' interest income taken into account by the U.S. shareholder. Specifically, specified interest expense of a U.S. shareholder is its pro rata share of interest expense properly allocable to gross tested income reduced by its pro rata share of interest income included in gross tested income to the extent attributable to such interest expense. The effect of this formulation is to count against net DTIR only a U.S. shareholder's pro rata share of interest expense allocable to gross tested income to the extent that the related interest income is not also reflected in the U.S. shareholder's pro rata share of the tested income of another CFC, such as in the case of third-party interest expense or interest expense paid to related U.S. persons.

The amount of interest income ''attributable'' to interest expense is not defined in section 951A(b)(2)(B). Accordingly, it is necessary to define this concept in the proposed regulations. A definition that incorporates a strict tracing approach would require a U.S. shareholder to determine each item of interest expense with respect to each debt instrument of each of its CFCs to determine whether, and to what extent, the interest income with respect to that debt instrument is taken into account by the U.S. shareholder in determining the shareholder's net CFC tested income. However, the Treasury Department and the IRS have determined that a tracing approach for specified interest expense would be administratively burdensome and difficult to reconcile with the framework of section 951A, which generally requires a determination of CFC-level items followed by a second determination of U.S. shareholder-level aggregate pro rata shares of such items. A tracing approach for specified interest expense would necessitate a hybrid determination, in which the relevant item—''attributable'' interest income—could not be determined at the level of the CFC, but rather would require a matching at the U.S. shareholder level of the shareholder's pro rata share of each item of interest expense with its pro rata share of each item of interest income attributable to such interest expense. A tracing approach would create particular complexity with respect to interest paid between CFCs that are owned by different U.S. shareholders in different proportions or with respect to interest for which the accrual of the expense and inclusion of the income occur in separate taxable years.

The Treasury Department and the IRS have instead determined that a netting approach to specified interest expense accomplishes the purpose of the specified interest expense rule in a more administrable manner and is consistent with the requirement that ''attributable'' interest income be netted against interest expense. Therefore, the proposed regulations provide that a U.S. shareholder's specified interest expense is the excess of its aggregate pro rata share of the tested interest expense of each CFC over its aggregate pro rata share of the tested interest income of each CFC. See proposed § 1.951A–1(c)(3)(iii). Tested interest expense and tested interest income are generally defined by reference to all interest expense and interest income that is taken into account in determining a CFC's tested income or tested loss. See proposed § 1.951A–4(b)(1) and (2).

Comments have questioned whether interest expense of a captive finance CFC must be taken into account for purposes of determining a U.S. shareholder's specified interest expense, or whether the related interest income from unrelated customers may be available to offset such interest expense. Under a netting approach to the computation of specified interest expense, without modifications, whether a CFC's active banking business increases or reduces the specified interest expense of a U.S. shareholder relative to other taxpayers depends on whether the third-party expense related to such business is greater than or less than interest income related to such business. The Treasury Department and the IRS have determined that a U.S. shareholder's specified interest expense, and therefore its net DTIR and its GILTI inclusion amount, should not depend on whether the U.S. shareholder has one or more CFCs engaged in the active conduct of a financing or insurance business, as long as the interest expense of the CFC is incurred exclusively to fund such business with unrelated persons and thus not incurred, for instance, to fund the acquisition of specified tangible property. Therefore, the proposed regulations exclude from the definition of tested interest expense any interest expense of a CFC that is an eligible controlled foreign corporation (within the meaning of section 954(h)(2)) or a qualifying insurance company (within the meaning of section 953(e)(3)) (''qualified CFC''), except to the extent of the qualified CFC's assets unrelated to its financing or insurance business and any interest income received by the qualified CFC from loans to certain related persons (interest expense described in this sentence, ''qualified interest expense''). See proposed § 1.951A–4(b)(1)(iii). Further, the proposed regulations exclude from the definition of tested interest income any interest income of a qualified CFC included in the gross tested income of the qualified CFC for the CFC inclusion year that is excluded from subpart F income due to the active financing exception of section 954(h) or the active insurance exception of section 954(i) (''qualified interest income''). See proposed § 1.951A–4(b)(2)(iii).

For purposes of determining specified interest expense, interest income and interest expense are defined broadly to encompass any amount treated as interest under the Code or regulations, and any other amount incurred or recognized in a transaction or series of integrated or related transactions in which the use or forbearance of funds is secured for a period of time if the expense or loss is predominately incurred in consideration of the time value of money. See proposed § 1.951A–4(b)(1)(ii) and (2)(ii).

Comments requested clarification of whether the interest expense of a tested loss CFC is used in the determination of specified interest expense. Regardless of whether interest expense increases tested loss or reduces tested income, the expense is ''taken into account. . .in determining the shareholder's net CFC tested income'' within the meaning of section 951A(b)(2)(B). In addition, if a tested loss CFC's interest expense were not taken into account for purposes of determining specified interest expense, a taxpayer could easily avoid specified interest expense by incurring offshore debt through a tested loss CFC. Therefore, the proposed regulations confirm that any interest expense taken into account for purposes of determining the tested income or tested loss of a CFC is also taken into account in determining a U.S. shareholder's specified interest expense.

F. Domestic Partnerships and Their Partners

Comments requested guidance on the treatment of domestic partnerships that own stock of CFCs. Section 951A itself does not contain any specific rules on domestic partnerships and their partners that directly or indirectly own stock of CFCs. Accordingly, proposed § 1.951A–5 provides this guidance to domestic partnerships and their partners on how to compute their GILTI inclusion amounts. This guidance also applies to S corporations and their shareholders, which are treated as partnerships and partners for purposes of sections 951 through 965. See section 1373.

A domestic partnership is a U.S. person by definition under section 7701(a)(4) and (30) and can therefore be a U.S. shareholder of a CFC under section 951(b). Under current law, a domestic partnership that is a U.S. shareholder includes in gross income its section 951(a)(1)(A) inclusion with respect to a CFC, and its partners include in gross income their distributive share of such inclusion. However, as noted in section I.A of this Explanation of Provisions, there is no analog in section 951(a)(1)(A) to the U.S. shareholder-level determinations required by section 951A, and thus the level at which the section 951(a)(1)(A) determination is made—whether at the level of the partnership or its partners—does not generally affect the amount of the inclusion, if the partnership and its partners are all U.S. shareholders. On the other hand, the GILTI inclusion amount is an aggregation of the U.S. shareholder's pro rata shares of tested income, tested loss, QBAI, tested interest expense, and tested interest income of each of its CFCs. Thus, the level at which the GILTI calculation is made dictates the CFC items to be taken into account by the shareholder, and each of these items can impact the shareholder's GILTI inclusion amount.

The Treasury Department and the IRS considered a number of approaches to applying section 951A with respect to domestic partnerships and their partners. A pure aggregate approach to the treatment of domestic partnerships and their partners would treat the partnership as an aggregate of its partners, so that each partner would calculate its own GILTI inclusion amount taking into account its pro rata share of CFC items through the partnership. However, a pure aggregate approach might also be interpreted by taxpayers to exempt small partners of a domestic partnership from the GILTI regime entirely, a result that is not clearly contemplated in section 951A or its legislative history and is inconsistent with section 951.

The Treasury Department and the IRS also considered a pure entity approach. Under a pure entity approach, the domestic partnership would determine its own GILTI inclusion amount, and each partner would take into gross income its distributive share of such amount. In the case of a partner that is a U.S. shareholder of CFCs owned by the partnership and other CFCs outside the partnership, a pure entity approach would effectively fragment the shareholder's GILTI inclusion amount into multiple GILTI inclusion amounts by separating the items of the CFCs owned by the shareholder through the partnership from the items of the CFCs owned by the shareholder outside the partnership, including through other domestic partnerships. An approach that dramatically alters a U.S. shareholder's inclusion under section 951A for a taxable year depending on the legal structure by which the shareholder owns each CFC presents both an inappropriate planning opportunity as well as a trap for the unwary. Such an approach is also inconsistent with the structure of section 951A, which requires an aggregation of all relevant items of a shareholder's CFCs in order to compute a single GILTI inclusion amount for a U.S. shareholder. As discussed in section III.A of this Explanation of Provisions, the Treasury Department and the IRS relied on similar considerations in concluding that the relevant items of each CFC owned directly or indirectly by members of a consolidated group should be taken into account in determining the GILTI inclusion amount of each member of that group.

In addition, the Treasury Department and the IRS have concluded that other provisions that are related to, and interdependent with, section 951A should apply at the level of a domestic corporate partner. Section 960(d) provides a domestic corporation that is a U.S. shareholder a credit for foreign taxes paid by a CFC that are properly attributable to tested income ''taken into account'' by the domestic corporation, and determines the amount of that credit by reference to the corporation's aggregate pro rata share of tested income. See section 960(d)(2)(B) and (3). A domestic partnership is not eligible to claim deemed paid credits under section 960(d). Furthermore, under a pure entity approach, a domestic corporate partner of a domestic partnership may not be eligible for a deemed paid credit by reason of its distributive share of the partnership's GILTI inclusion because a partner would not have a pro rata share of the tested income of any CFC owned by the partnership, and thus it would not take into account the tested income of any such CFC. Similarly, only a domestic corporation is eligible for a section 250 deduction. Nonetheless, the Conference Report indicates that the domestic corporate partners of a domestic partnership should get the benefit of a section 250 deduction, which is consistent with an aggregate approach. See Conf. Rep. at 623, fn. 1517.

Based on the foregoing, the Treasury Department and the IRS have determined that the approach that best harmonizes the treatment of domestic partnerships and their partners across all provisions of the GILTI regime (sections 250, 951A, and 960(d)) is neither a pure aggregate nor a pure entity approach. Rather, the most harmonious approach treats a domestic partnership as an entity with respect to partners that are not U.S. shareholders of any CFC owned by the partnership, but treats the partnership as an aggregate for purposes of partners that are themselves U.S. shareholders with respect to one or more CFCs owned by the partnership. This approach ensures that each non-U.S. shareholder partner takes into income its distributive share of the domestic partnership's GILTI inclusion amount (similar to subpart F), while permitting a partner that is itself a U.S. shareholder to determine a single GILTI inclusion amount by reference to all its CFCs, whether owned directly or through a partnership, as well as allowing a corporate U.S. shareholder to calculate a foreign tax credit under section 960(d) with respect to each such CFC and to compute a section 250 deduction with respect to its GILTI inclusion amount determined by reference to each such CFC.

Therefore, the proposed regulations provide that, in general, a domestic partnership that is a U.S. shareholder of one or more CFCs (''U.S. shareholder partnership'') computes its own GILTI inclusion amount in the same manner as any other U.S. shareholder, and each partner takes into account its distributive share of the domestic partnership's GILTI inclusion amount under section 702 and § 1.702–1(a)(8)(ii). See proposed § 1.951A–5(b). However, for purposes of section 951A and the proposed regulations, a partner that is itself a U.S. shareholder (within the meaning of section 951(b)) (''U.S. shareholder partner'') of one or more CFCs owned directly or indirectly by a domestic partnership (''partnership CFC'') is treated as owning

proportionately section 958(a) stock in each such partnership CFC as if the partnership were a foreign partnership. See proposed § 1.951A–5(c). As a result, a partner that is itself a U.S. shareholder of a CFC owned by a domestic partnership computes its GILTI inclusion amount for a taxable year by taking into account its proportionate share of the partnership's pro rata share of each of the relevant items—tested income, tested loss, QBAI, tested interest income, and tested interest expense—of such CFC. This rule applies regardless of whether the domestic partnership itself has a GILTI inclusion amount for the taxable year. See proposed § 1.951A–5(g), *Example 6.* In the case that a partner is treated as owning the section 958(a) stock of one or more partnership CFCs, the partner's distributive share of the partnership's GILTI inclusion amount is determined solely by reference to partnership CFCs in which the partner is not a U.S. shareholder. See proposed § 1.951A–5(c) and (g), *Example 3.* A U.S. shareholder partnership is therefore required to provide to its partners their distributive share of the partnership's GILTI inclusion amount, as well as provide to each U.S. shareholder partner the partner's proportionate share of the partnership's pro rata share (if any) of each CFC tested item of each partnership CFC of the partnership, and forms and instructions will be updated accordingly. See proposed § 1.951A–5(f).

To illustrate the differences between the approach taken in the proposed regulations and the pure entity approach, consider a domestic partnership (PRS) with two domestic corporate partners, US1 and US2, owning 5 percent and 95 percent of PRS, respectively. PRS owns 100 percent of the single class of stock of FS1, a CFC with tested income of $100x, and 100 percent of the single class of stock of FS2, a CFC with tested loss of $50x. US2 also owns 100 percent of the single class of stock of FS3, a CFC with tested loss of $20x. Under a pure entity approach, US2's distributive share of PRS's GILTI inclusion amount would be $47.50x (95% × ($100x − $50x)), and US2's pro rata share of FS3's tested loss of $20x would be unused. Under the proposed regulations, US2, because it is a U.S. shareholder partner with respect to FS1 and FS2, aggregates its proportionate share of the tested income and tested loss of FS1 and FS2 with its pro rata share of the tested loss of FS3 in determining its GILTI inclusion amount of $27.50x ((95% × ($100x − $50x)) − $20x). Accordingly, under a pure entity approach, US2 would be incentivized to reorganize its ownership structure (for example, by liquidating PRS or contributing the stock of FS3 to PRS) in order to obtain the full benefit of the tested loss of FS3. Under the proposed regulations, however, US2 has the same GILTI inclusion amount whether it owns its CFCs directly or through one or more partnerships.

The Treasury Department and the IRS request comments as to whether any other approach to the treatment of domestic partnerships and their partners for purposes of section 951A, including a pure entity approach or a pure aggregate approach, would more appropriately harmonize the provisions of the GILTI regime than the approach of the proposed regulations, particularly in light of the administrative and compliance burdens associated with any other approach and the approach of the proposed regulations. In addition, the Treasury Department and the IRS request comments on adjustments required by reason of computing a GILTI inclusion amount, in whole or in part, at the level of the partner of a domestic partnership, including adjustments to the partner's basis in its partnership interest, the partner's section 704(b) capital account, the partnership's basis in CFC stock under section 961, and a CFC's previously taxed earnings and profits with respect to the partner or partnership under section 959.

G. Treatment of GILTI Inclusion Amount and Adjustments to Earnings and Profits and Basis

1. Treatment of GILTI as Subpart F Income for Certain Purposes

A U.S. shareholder's GILTI inclusion amount is not an inclusion under section 951(a)(1)(A). Nevertheless, for purposes of some provisions, GILTI inclusion amounts are treated similarly to section 951(a)(1)(A) inclusions. Section 951A(f)(1)(A) provides that any GILTI included in gross income is treated in the same manner as an amount included under section 951(a)(1)(A) for purposes of applying sections 168(h)(2)(B), 535(b)(10), 851(b), 904(h)(1), 959, 961, 962, 993(a)(1)(E), 996(f)(1), 1248(b)(1), 1248(d)(1), 6501(e)(1)(C), 6654(d)(2)(D), and 6655(e)(4).

Section 951A(f)(1)(B) grants the Secretary authority to provide rules applying section 951A(f)(1)(A) to other provisions of the Code. A comment requested clarification as to whether GILTI inclusion amounts are net investment income under section 1411. Pursuant to the authority in section 951A(f)(1)(B), the proposed regulations provide that a GILTI inclusion amount is treated in the same manner as an amount included under section 951(a)(1)(A) for purposes of applying section 1411. See proposed § 1.951A–6(b)(1). Thus, for example, a U.S. shareholder that has made an election pursuant to § 1.1411–10(g) with respect to a CFC to treat amounts included in gross income under section 951(a)(1)(A) as net investment income and to apply the basis adjustment rules of sections 961(a) and (b) with respect to such amounts for section 1411 purposes should also treat the portion of the U.S. shareholder's GILTI inclusion amount treated as being with respect to the CFC under section 951A(f)(2) and proposed § 1.951A–6(b)(2) as net investment income.

Comments have requested that regulations clarify that an inclusion under section 951A is determined before an inclusion under section 951(a)(1)(B). The Treasury Department and the IRS have determined that clarification is unnecessary. Because a GILTI inclusion amount is treated as a section 951(a)(1)(A) inclusion for purposes of section 959, the determination of the amount included under section 951(a)(1)(B) is made after the determination of the amount of a section 951(a)(1)(A) inclusion and the GILTI inclusion amount. See section 959(a)(2) and (f)(1). The Treasury Department and the IRS intend to issue a separate notice of proposed rulemaking to update the regulations under sections 959 and 961 to account for the Act's modifications to the U.S. international tax system, including the enactment of section 245A.

The characterization of GILTI inclusions for purposes of determining the unrelated business taxable income of tax-exempt entities will be addressed in separate guidance. The Treasury Department and the IRS request comments on other areas in which the characterization of a GILTI inclusion amount is relevant, and whether it is appropriate in those areas to treat a GILTI inclusion amount in the same manner as a section 951(a)(1)(A) inclusion or in some other manner (for example, as a dividend).

2. Interaction With Sections 163(e)(3)(B)(i) and 267(a)(3)(B)

Section 267(a)(3)(B) generally provides that a deduction for an item payable to a related CFC is not allowed until paid, except to the extent that an amount attributable to that item is includible (determined without regard to properly allocable deductions and qualified deficits) in the gross income of

a U.S. shareholder. Section 163(e)(3)(B)(i) provides a similar rule for original issue discount on a debt instrument held by a related CFC.

The Treasury Department and the IRS have determined that deductions should not be deferred under sections 163(e)(3)(B)(i) and 267(a)(3)(B) to the extent an item is taken into account in determining a U.S. shareholder's GILTI inclusion amount. Accordingly, the proposed regulations provide that a deduction is allowed under sections 163(e)(3)(B)(i) and 267(a)(3)(B) for an item taken into account in determining the net CFC tested income of a U.S. shareholder, including a U.S. shareholder treated under the proposed regulations as owning section 958(a) stock of a CFC owned by a domestic partnership. See proposed § 1.951A–6(c)(1). In the case of a U.S. shareholder that is a domestic partnership, this rule applies only to the extent that one or more U.S. persons (other than domestic partnerships) that are direct or indirect partners of the domestic partnership include in gross income their distributive share of the partnership's GILTI inclusion amount or the item is taken into account by a U.S. shareholder partner of the domestic partnership by reason of § 1.951A–5(c). See proposed § 1.951A–6(c)(2).

3. Basis Adjustments for the Use of Tested Losses

In determining a U.S. shareholder's net CFC tested income, the U.S. shareholder's pro rata share of a tested loss of one CFC may offset the shareholder's pro rata share of tested income of another CFC. Under the statute, such a use of a tested loss does not reduce the U.S. shareholder's basis in the stock of the tested loss CFC, increase the stock basis of the tested income CFC, or affect the earnings and profits of either the tested loss CFC or the tested income CFC.

The Treasury Department and the IRS have determined that in certain cases the lack of adjustments to stock basis of a tested loss CFC can lead to inappropriate results. For example, if the U.S. shareholder's basis in the stock of the tested loss CFC is not reduced to reflect the use of the tested loss to offset tested income taken into account by the U.S. shareholder, the U.S. shareholder would recognize a second and duplicative benefit of the loss—either through the recognition of a loss or the reduction of gain—if the stock of the tested loss CFC is disposed of. See *Charles Ilfeld Co.* v. *Hernandez,* 292 U.S. 62 (1934) (denying the loss on stock of subsidiaries upon liquidation when operating losses were previously claimed from the subsidiaries' operations because ''[i]f allowed, this would be the practical equivalent of double deduction''); *U.S.* v. *Skelly Oil. Co.,* 394 U.S. 678 (1969) (''the Code should not be interpreted to allow respondent 'the practical equivalent of a double deduction''' (citing *Charles Ilfeld Co.*)); § 1.161–1. On the other hand, in the case of a corporate U.S. shareholder, but not in the case of an individual, gain recognized on the disposition of a CFC attributable to offset tested income would, in most cases, be eliminated as a result of the application of section 964(e) or section 1248(a) and (j), to the extent the gain is recharacterized as a dividend that is eligible for the dividends received deduction under section 245A. Accordingly, proposed § 1.951A–6(e) generally provides that in the case of a corporate U.S. shareholder (excluding regulated investment companies and real estate investment trusts), for purposes of determining the gain, loss, or income on the direct or indirect disposition of stock of a CFC, the basis of the stock is reduced by the amount of tested loss that has been used to offset tested income in calculating net CFC tested income of the U.S. shareholder. The basis reduction is only made at the time of the disposition and therefore does not affect the stock basis prior to a disposition. Requiring the basis reduction only at the time of the disposition prevents the use of tested losses alone from causing the recognition of gain if the reduction exceeds the amount of stock basis.

The basis adjustments apply only to the extent a ''net'' tested loss of the controlled foreign corporation has been used. This limitation is intended to ensure that the reduction applies only to the extent necessary to eliminate the duplicative loss in the stock. For example, if a $100x tested loss of a CFC (CFC1) offsets $100x of tested income of another CFC (CFC2) in one year in determining a U.S. shareholder's net CFC tested income, and in the next year CFC1 has $20x of tested income that is offset by a $20x tested loss of CFC2, then the $100x used tested loss attributable to the CFC1 stock from the first year is reduced by the $20x of its tested income from the second year that was offset by the tested loss of CFC2, resulting in a ''net'' used tested loss of $80x. See proposed § 1.951A–6(e)(2).

Similar adjustments apply when the tested loss CFC is treated as owned by the U.S. shareholder through certain intervening foreign entities by reason of section 958(a)(2) to prevent the indirect use of the duplicative loss through the disposition of interests in those intervening entities. The regulations provide an exception to those rules in certain cases when the tested loss CFC and the CFC that generated the tested income that is offset by the tested loss are in the same section 958(a)(2) ownership chain; adjustments are not appropriate in these cases because there is no duplicative loss to the extent the shares of both CFCs are directly or indirectly disposed of. See proposed § 1.951A–6(e)(1)(ii).

A direct disposition of the stock of a CFC can result in the indirect disposition of the stock of one or more lower-tier CFCs. See proposed § 1.951A–6(e)(6)(ii)(B). In such a case, basis adjustments may be made to both the stock of the upper-tier CFC and the stock of the lower-tier CFCs. Accordingly, the proposed regulations provide ordering rules for making these adjustments that, in general, are intended to prevent gain resulting from a basis adjustment attributable to the use of a single tested loss from being taken into account more than once. See proposed § 1.951A–6(e)(1)(iv).

The proposed regulations also include rules that take into account certain nonrecognition transactions involving CFCs, such as the acquisition of CFC stock by a domestic corporation and transactions described in section 381. See proposed § 1.951A–6(e)(4)(ii) and (e)(5). These rules are intended to prevent the elimination or avoidance of the basis adjustments through these types of transactions.

Finally, the proposed regulations provide a special rule to address dispositions of CFC stock by another CFC that is not wholly owned by a single domestic corporation. See proposed § 1.951A–6(e)(7). This rule, which is consistent with proposed § 1.961–3(b) and Revenue Ruling 82–16, 1982–1 C.B. 106, is intended to ensure that the appropriate amount of subpart F income is taken into account by U.S. shareholders of the CFC as a result of the disposition.

The Treasury Department and the IRS request comments on these rules, including whether additional adjustments to stock basis or earnings and profits should be made to account for a used tested loss or offset tested income (for example, whether adjustments should be provided that are consistent with those set forth in proposed § 1.965–2(d) and (f) (REG–104226–18, 83 FR 39514, August 9, 2018)). Comments are also requested on whether similar rules should apply to non-corporate U.S. shareholders, taking into account the fact that non-corporate U.S. shareholders are not entitled to a dividends received deduction under section 245A. Additionally, comments

are requested as to whether the definition of ''disposition'' should be modified. For example, the Treasury Department and the IRS are considering broadening the term to include transactions that do not involve an actual transfer of stock but might result in taxable gain but for the presence of tax basis in CFC stock. Examples of such transactions include distributions subject to section 301(c)(2) or 1059.

II. Section 951

A. Pro Rata Share Rules

Section 1.951–1(e) was revised in 2005 and 2006 to address certain avoidance structures, such as structures that resulted in non-economic allocations of subpart F income to shareholders of CFCs that are not U.S. shareholders. The Treasury Department and the IRS have become aware of additional avoidance structures. For example, the existing regulations require an allocation of earnings and profits between classes of stock with discretionary distribution rights based on the fair market value of the stock. While this rule appropriately allocates subpart F income in some cases (for example, involving multiple classes of common stock), some taxpayers have attempted to improperly allocate subpart F income by applying these rules to certain structures involving shares with preferred liquidation and distribution rights. Similar avoidance structures involve cumulative preferred stock with dividends that compound less frequently than annually.

This notice of proposed rulemaking proposes to amend § 1.951–1(e) to address these avoidance structures, which implicate section 951A as well as section 951. The proposed regulations clarify that, for purposes of determining a U.S. shareholder's pro rata share of subpart F income, earnings and profits for the taxable year are first hypothetically distributed among the classes of stock and then hypothetically distributed to each share in the class on the hypothetical distribution date, which is the last day of the CFC's taxable year on which it is a CFC. In lieu of prescribing a determination based on fair market value, the proposed regulations provide that the amount of earnings and profits that would be distributed with respect to classes of stock is based on all relevant facts and circumstances. See proposed § 1.951–1(e)(3). In addition, the proposed regulations disregard any transaction or arrangement that is part of a plan a principal purpose of which is to reduce a U.S. shareholder's pro rata share of the subpart F income of a CFC. See proposed § 1.951–1(e)(6). This rule also applies for purposes of determining a U.S. shareholder's pro rata share of amounts for purposes of calculating the shareholder's GILTI inclusion amount. Id. As a result of adding this broader rule, the proposed regulations do not include the specific anti-avoidance rule involving section 304 transactions in existing § 1.951–1(e)(3)(v).

The proposed regulations also modify § 1.951–1(e) in specific ways to take into account section 951A. For example, the proposed regulations provide that a U.S. shareholder's pro rata share of a CFC's subpart F income is determined by reference to the shareholder's proportionate share of the total current earnings and profits that would be distributed in the hypothetical distribution. In addition to determining a U.S. shareholder's pro rata share of a CFC's subpart F income, § 1.951–1(e) also applies for purposes of determining the shareholder's pro rata share of the CFC's tested income. See also proposed § 1.951A–1(d)(2). However, because tested income is not limited to the earnings and profits of a CFC, and because a CFC's tested loss increases its earnings and profits for purposes of determining the subpart F income limitation in section 952(c)(1), the earnings and profits allocated in the hypothetical distribution may exceed the earnings and profits of the CFC computed under section 964. Accordingly, the hypothetical distribution in the proposed regulations is based on the greater of the section 964 earnings and profits or the sum of the subpart F income (increased by reason of any tested loss add-back under section 951A(c)(2)(B)(ii) and proposed § 1.951A–6(d)) and tested income of the CFC.

B. Partnership Blocker Structures

Notice 2010–41, 2010–22 I.R.B. 715, stated that forthcoming regulations would treat a domestic partnership as a foreign partnership for purposes of identifying the U.S. shareholder of a CFC required to include in gross income its pro rata share of the CFC's subpart F income in the circumstances described in the notice. The Treasury Department and the IRS have determined that the same rules should also apply to identify the U.S. shareholder of a CFC for purposes of section 951A. Accordingly, the proposed regulations treat certain controlled domestic partnerships as foreign partnerships for purposes of identifying a U.S. shareholder for purposes of sections 951 through 964. See also proposed § 1.965–1(e) (REG–104226–18, 83 FR 39514, August 9, 2018) (adopting a similar partnership blocker rule for purposes of the section 965 regulations).

C. Other Modifications

The proposed regulations also update § 1.951–1 consistent with the modification in the Act of the definition of a U.S. shareholder and the elimination in the Act of the 30-day requirement. See proposed § 1.951–1(a) and (g)(1).

III. Section 1502

A. In General

Section 1502 provides the Secretary authority to

> prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

A consolidated group member's inclusion of subpart F income under section 951(a)(1)(A) is determined at the member level. However, as discussed in section I.A of this Explanation of Provisions, a section 951(a)(1)(A) inclusion with respect to a CFC is determined solely by reference to the subpart F income of the CFC, and therefore determining a member's section 951(a)(1)(A) inclusion solely by reference to a CFC the stock of which is owned (within the meaning of section 958(a)) by the member is not distortive of the consolidated group's income tax liability. As a result, the location of the CFC within the group generally has no effect on the consolidated group's income tax liability by reason of section 951(a)(1)(A). In contrast, section 951A requires an aggregate, U.S. shareholder-level calculation, under which a member's pro rata share of the relevant items of one CFC can increase or decrease a member's GILTI inclusion amount otherwise resulting from its ownership of another CFC. Accordingly, a determination of a member's GILTI inclusion amount solely based on its pro rata share of the items of a CFC the stock of which is owned (within the meaning of section 958(a)) by that member may not result in a clear reflection of the consolidated group's income tax liability. For example, a consolidated group could segregate one CFC with tested interest expense under one member and another CFC with QBAI under another member, thereby increasing the net DTIR of the second

member relative to the consolidated group's net DTIR if determined at a group level. Alternatively, a strict, separate-entity application of section 951A could inappropriately increase a consolidated group's income tax liability, because one member's excess pro rata share of tested losses or QBAI over tested income would be unavailable to reduce another member's GILTI inclusion amount.

B. Section 1.1502–51

In response to comments, the Treasury Department and the IRS have determined that a member's GILTI inclusion amount should be determined by reference to the relevant items of each CFC owned by members of the same consolidated group. As discussed in section I.A of this Explanation of Provisions, a U.S. shareholder includes in gross income its GILTI inclusion amount for any taxable year. GILTI inclusion amount is defined under proposed § 1.951A–1(c)(1) as, with respect to a U.S. shareholder for a taxable year of the shareholder, the excess (if any) of the shareholder's net CFC tested income over the shareholder's net DTIR for the taxable year. Under proposed § 1.1502–51, this definition applies equally to a U.S. shareholder that is a member of a consolidated group. However, consistent with the authority in section 1502, the proposed regulations provide special definitions of net CFC tested income and net DTIR in order to clearly reflect the income tax liability of the consolidated group. Specifically, the proposed regulations provide that, to determine a member's GILTI inclusion amount, the pro rata shares of tested loss, QBAI, tested interest expense, and tested interest income of each member are aggregated, and then a portion of each aggregate amount is allocated to each member of the group that is a U.S. shareholder of a tested income CFC based on the proportion of such member's aggregate pro rata share of tested income to the total tested income of the consolidated group. See proposed § 1.1502–51(e).

As discussed in section I.G.3 of this Explanation of Provisions, proposed § 1.951A–6(e) provides that the adjusted basis of the stock of a CFC is adjusted immediately before its disposition. Proposed § 1.1502–51(c) provides special rules for making these adjustments to the adjusted basis of the stock of a CFC owned by a member in a manner that reflects the special definitions applicable to members.

C. Section 1.1502–32

Section 1.1502–32 provides rules for adjusting the basis of the stock of a subsidiary owned by another member to reflect, among other items, the subsidiary's items of income. Accordingly, no new rules are necessary to adjust the basis of the stock of a member because of a GILTI inclusion. However, as previously discussed, proposed §§ 1.951A–6(e) and 1.1502–51(c) provide rules for adjusting the basis of the stock of a CFC immediately before its disposition. As a result, proposed § 1.1502–32(b)(3)(ii)(E) and (iii)(C) provide for adjustments to the basis of the stock of a member to reflect those rules. Specifically, the proposed rules treat a portion of a member's offset tested income amount as tax-exempt income and all of a member's used tested loss amount as a noncapital, nondeductible expense.

As previously discussed, the Treasury Department and the IRS have determined that in the case of a corporate U.S. shareholder, gain recognized on the disposition of stock of a CFC attributable to offset tested income would, in most cases, be eliminated as a result of the application of section 964(e)(4) or section 1248(a) and (j), to the extent the gain or income is eligible for the dividends received deduction under section 245A. In order to not incentivize a sale of the stock of a CFC over a sale of stock of a member, proposed § 1.1502–32(b)(3)(ii)(F) provides that a member is also treated as receiving tax-exempt income immediately before another member recognizes income, gain, deduction, or loss with respect to a share of the first member's stock. The amount of this additional tax-exempt income is the net offset tested income amount allocable to the shares of any CFC owned by the first member to the extent that a distribution of such amount would have been characterized as a dividend eligible for a section 245A deduction and not subject to section 1059.

The Treasury Department and the IRS request comments regarding the coordination of the rules of proposed §§ 1.951A–6(e) and 1.1502–51(c) with the investment adjustment regime of § 1.1502–32. Comments are specifically requested on: (1) Whether the amount of the adjustments to the basis of member stock should be limited to the amount of the adjustments to the basis of the stock of a CFC under the rules of proposed § 1.951A–6(e); (2) whether the adjustments to the basis of member stock should all be made on a current basis, made to the extent of the basis adjustments provided in proposed § 1.951A–6(e) on a current basis with any remaining adjustments being made at the time of a disposition of stock of a CFC or of a member, or made only at the time of a disposition of the stock of a CFC or of a member; and (3) whether rules should provide that a deduction under section 245A should not be treated as tax-exempt income to the extent that the underlying dividend is attributable to offset tested income for which basis adjustments have already been made. Additionally, comments are specifically requested as to whether there are any circumstances in which there should be a deemed disposition of the stock of a CFC owned by a member, such that the rules of proposed § 1.951A–6(e) would apply, including, but not limited to, a deconsolidation or taxable disposition of the stock of a member that owns (directly or indirectly) the stock of a CFC to either a person outside of the consolidated group or to another member, and a transfer of the stock of a member in an intercompany transaction that is a nonrecognition transaction. Similarly, comments are specifically requested as to whether there are other transactions that should be described in the definition of transferred shares in proposed § 1.1502–32(b)(3)(ii)(F)(*1*), such as a deemed disposition pursuant to § 1.1502–19(c)(1)(iii)(B). Lastly, comments are specifically requested as to whether any other adjustments are necessary to prevent the duplication of gain or loss resulting from a member's ownership of a CFC, including situations where a member owning a CFC joins another consolidated group.

In response to comments received, no new rules are being proposed under § 1.1502–33, which provides rules for adjusting the earnings and profits of a subsidiary and any member owning stock of the subsidiary. The Treasury Department and the IRS request comments on whether additional rules under § 1.1502–33 or any other regulations issued under section 1502 are necessary.

IV. Sections 1.6038–2(a) and 1.6038–5

Under section 6038(a)(1), U.S. persons that control foreign corporations must file certain information returns with respect to those corporations. Before the Act, a U.S. shareholder would not have had an income inclusion under section 951(a)(1) with respect to a foreign corporation unless the corporation had been a CFC for an uninterrupted period of at least 30 days during the taxable year. While section 6038 does not limit the reporting requirements to foreign corporations that a U.S. person controls for an uninterrupted period of at least

30 days, § 1.6038–2(a) does provide for such a limit. To coordinate with the amendment to section 951(a)(1) that removed the 30-day requirement, this notice of proposed rulemaking proposes to revise § 1.6038–2(a) to provide that certain information reporting is required for U.S. persons that control a foreign corporation at any time during an annual accounting period.

Section 6038(a)(4) allows the Secretary to require any U.S. shareholder of a CFC to provide information required under section 6038(a)(1), which includes information that is similar to the listed information in section 6038(a)(1)(A) through (a)(1)(E), as well as information that ''the Secretary determines to be appropriate to carry out the provisions of this title.'' In order to effectively administer and enforce section 951A, the Treasury Department and the IRS have determined that, in general, U.S. shareholders must file a new Schedule I–1, Information for Global Intangible Low-Taxed Income, to Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, as well as new Form 8992, U.S Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI), to provide the information that a U.S. shareholder needs with respect to each of its CFCs to determine the U.S. shareholder's GILTI inclusion amount for a taxable year. Proposed § 1.6038–5 provides the filing requirements for new Form 8992.

V. Applicability Dates

Consistent with the applicability date of section 951A, proposed §§ 1.951–1(e)(1)(ii)(B), 1.951A–1 through 1.951A–6, 1.1502–32(b)(3)(ii)(E), (b)(3)(ii)(F), and (b)(3)(iii)(C), and 1.1502–51 are proposed to apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end. See section 7805(b)(2). Proposed § 1.951–1(e) (pro rata share of subpart F income) (other than § 1.951–1(e)(1)(ii)(B)) is proposed to apply to taxable years of U.S. shareholders ending on or after October 3, 2018. See section 7805(b)(1)(B). Consistent with the applicability date of the modification to section 951 in the Act, proposed § 1.951–1(a) (controlled foreign corporations) and § 1.951–1(g) (definition of U.S. shareholder) are proposed to apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end. See section 7805(b)(2). Proposed § 1.951–1(h) (special rule for partnership blocker structure) is proposed to apply to taxable years of domestic partnerships ending on or after May 14, 2010. See Notice 2010–41 and section 7805(b)(1)(C). Although proposed § 1.951–1(h) applies for purposes of both section 951 and section 951A, the only practical effect of applying this rule to taxable years of domestic partnerships ending on or after May 14, 2010, and before January 1, 2018, concerns the application of section 951. The proposed rule does not have relevance to the application of section 951A until the first taxable year of a CFC owned by a domestic partnership beginning after December 31, 2017 (the effective date of section 951A). Proposed § 1.6038–2(a) (information returns required of U.S. persons with respect to annual accounting periods of certain foreign corporations) and proposed § 1.6038–5 (information returns required of certain U.S. persons to report amounts determined with respect to certain foreign corporations for GILTI purposes) are proposed to apply to taxable years of foreign corporations beginning on or after October 3, 2018. See sections 6038(a)(3) and 7805(b)(1)(B).

Special Analyses

Regulatory Planning and Review—Economic Analysis

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Executive Order 13771 designation for any final rule resulting from these proposed regulations will be informed by comments received.

The proposed regulations have been designated by the Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. OIRA has determined that the proposed rulemaking is significant. Accordingly, the proposed regulations have been reviewed by OIRA. For more detail on the economic analysis, please refer to the following analysis.

A. Overview

The proposed regulations provide taxpayers with computational, definitional, and anti-avoidance guidance regarding the application of section 951A. They provide guidance for U.S. shareholders to determine the amount of GILTI to include in gross income and how to compute the components of GILTI. Among other benefits, this clarity helps ensure that taxpayers all calculate GILTI in a similar manner, which promotes efficiency and equity contingent on the provisions of the overall Code.

The proposed regulations under sections 951A, 1502, and 6038 (proposed §§ 1.951A–1 through 1.951A–7, 1.1502–12, 1.1502–13, 1.1502–32, and 1.1502–51, and 1.6038–5) provide details for taxpayers (including members of a consolidated group) regarding the computation of certain components of GILTI (for example, tested income and tested loss, QBAI, net deemed tangible income return, and specified interest expense), describe the consequences of a GILTI inclusion for purposes of other sections of the Code, and detail the reporting requirements associated with GILTI. These proposed regulations further establish anti-abuse rules to prevent taxpayers from taking measures to inappropriately reduce their GILTI through certain transfers of property. They also disallow certain losses that reduce GILTI from being used a second time.

The proposed regulations under sections 951 and 6038 (proposed §§ 1.951–1 and 1.6038–2) prevent taxpayers from avoiding an inclusion of subpart F income under section 951(a) or the inclusion of GILTI under section 951A through certain artificial arrangements involving the ownership of CFC stock, coordinate the calculation of a U.S. shareholder's subpart F with its GILTI, and conform the regulations to other amendments in the Act, including a modification to the definition of U.S. shareholder for purposes of sections 951(a) and 951A and the elimination of the 30-day CFC status requirement. This economic analysis describes the economic benefits and costs of the proposed regulations.

B. Economic Analysis of the Proposed Regulations

1. Background

Because section 951A is a new Code section, many of the details behind the relevant terms and necessary calculations required for the

computation of a U.S. shareholder's GILTI inclusion amount would benefit from greater specificity. Thus, as is expected after the passage of major tax reform legislation, the regulations answer open questions and provide detail and specificity for the definitions and concepts described in section 951A, so that U.S. shareholders can readily and accurately determine their GILTI inclusion amounts. For example, the regulations provide definitions of crucial terms, such as tested income, tested loss, specified tangible property, and specified interest expense.

As discussed in section I.A. of the Explanation of Provisions, although a GILTI inclusion is treated similarly to an inclusion of subpart F income for some purposes, it is determined in a manner fundamentally different from that of a subpart F inclusion. Therefore, in some cases it is appropriate for the regulations to rely on subpart F principles, but in other cases different rules are necessary. For example, the regulations apply subpart F rules for purposes of (1) determining a U.S. shareholder's pro rata share of certain items of a CFC, (2) translating foreign currency to U.S. dollars, (3) determining gross income and allowable deductions, and (4) allocating and apportioning allowable deductions to gross tested income. However, it would be inappropriate to rely on subpart F rules for the GILTI computations that are performed at the U.S. shareholder level because subpart F income is determined solely at the level of a CFC. For example, the regulations provide detail on how a U.S. shareholder determines its specified interest expense at the shareholder level based on the interest expense and interest income of each CFC owned by the shareholder.

Additionally, the proposed regulations provide rules regarding the interaction of certain aspects of section 951A with other provisions. For example, they clarify that, regarding the interaction of the earnings and profits limitation (including recapture) for subpart F income and the determination of gross tested income, tested income and tested loss are computed without regard to the earnings and profits limitation in section 952(c). In addition, the proposed regulations provide that GILTI inclusion amounts are considered net investment income under section 1411. Finally, the proposed regulations provide that certain deductions between related parties are not deferred under sections 163(e)(3)(B)(i) and 267(a)(3)(B) to the extent the income is taken into account in determining a U.S. shareholder's GILTI inclusion amount.

Section 951A provides the Secretary of the Treasury the authority to issue regulations and other guidance to prevent the avoidance of the purposes of section 951A(d). As such, regulations under §§ 1.951A–2 and 1.951A–3 provide that certain transactions that reduce a U.S. shareholder's GILTI inclusion amount, for example, by increasing a CFC's qualified business asset investment (QBAI) or decreasing a CFC's tested income, will be disregarded for purposes of the GILTI computation.

Further, the Treasury Department and the IRS have determined that, in the absence of any adjustment, inappropriate results may arise in cases that a U.S. shareholder's pro rata share of the tested loss of one CFC offsets the shareholder's pro rata share of the tested income of another CFC in determining the shareholder's GILTI inclusion amount. In particular, a U.S. shareholder disposing of the stock of a tested loss CFC could recognize second, duplicative benefits from a single economic loss. Therefore, the proposed regulations provide that, when determining gain or loss on the disposition of the stock of a tested loss CFC, the U.S. shareholder's basis in the stock of the tested loss CFC is reduced by the cumulative amount of tested losses that were used to offset tested income in determining the shareholder's net CFC tested income.

The statute is silent on the computation of GILTI for members of a consolidated group and for domestic partnerships and their partners. Absent these regulations, there would be uncertainty among taxpayers as to whether to calculate a GILTI inclusion amount at the level of a member or its consolidated group, or at the level of a domestic partnership or its partners. Without guidance, different taxpayers would likely take different positions on these matters. The proposed regulations provide clarity by (1) determining the GILTI inclusion amount of each member of a consolidated group by taking into account the relevant items of each CFC owned by members of such group, and (2) providing guidance on the computation of the GILTI inclusion amount of domestic partnerships and their partners.

Finally, these proposed regulations provide reporting requirements necessary to properly administer and enforce section 951A. In particular, the Treasury Department and the IRS have determined that U.S. shareholders must file a new Schedule I–1, Information for Global Intangible Low-Taxed Income, associated with Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, as well as new Form 8992, U.S Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI), in order to provide the information that a U.S. shareholder is using with respect to each of its CFCs to determine the U.S. shareholder's GILTI inclusion amount for a taxable year. The proposed regulations also provide that a U.S. shareholder partnership must include on its Schedule K–1, associated with Form 1065, U.S. Return of Partnership Income, certain information necessary for its partners to determine their distributive share of the partnership's GILTI inclusion amount or, in the case of U.S. shareholder partners, to determine their own GILTI inclusion amounts. Finally, to coordinate with the amendment to section 951(a)(1) that removed the 30-day CFC status requirement for subpart F inclusions, the proposed regulations provide that certain information reporting is required for U.S. persons that control a foreign corporation at any time during an annual accounting period.

2. Anticipated Benefits and Costs of the Proposed Regulations

a. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations against a baseline—the way the world would look in the absence of the proposed regulations.

b. Anticipated Benefits

The Treasury Department and the IRS expect that the certainty and clarity provided by these proposed regulations, relative to the baseline, will enhance U.S. economic performance under the statute. Because a tax has not previously been imposed on GILTI and the statute is silent on certain aspects of definitions and calculations, taxpayers can particularly benefit from enhanced specificity regarding the relevant terms and necessary calculations they are required to apply under the statute. In the absence of this enhanced specificity, similarly situated taxpayers might interpret the statutory rules of section 951A differently, potentially resulting in inequitable outcomes. For example, different taxpayers might pursue income-generating activities based on different assumptions about whether that income will be counted as GILTI, and some taxpayers may forego specific investments that other taxpayers deem worthwhile based on different interpretations of the tax consequences alone. The guidance provided in these regulations helps to ensure that

taxpayers face more uniform incentives when making economic decisions, a tenet of economic efficiency. Consistent reporting across taxpayers also increases the IRS's ability to consistently enforce the tax rules, thus increasing equity and decreasing opportunities for tax evasion.

For example, the proposed regulations provide a definition of specified interest expense that adopts a netting approach. Alternatives would be to adopt a tracing approach or to remain silent. The Treasury Department and the IRS rejected a tracing approach because it would be more burdensome for taxpayers due to the complexity of matching, at the U.S. shareholder-level, of the shareholder's pro rata share of each item of interest expense with its pro rata share of each item of interest income. The Treasury Department and the IRS also rejected the option of remaining silent because if taxpayers relied on statutory language alone, taxpayers would adopt different approaches because the statute does not define what ''attributable'' means, leaving it open to differing interpretations.

As discussed above, there are similarities between GILTI and subpart F. Where appropriate, these proposed regulations rely on rules already developed under subpart F. Since taxpayers to whom GILTI applies are already subject to the subpart F regime, it is less costly to them to apply rules they are already familiar with, and they will benefit in reduced time and cost spent learning new rules. For example, the proposed regulations apply existing subpart F rules for determining allowable deductions for GILTI purposes. By relying on existing infrastructure, the proposed regulations allow taxpayers to use the same analysis that they already conduct for subpart F purposes. For additional discussion of the rules for determining allowable deductions, see section I.C.1 of the Explanation of Provisions section.

The Treasury Department and the IRS next considered the benefits and costs of providing these specific proposed terms, calculations, and other details regarding GILTI. In developing these proposed regulations, the Treasury Department and the IRS have generally aimed to apply the principle that an economically efficient tax system would treat income derived from similar economic decisions similarly, to the extent consistent with the statute and considerations of administrability of the tax system. Similar economic decisions, in the context of GILTI, are those that involve property of a similar degree of immobility and that demonstrate active business operations and presence in any particular jurisdiction. See, for example, Senate Explanation, at 366.

An economically efficient tax system would also generally keep the choice among businesses' ownership and organizational structures neutral contingent on the provisions of the corporate income tax and other tax provisions that may affect organizational structure. The Treasury Department and the IRS expect that the proposed regulations, in providing that GILTI be generally calculated on a consolidated group basis and at the partner level in the case of partners that are U.S. shareholders of one or more partnership CFCs, will ensure that shareholders face uniform tax treatment on their GILTI-relevant investments regardless of ownership or organizational structure, thus encouraging market-driven as opposed to tax-driven structuring decisions. If, as an alternative policy approach, GILTI were determined solely at the level of a member (in the case of consolidated groups) or solely at the level of a partnership (in the case of domestic partnerships and their partners), many taxpayers would be compelled to reorganize their ownership structures just to obtain the full aggregation of CFC attributes as envisioned by Congress. Yet other taxpayers would be incentivized to reorganize in an attempt to avoid full aggregation so as to reduce their inclusion below an amount that accurately reflects their GILTI. For an illustration, see section I.F of the Explanation of Provisions. Therefore, the Treasury Department and the IRS propose that GILTI be calculated on a consolidated group basis and at the partner level in the case of partners that are U.S. shareholders of one or more partnership CFCs. The preamble discusses further why those approaches were taken, as well as describing alternative approaches considered. The Treasury Department and the IRS request comments on this proposed approach.

c. Anticipated Impacts on Administrative and Compliance Costs

Because the statute requires payment of tax regardless of the issuance of regulations or instructions, the new forms, revisions to existing forms, and proposed regulations can lower the burden on taxpayers of determining their tax liability. The Treasury Department and the IRS expect that the proposed regulations will reduce the costs for taxpayers to comply with the Act, relative to the baseline of no promulgated regulations. The proposed regulations require that each U.S. shareholder partnership provide to each partner its distributive share of the partnership's GILTI inclusion amount and, if the partner is a U.S. shareholder of one or more partnership CFCs, the partner's proportionate share of the partnership's pro rata share of each relevant item of the partnership CFC. Under the baseline, the burden would potentially have fallen on each partner, who would be required to determine its own distributive share of the partnership's GILTI inclusion amount or, if a U.S. shareholder of a partnership CFC, determine its own GILTI inclusion amount by reference to the partnership's pro rata share of items of the partnership CFC. While this latter burden is difficult to assess, because it is unclear how partners would calculate these amounts in the absence of a determination by the partnership and it is similarly unclear what efforts might be made by the partnership to help the partners fulfill this obligation, the Treasury Department and the IRS expect that it would be significantly greater than the burden incurred under the proposed regulations.

Proposed § 1.6038–2(a) increases record-keeping requirements for taxpayers because it requires all taxpayers to file Form 5471 if they held stock in a CFC during the taxable year regardless of the duration of the holding period, rather than only if they held the stock for a 30-day period under the current regulation. The changes in the proposed regulation derive directly from statutory changes to the holding period requirement in the Act.

C. Paperwork Reduction Act

The collections of information in these proposed regulations with respect to section 951A are in proposed §§ 1.951A–5(f) and 1.6038–5. A separate collection of information applicable to controlling U.S. shareholders of a foreign corporation is in proposed § 1.6038–2(a).

The collection of information in proposed § 1.6038–5 is mandatory for each U.S. shareholder (including a U.S. shareholder partner) that owns (within the meaning of section 958(a)) stock of a CFC. The collection of information in proposed § 1.6038–5 is satisfied by submitting a new reporting form, Form 8992, U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI), with an income tax return. In addition, for those U.S. shareholders that are required to file Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations, a new Schedule I–1, Information for Global Intangible Low-Taxed Income, has been added. For purposes of the Paperwork Reduction Act of 1995 (44

U.S.C. 3507(d)) (''PRA''), the reporting burden associated with proposed § 1.6038–5 will be reflected in the IRS Form 14029, Paperwork Reduction Act Submission, associated with Form 5471 (OMB control number 1545–0704) and the new Form 8992 (OMB control number 1545–0123).

The collection of information in proposed § 1.951A–5(f) requires each U.S. shareholder partnership to provide to its partners their distributive share of the partnership's GILTI inclusion amount, as well as provide to each U.S. shareholder partner their proportionate share of the partnership's pro rata share (if any) of each CFC tested item of each partnership CFC of the partnership. The Treasury Department and the IRS anticipate revising Schedule K–1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc., or its instructions to require the provision of this information. For purposes of the PRA, the reporting burden associated with proposed § 1.951A–5(f) will be reflected in the IRS Form 14029, Paperwork Reduction Act Submission, associated with Schedule K–1 (Form 1065, OMB control number 1545–0123).

The collection of information currently required from a U.S. person that controls a foreign corporation is revised by proposed § 1.6038–2(a). Section 1.6038–2(a) presently requires only those U.S. persons with uninterrupted control of a foreign corporation for 30 days or more during the shareholder's annual accounting period to file Form 5471 for that period. Consistent with statutory changes in the Act, the revised collection of information in proposed § 1.6038–2(a) eliminates the 30-day holding period as a precondition to reporting and requires every U.S. person that controls a foreign corporation at any time during an annual accounting period to file Form 5471 for that period. For purposes of the PRA, the reporting burden associated with proposed § 1.6038–2(a) will be reflected in the IRS Form 14029, Paperwork Reduction Act Submission, associated with Form 5471.

When available, drafts of IRS forms are posted for comment at *https://apps.irs.gov/app/picklist/list/draftTaxForms.html.*

RELATED NEW OR REVISED TAX FORMS

	New	Revision of existing form	Number of respondents (estimated)
Schedule I–1 (Form 5471)	✓		25,000–35,000
Form 8992	✓		25,000–35,000
Form 1065/1120S, Schedule K		✓	8,000–12,000
Form 5471 (30 days)		✓	<1,000

D. Regulatory Flexibility Act

It is hereby certified that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The domestic small business entities that are subject to section 951A and this notice of proposed rulemaking are those domestic small business entities that are U.S. shareholders of a CFC.[2] Generally, a U.S. shareholder is any U.S. person that owns 10 percent or more of a foreign corporation's stock, measured either by value or voting power. A CFC is a foreign corporation in which more than 50 percent of its stock is owned by U.S. shareholders, again measured either by value or voting power. Data about the number of domestic small business entities potentially affected by these regulations are not readily available.

The domestic small business entities that are subject to the requirements of proposed § 1.951A–5(f) or 1.6038–5 of this notice of proposed rulemaking are U.S. shareholders of one or more CFCs. The Treasury Department and the IRS do not have data to assess the number of small entities potentially affected by § 1.951A–5(f) or 1.6038–5. However, businesses that are U.S. shareholders of CFCs are generally not small businesses because the ownership of sufficient stock in a CFC in order to be a U.S. shareholder generally entails significant resources and investment. Therefore, the Treasury Department and the IRS do not believe that a substantial number of domestic small business entities will be subject to proposed § 1.951A–5(f) or 1.6038–5. Consequently, the Treasury Department and the IRS do not believe that proposed § 1.951A–5(f) or 1.6038–5 will have a significant economic impact on a substantial number of domestic small business entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required with respect to the collection of information requirements of proposed § 1.951A–5(f) or 1.6038–5.

Existing § 1.6038–2(a) requires only those U.S. persons with uninterrupted control of a foreign corporation for 30 days or more during the shareholder's annual accounting period to file Form 5471 for that period. Proposed § 1.6038–2(a) eliminates the 30-day holding period as a precondition to reporting and requires every U.S. person that controls a foreign corporation at any time during an annual accounting period to file Form 5471 for that period. As a result, those U.S. shareholders that control a foreign corporation for less than 30 days will now be required to file Form 5471 pursuant to proposed § 1.6038–2(a). The domestic small business entities subject to the requirements of proposed § 1.6038–2(a) are those domestic small business entities that control a foreign corporation at any time during a taxable year. For these purposes, a domestic small business entity controls a foreign corporation by owning more than 50 percent of that foreign corporation's stock, measured either by voting power or value. The Treasury Department and the IRS do not believe that a substantial number of domestic small business entities that are controlling shareholders of a foreign corporation will become Form 5471 filers due to the information collection in proposed § 1.6038–2(a) for the following reasons. First, significant resources and investment are required for a U.S. person to own and operate a business in a foreign country as a corporation. Second, the Treasury Department and the IRS believe that satisfying the stock ownership requirement for control for purposes of proposed § 1.6038–2(a) requires a potential outlay of significant resources and investment, including active involvement in managing the foreign corporation due to controlling ownership of the corporation, such that

[2] The Treasury Department and the IRS estimate that there are 25,000–35,000 respondents of all sizes that are likely to file Schedule I–1, Form 5471. Only a small proportion of these are likely to be small businesses. The Treasury Department and the IRS request comments on the number of small businesses that are likely to file Schedule I–1.

few domestic small business entities are likely to control foreign corporations for purposes of proposed § 1.6038–2(a). For these reasons, the Treasury Department and the IRS do not believe it likely that a domestic small business entity would have controlling ownership of a foreign corporation for less than a 30-day period in a taxable year. As a result, the Treasury Department and the IRS do not believe that a substantial number of domestic small business entities will be affected by the proposed § 1.6038–2(a) eliminating the 30-day holding period as a precondition to filing Form 5471. Consequently, the Treasury Department and the IRS do not believe that proposed § 1.6038–2(a) will have a significant economic impact on a substantial number of domestic small business entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required with respect to the requirements of proposed § 1.6038–2(a).

Notwithstanding this certification, the Treasury Department and the IRS invite comments from the public about the impact of this proposed rule on small entities.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. The IRS invites the public to comment on this certification.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2018, that threshold is approximately $150 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

F. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Comments and Requests for Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, and specifically on the issues identified in sections I.B.3, I.C.1, I.D.4, I.F, I.G.1, I.G.3, and III.C of the Explanations of Provisions. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, then notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of the proposed regulations are Melinda E. Harvey and Michael Kaercher of the Office of Associate Chief Counsel (International) and Austin Diamond-Jones and Kevin M. Jacobs of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in the development of the proposed regulations.

Statement of Availability of IRS Documents

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.951–1 also issued under 26 U.S.C. 7701(a). * * *

Sections 1.951A–2 and 1.951A–3 also issued under 26 U.S.C. 951A(d). * * *

Section 1.951A–5 also issued under 26 U.S.C. 6031.

Section 1.951A–6 also issued under 26 U.S.C. 951A(f)(1)(B). * * *

Section 1.1502–51 also issued under 26 U.S.C. 1502. * * *

Section 1.6038–2 also issued under 26 U.S.C. 6038. * * *

Section 1.6038–5 also issued under 26 U.S.C. 6038. * * *

■ **Par. 2.** Section 1.951–1 is amended by:

■ 1. Revising the introductory language in paragraph (a).

■ 2. Revising paragraphs (e) and (g)(1).

■ 3. Adding paragraphs (h) and (i).

The revisions and additions read as follows:

§ 1.951–1 Amounts included in gross income of United States shareholders.

(a) *In general.* If a foreign corporation is a controlled foreign corporation (within the meaning of section 957) at any time during any taxable year of such corporation, every person—

* * * * *

(e) *Pro rata share of subpart F income defined*—(1) *In general*—(i) *Hypothetical distribution.* For purposes of paragraph (b) of this section, a United States shareholder's pro rata share of a controlled foreign corporation's subpart F income for a taxable year is the amount that bears the same ratio to the corporation's subpart F income for the taxable year as the amount of the corporation's current earnings and profits that would be distributed with respect to the stock of the corporation which the United States shareholder owns (within the meaning of section 958(a)) for the taxable year bears to the total amount of the corporation's current earnings and profits that would be distributed with respect to the stock owned by all the shareholders of the corporation if all the current earnings and profits of the corporation for the taxable year (not reduced by actual distributions during the year) were distributed (*hypothetical distribution*) on the last day of the corporation's taxable year on which such corporation is a controlled foreign corporation (*hypothetical distribution date*).

(ii) *Determination of current earnings and profits.* For purposes of this paragraph (e), the amount of current earnings and profits of a controlled foreign corporation for a taxable year is treated as the greater of the following two amounts:

(A) The earnings and profits of the corporation for the taxable year determined under section 964; or

(B) The sum of the subpart F income (as determined under section 952 and increased as provided under section 951A(c)(2)(B)(ii) and § 1.951A–6(d)) of the corporation for the taxable year and the tested income (as defined in section 951A(c)(2)(A) and § 1.951A–2(b)(1)) of the corporation for the taxable year.

(2) *One class of stock.* If a controlled foreign corporation for a taxable year has only one class of stock outstanding, the amount of the corporation's current earnings and profits distributed in the hypothetical distribution with respect to each share in the class of stock is determined as if the hypothetical distribution were made pro rata with respect to each share in the class of stock.

(3) *More than one class of stock.* If a controlled foreign corporation for a taxable year has more than one class of stock outstanding, the amount of the corporation's current earnings and profits distributed in the hypothetical distribution with respect to each class of stock is determined under this paragraph (e)(3) based on the distribution rights of each class of stock on the hypothetical distribution date, and then further distributed pro rata with respect to each share in the class of stock. Subject to paragraphs (e)(4) through (6) of this section, the distribution rights of a class of stock are determined taking into account all facts and circumstances related to the economic rights and interest in the current earnings and profits of the corporation of each class, including the terms of the class of stock, any agreement among the shareholders and, where appropriate, the relative fair market value of shares of stock.

(4) *Special rules*—(i) *Redemptions, liquidations, and returns of capital.* Notwithstanding the terms of any class of stock of the controlled foreign corporation or any agreement or arrangement with respect thereto, no amount of current earnings and profits is distributed in the hypothetical distribution with respect to a particular class of stock to the extent that a distribution of such amount would constitute a distribution in redemption of stock (even if such redemption would be treated as a distribution of property to which section 301 applies pursuant to section 302(d)), a distribution in liquidation, or a return of capital.

(ii) *Certain cumulative preferred stock.* If a controlled foreign corporation has outstanding a class of redeemable preferred stock with cumulative dividend rights and dividend arrearages that do not compound at least annually at a rate that equals or exceeds the applicable Federal rate (as defined in section 1274(d)(1)) (*AFR*), the amount of the corporation's current earnings and profits distributed in the hypothetical distribution with respect to the class of stock may not exceed the amount of dividends actually paid during the taxable year with respect to the class of stock plus the present value of the unpaid current dividends with respect to the class determined using the AFR that applies on the date the stock is issued for the term from such issue date to the mandatory redemption date and assuming the dividends will be paid at the mandatory redemption date. For purposes of this paragraph (e)(4)(ii), if the class of preferred stock does not have a mandatory redemption date, the mandatory redemption date is the date that the class of preferred stock is expected to be redeemed based on all facts and circumstances.

(iii) *Dividend arrearages.* If there is an arrearage in dividends for prior taxable years with respect to a class of preferred stock of a controlled foreign corporation, an amount of the corporation's current earnings and profits is distributed in the hypothetical distribution to the class of preferred stock by reason of the arrearage only to the extent the arrearage exceeds the accumulated earnings and profits of the controlled foreign corporation remaining from prior taxable years beginning after December 31, 1962, as of the beginning of the taxable year, or the date on which such stock was issued, whichever is later. If there is an arrearage in dividends for prior taxable years with respect to more than one class of preferred stock, the previous sentence is applied to each class in order of priority, except that the accumulated earnings and profits remaining after the applicable date are reduced by the earnings and profits necessary to satisfy arrearages with respect to classes of stock with a higher priority. For purposes of this paragraph (e)(4)(iii), the amount of any arrearage is determined by taking into account the time value of money principles in paragraph (e)(4)(ii) of this section.

(5) *Restrictions or other limitations on distributions*—(i) *In general.* A restriction or other limitation on distributions of an amount of earnings and profits by a controlled foreign corporation is not taken into account in determining the amount of the corporation's current earnings and profits distributed in a hypothetical distribution to a class of stock of the controlled foreign corporation.

(ii) *Definition.* For purposes of paragraph (e)(5)(i) of this section, a restriction or other limitation on distributions includes any limitation that has the effect of limiting the distribution of an amount of earnings and profits by a controlled foreign corporation with respect to a class of stock of the corporation, other than currency or other restrictions or limitations imposed under the laws of any foreign country as provided in section 964(b).

(iii) *Exception for certain preferred distributions.* For purposes of paragraph (e)(5)(i) of this section, the right to receive periodically a fixed amount (whether determined by a percentage of par value, a reference to a floating coupon rate, a stated return expressed in terms of a certain amount of U.S. dollars or foreign currency, or otherwise) with respect to a class of stock the distribution of which is a condition precedent to a further distribution of earnings and profits that year with respect to any class of stock (not including a distribution in partial or complete liquidation) is not a restriction or other limitation on the distribution of earnings and profits by a controlled foreign corporation.

(iv) *Illustrative list of restrictions and limitations.* Except as provided in paragraph (e)(5)(iii) of this section, restrictions or other limitations on distributions include, but are not limited to—

(A) An arrangement that restricts the ability of a controlled foreign corporation to pay dividends on a class of stock of the corporation until a condition or conditions are satisfied (for example, until another class of stock is redeemed);

(B) A loan agreement entered into by a controlled foreign corporation that restricts or otherwise affects the ability to make distributions on its stock until certain requirements are satisfied; or

(C) An arrangement that conditions the ability of a controlled foreign corporation to pay dividends to its shareholders on the financial condition of the corporation.

(6) *Transactions and arrangements with a principal purpose of reducing pro rata shares.* For purposes of this paragraph (e), any transaction or arrangement that is part of a plan a principal purpose of which is the avoidance of Federal income taxation, including, but not limited to, a transaction or arrangement to reduce a United States shareholder's pro rata share of the subpart F income of a controlled foreign corporation, which transaction or arrangement would avoid Federal income taxation without regard

to this paragraph (e)(6), is disregarded in determining such United States shareholder's pro rata share of the subpart F income of the corporation. This paragraph (e)(6) also applies for purposes of the pro rata share rules described in § 1.951A–1(d) that reference this paragraph (e), including the rules in § 1.951A–1(d)(3) that determine the pro rata share of qualified business asset investment based on the pro rata share of tested income.

(7) *Examples.* The application of this section is illustrated by the examples in this paragraph (e)(7).

(i) *Common facts for examples in paragraph (e)(7).* Except as otherwise stated, the following facts are assumed for purposes of the examples.

(A) FC1 is a controlled foreign corporation.

(B) USP1, USP2, and USP3 are domestic corporations and United States shareholders of FC1.

(C) Individual A is a foreign individual, and FC2 is a foreign corporation.

(D) All persons use the calendar year as their taxable year.

(E) Any ownership of FC1 by any shareholder is for all of Year 1.

(F) The common shareholders of FC1 are entitled to dividends when declared by FC1's board of directors.

(G) There are no accrued but unpaid dividends with respect to preferred shares, and common shares have positive liquidation value.

(H) FC1 makes no distributions during Year 1.

(I) There are no other facts and circumstances related to the economic rights and interest of any class of stock in the current earnings and profits of a foreign corporation, and no transaction or arrangement was entered into as part of a plan a principal purpose of which is the avoidance of Federal income taxation.

(J) FC1 does not have tested income within the meaning of section 951A(c)(2)(A) and § 1.951A–2(b)(1) or tested loss within the meaning of section 951A(c)(2)(B) and § 1.951A–2(b)(2).

(ii) Example 1: Single class of stock— (A) *Facts.* FC1 has outstanding 100 shares of one class of stock. USP1 owns 60 shares of FC1. USP2 owns 40 shares of FC1. For Year 1, FC1 has $1,000x of earnings and profits and $100x of subpart F income within the meaning of section 952.

(B) *Facts. Analysis.* FC1 has one class of stock. Therefore, under paragraph (e)(2) of this section, FC1's current earnings and profits of $1,000x are distributed in the hypothetical distribution pro rata to each share of stock. Accordingly, under paragraph (e)(1) of this section, for Year 1, USP1's pro rata share of FC1's subpart F income is $60x ($100x × $600x/$1,000x) and USP2's pro rata share of FC1's subpart F income is $40x ($100x × $400x/$1,000x).

(iii) Example 2: Common and preferred stock— (A) *Facts.* FC1 has outstanding 70 shares of common stock and 30 shares of 4% nonparticipating, voting preferred stock with a par value of $10x per share. USP1 owns all of the common shares. Individual A owns all of the preferred shares. For Year 1, FC1 has $100x of earnings and profits and $50x of subpart F income within the meaning of section 952. In Year 1, FC1 distributes as a dividend $12x to Individual A with respect to Individual A's preferred shares.

(B) *Analysis.* The distribution rights of the preferred shares are not a restriction or other limitation within the meaning of paragraph (e)(5) of this section. Under paragraph (e)(3) of this section, the amount of FC1's current earnings and profits distributed in the hypothetical distribution with respect to Individual A's preferred shares is $12x and with respect to USP1's common shares is $88x. Accordingly, under paragraph (e)(1) of this section, USP1's pro rata share of FC1's subpart F income is $44x ($50x × $88x/$100x) for Year 1.

(iv) Example 3: Restriction based on cumulative income— (A) *Facts.* FC1 has outstanding 10 shares of common stock and 400 shares of 2% nonparticipating, voting preferred stock with a par value of $1x per share. USP1 owns all of the common shares. FC2 owns all of the preferred shares. USP1 and FC2 cause the governing documents of FC1 to provide that no dividends may be paid to the common shareholders until FC1 cumulatively earns $100,000x of income. For Year 1, FC1 has $50x of earnings and profits and $50x of subpart F income within the meaning of section 952. In Year 1, FC1 distributes as a dividend $8x to FC2 with respect to FC2's preferred shares.

(B) *Analysis.* The agreement restricting FC1's ability to pay dividends to common shareholders until FC1 cumulatively earns $100,000x of income is a restriction or other limitation within the meaning of paragraph (e)(5) of this section. Therefore, the restriction is disregarded for purposes of determining the amount of FC1's current earnings and profits distributed in the hypothetical distribution to a class of stock. The distribution rights of the preferred shares are not a restriction or other limitation within the meaning of paragraph (e)(5) of this section. Under paragraph (e)(3) of this section, the amount of FC1's current earnings and profits distributed in the hypothetical distribution with respect to FC2's preferred shares is $8x and with respect to USP1's common shares is $42x. Accordingly, under paragraph (e)(1) of this section, USP1's pro rata share of FC1's subpart F income is $42x for Year 1.

(v) Example 4: Redemption rights— (A) *Facts.* FC1 has outstanding 40 shares of common stock and 10 shares of 4% nonparticipating, voting preferred stock with a par value of $50x per share. Pursuant to the terms of the preferred stock, FC1 has the right to redeem at any time, in whole or in part, the preferred stock. FC2 owns all of the preferred shares. USP1, wholly owned by FC2, owns all of the common shares. For Year 1, FC1 has $100x of earnings and profits and $100x of subpart F income within the meaning of section 952. In Year 1, FC1 distributes as a dividend $20x to FC2 with respect to FC2's preferred shares.

(B) *Analysis.* If FC1 were treated as having redeemed any preferred shares, the redemption would be treated as a distribution to which section 301 applies under section 302(d) due to FC2's constructive ownership of the common shares. However, under paragraph (e)(4)(i) of this section, no amount of earnings and profits is distributed in the hypothetical distribution to the preferred shareholders on the hypothetical distribution date as a result of FC1's right to redeem, in whole or in part, the preferred shares. FC1's redemption rights with respect to the preferred shares cannot affect the distribution of current earnings and profits in the hypothetical distribution to FC1's shareholders. As a result, the amount of FC1's current earnings and profits distributed in the hypothetical distribution with respect to FC2's preferred shares is $20x and with respect to USP1's common shares is $80x. Accordingly, under paragraph (e)(1) of this section, USP1's pro rata share of FC1's subpart F income is $80x for Year 1.

(vi) Example 5: Shareholder owns common and preferred stock— (A) *Facts.* FC1 has outstanding 40 shares of common stock and 60 shares of 6% nonparticipating, nonvoting preferred stock with a par value of $100x per share. USP1 owns 30 shares of the common stock and 15 shares of the preferred stock during Year 1. The remaining 10 shares of common stock and 45 shares of preferred stock of FC1 are owned by Individual A. For Year 1, FC1 has $1,000x of earnings and profits and $500x of subpart F income within the meaning of section 952.

(B) *Analysis.* Under paragraph (e)(5)(iii) of this section, the right of the holder of the preferred stock to receive 6% of par value is not a restriction or other limitation within the meaning of paragraph (e)(5) of this section. The amount of FC1's current earnings and profits distributed in the hypothetical distribution with respect to FC1's preferred shares is $360x (0.06 × $100x × 60) and with respect to its common shares is $640x ($1,000x − $360x). As a result, the amount of FC1's current earnings and profits distributed in the hypothetical distribution to USP1 is $570x, the sum of $90x ($360x × 15/60) with respect to its preferred shares and $480x ($640x × 30/40) with respect to its common shares. Accordingly, under paragraph (e)(1) of this section, USP1's pro rata share of the subpart F income of FC1 is $285x ($500x × $570x/$1,000x).

(vii) Example 6: Subpart F income and tested income— (A) *Facts.* FC1 has outstanding 700 shares of common stock and 300 shares of 4% nonparticipating, voting preferred stock with a par value of $100x per share. USP1 owns all of the common shares. USP2 owns all of the preferred shares. For Year 1, FC1 has $10,000x of earnings and profits, $2,000x of subpart F income within the meaning of section 952, and $9,000x of tested income within the meaning of section 951A(c)(2)(A) and § 1.951A–2(b)(1).

(B) *Analysis*—(*1*) *Pro rata share of subpart F income.* The current earnings and profits of

FC1 determined under paragraph (e)(1)(ii) of this section are $11,000x, the greater of FC1's earnings and profits as determined under section 964 ($10,000x) or the sum of FC1's subpart F income and tested income ($2,000x + $9,000x). The amount of FC1's current earnings and profits distributed in the hypothetical distribution with respect to USP2's preferred shares is $1,200x (.04 × $100x × 300) and with respect to USP1's common shares is $9,800x ($11,000x − $1,200x). Accordingly, under paragraph (e)(1) of this section, USP1's pro rata share of FC1's subpart F income is $1,782x ($2,000x × $9,800x/$11,000x), and USP2's pro rata share of FC1's subpart F income is $218x ($2,000x × $1,200x/$11,000x).

(*2*) *Pro rata share of tested income.* The same analysis applies for the hypothetical distribution with respect to the tested income as under paragraph (ii)(A) of this *Example 6* with respect to the subpart F income. Accordingly, under § 1.951A–1(d)(2), USP1's pro rata share of FC1's tested income is $8,018x ($9,000x × $9,800x/$11,000x), and USP2's pro rata share of FC1's tested income is $982x ($9,000x × $1,200x/$11,000x) for Year 1.

(viii) Example 7: Subpart F income and tested loss— (A) *Facts.* The facts are the same as in paragraph (A) of *Example 6,* except that for Year 1, FC1 has $8,000x of earnings and profits, $10,000x of subpart F income within the meaning of section 952 (but without regard to the limitation in section 952(c)), and $2,000x of tested loss within the meaning of section 951A(c)(2)(B) and § 1.951A–2(b)(2). Under section 951A(c)(2)(B)(ii) and § 1.951A–6(d), the earnings and profits of FC1 are increased for purposes of section 952 by the amount of FC1's tested loss. Accordingly, taking into account section 951A(c)(2)(B)(ii) and § 1.951A–6(d), the subpart F income of FC1 is $10,000x.

(B) *Analysis*—(*1*) *Pro rata share of subpart F income.* The current earnings and profits determined under paragraph (e)(1)(ii) of this section are $10,000x, the greater of the earnings and profits of FC1 determined under section 964 ($8,000x) or the sum of FC1's subpart F income and tested income ($10,000x + $0). The amount of FC1's current earnings and profits distributed in the hypothetical distribution with respect to USP2's preferred shares is $1,200x (.04 × $100x × 300) and with respect to Corp A's common shares is $8,800x ($10,000x − $1,200x). Accordingly, under paragraph (e)(1) of this section, for Year 1, USP1's pro rata share of FC1's subpart F income is $8,800x and USP2's pro rata share of FC1's subpart F income is $1,200x.

(*2*) *Pro rata share of tested loss.* The current earnings and profits determined under § 1.951A–1(d)(4)(i)(B) are $2,000x, the amount of FC1's tested loss. Under § 1.951A–1(d)(4)(i)(C), the entire $2,000x tested loss is distributed in the hypothetical distribution with respect to USP1's common shares. Accordingly, USP1's pro rata share of the tested loss is $2,000x.

* * * * *

(g) * * *

(1) *In general.* For purposes of sections 951 through 964, the term ''United States shareholder'' means, with respect to a foreign corporation, a United States person (as defined in section 957(c)) who owns within the meaning of section 958(a), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation, or 10 percent or more of the total value of shares of all classes of stock of such foreign corporation.

* * * * *

(h) *Special rule for partnership blocker structures*—(1) *In general.* For purposes of sections 951 through 964, a controlled domestic partnership is treated as a foreign partnership in determining the stock of a controlled foreign corporation owned (within the meaning of section 958(a)) by a United States person if the following conditions are satisfied—

(i) Without regard to this paragraph (h), the controlled domestic partnership owns (within the meaning of section 958(a)) stock of a controlled foreign corporation; and

(ii) If the controlled domestic partnership (and all other controlled domestic partnerships in the chain of ownership of the controlled foreign corporation) were treated as foreign—

(A) The controlled foreign corporation would continue to be a controlled foreign corporation; and

(B) At least one United States shareholder of the controlled foreign corporation would be treated as owning (within the meaning of section 958(a)) stock of the controlled foreign corporation through another foreign corporation that is a direct or indirect partner in the controlled domestic partnership.

(2) *Definition of a controlled domestic partnership.* For purposes of paragraph (h)(1) of this section, the term *controlled domestic partnership* means, with respect to a United States shareholder described in paragraph (h)(1)(ii)(B) of this section, a domestic partnership that is controlled by the United States shareholder and persons related to the United States shareholder. For purposes of this paragraph (h)(2), control generally is determined based on all the facts and circumstances, except that a partnership will be deemed to be controlled by a United States shareholder and related persons in any case in which those persons, in the aggregate, own (directly or indirectly through one or more partnerships) more than 50 percent of the interests in the partnership capital or profits. For purposes of this paragraph (h)(2), a related person is, with respect to a United States shareholder, a person that is related to the United States shareholder within the meaning of section 267(b) or 707(b)(1).

(3) Example— (i) *Facts.* USP, a domestic corporation, owns all of the stock of CFC1 and CFC2. CFC1 and CFC2 own 60% and 40%, respectively, of the interests in the capital and profits of DPS, a domestic partnership. DPS owns all of the stock of CFC3. Each of CFC1, CFC2, and CFC3 is a controlled foreign corporation. USP, DPS, CFC1, CFC2, and CFC3 all use the calendar year as their taxable year. For Year 1, CFC3 has $100x of subpart F income (as defined under section 952) and $100x of earnings and profits.

(ii) *Analysis.* DPS is a controlled domestic partnership with respect to USP within the meaning of paragraph (h)(2) of this section because more than 50% of the interests in its capital or profits are owned by persons related to USP within the meaning of section 267(b) (that is, CFC1 and CFC2), and thus DPS is controlled by USP and related persons. Without regard to paragraph (h) of this section, DPS is a United States shareholder that owns (within the meaning of section 958(a)) stock of CFC3, a controlled foreign corporation. If DPS were treated as foreign, CFC3 would continue to be a controlled foreign corporation, and USP would be treated as owning (within the meaning of section 958(a)) stock in CFC3 through CFC1 and CFC2, which are both partners in DPS. Thus, under paragraph (h)(1) of this section, DPS is treated as a foreign partnership for purposes of determining the stock of CFC3 owned (within the meaning of section 958(a)) by USP. Accordingly, USP's pro rata share of CFC3's subpart F income for Year 1 is $100x, and USP includes in its gross income $100x under section 951(a)(1)(A). DPS is not a United States shareholder of CFC3 for purposes of sections 951 through 964.

(i) *Applicability dates.* Paragraphs (a), (e)(1)(ii)(B), and (g)(1) of this section apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end. Except for paragraph (e)(1)(ii)(B), paragraph (e) of this section applies to taxable years of United States shareholders ending on or after October 3, 2018. Paragraph (h) of this section applies to taxable years of domestic partnerships ending on or after May 14, 2010.

* * * * *

■ **Par. 3.** Section 1.951A–0 is added to read as follows:

§ 1.951A–0 Outline of section 951A regulations.

This section lists the headings for §§ 1.951A–1 through 1.951A–7.

§ 1.951A–1 General provisions.

(a) Overview.
(1) In general.
(2) Scope.
(b) Inclusion of global intangible low-taxed income.
(c) Determination of GILTI inclusion amount.
(1) In general.
(2) Definition of net CFC tested income.
(3) Definition of net deemed tangible income return.
(i) In general.
(ii) Definition of deemed tangible income return.
(iii) Definition of specified interest expense.
(4) Determination of GILTI inclusion amount for consolidated groups.
(d) Determination of pro rata share.
(1) In general.
(2) Tested income.
(i) In general.
(ii) Special rule for prior allocation of tested loss.
(3) Qualified business asset investment.
(i) In general.
(ii) Special rule for preferred stock in case of excess QBAI.
(iii) Examples.
(4) Tested loss.
(i) In general.
(ii) Special rule in case of accrued but unpaid dividends.
(iii) Special rule for stock with no liquidation value.
(iv) Examples.
(5) Tested interest expense.
(6) Tested interest income.
(e) Definitions.
(1) CFC inclusion date.
(2) CFC inclusion year.
(3) Section 958(a) stock.
(4) U.S. shareholder inclusion year.

§ 1.951A–2 Tested income and tested loss.

(a) Scope.
(b) Definitions related to tested income and tested loss.
(1) Tested income and tested income CFC.
(2) Tested loss and tested loss CFC.
(c) Rules relating to the determination of tested income and tested loss.
(1) Definition of gross tested income.
(2) Determination of gross tested income and allowable deductions.
(3) Allocation of deductions to gross tested income.
(4) Nonapplication of section 952(c).
(i) In general.
(ii) Example.
(5) Disregard of basis in property related to certain transfers during the disqualified period.
(i) In general.
(ii) Definition of specified property.
(iii) Definition of disqualified basis.
(iv) Example.

§ 1.951A–3 Qualified business asset investment.

(a) Scope.
(b) Definition of qualified business asset investment.
(c) Specified tangible property.
(1) In general.
(2) Tangible property.
(d) Dual use property.
(1) In general.
(2) Dual use ratio.
(3) Example.
(e) Determination of adjusted basis of specified tangible property.
(1) In general.
(2) Effect of change in law.
(3) Specified tangible property placed in service before enactment of section 951A.
(f) Special rules for short taxable years.
(1) In general.
(2) Determination of quarter closes.
(3) Reduction of qualified business asset investment.
(4) Example.
(g) Partnership property.
(1) In general.
(2) Definitions related to partnership QBAI.
(i) In general.
(ii) Partnership QBAI ratio.
(iii) Partnership specified tangible property.
(3) Determination of adjusted basis.
(4) Examples.
(h) Anti-abuse rules for certain transfers of property.
(1) Disregard of basis in specified tangible property held temporarily.
(2) Disregard of basis in specified tangible property related to transfers during the disqualified period.
(i) In general.
(ii) Determination of disqualified basis.
(A) In general.
(B) Definition of qualified gain amount.
(C) Definition of disqualified transfer.
(D) Definition of disqualified period.
(E) Related person.
(iii) Examples.

§ 1.951A–4 Tested interest expense and tested interest income.

(a) Scope.
(b) Definitions related to specified interest expense.
(1) Tested interest expense.
(i) In general.
(ii) Interest expense.
(iii) Qualified interest expense.
(iv) Qualified CFC.
(2) Tested interest income.
(i) In general.
(ii) Interest income.
(iii) Qualified interest income.
(c) Examples.

§ 1.951A–5 Domestic partnerships and their partners.

(a) Scope.
(b) In general.
(1) Determination of GILTI inclusion amount of a U.S. shareholder partnership.
(2) Determination of distributive share of U.S. shareholder partnership's GILTI inclusion amount of partner other than a U.S. shareholder partner.
(c) Determination of GILTI inclusion amount of a U.S. shareholder partner.
(d) Tiered U.S. shareholder partnerships.
(e) Definitions.
(1) CFC tested item.
(2) Partnership CFC.
(3) U.S. shareholder partner.
(4) U.S. shareholder partnership.
(f) Reporting requirement.
(g) Examples.

§ 1.951A–6 Treatment of GILTI inclusion amount and adjustments to earnings and profits and basis related to tested loss CFCs.

(a) Scope.
(b) Treatment as subpart F income for certain purposes.
(1) In general.
(2) Allocation of GILTI inclusion amount to tested income CFCs.
(i) In general.
(ii) Example.
(iii) Translation of portion of GILTI inclusion amount allocated to tested income CFC.
(c) Treatment as an amount includible in the gross income of a United States person.
(1) In general.
(2) Special rule for a United States shareholder that is a domestic partnership.
(d) Increase of earnings and profits of tested loss CFC for purposes of section 952(c)(1)(A).
(e) Adjustments to basis related to net used tested loss.
(1) In general.
(i) Disposition of stock of a controlled foreign corporation.
(ii) Disposition of stock of an upper-tier controlled foreign corporation.
(iii) Disposition of an interest in a foreign entity other than a controlled foreign corporation.
(iv) Order of application of basis reductions.
(v) No duplicative adjustments.
(2) Net used tested loss amount.
(i) In general.
(ii) Used tested loss amount.
(3) Net offset tested income amount.

(i) In general.
(ii) Offset tested income amount.
(4) Attribution to stock.
(i) In general.
(ii) Nonrecognition transactions.
(5) Section 381 transactions.
(6) Other definitions.
(i) Domestic corporation.
(ii) Disposition.
(7) Special rule for disposition by controlled foreign corporation less than 100 percent owned by a single domestic corporation.
(8) Special rules for members of a consolidated group.
(9) Examples.

§ 1.951A–7 Applicability dates.

■ **Par. 4.** Section 1.951A–1 is added to read as follows:

§ 1.951A–1 General provisions.

(a) *Overview*—(1) *In general.* This section and §§ 1.951A–2 through 1.951A–7 (collectively, the *section 951A regulations*) provide rules to determine a United States shareholder's income inclusion under section 951A and certain definitions for purposes of section 951A and the section 951A regulations. This section provides general rules for determining a United States shareholder's inclusion of global intangible low-taxed income. Section 1.951A–2 provides rules for determining a controlled foreign corporation's tested income or tested loss. Section 1.951A–3 provides rules for determining a controlled foreign corporation's qualified business asset investment. Section 1.951A–4 provides rules for determining a controlled foreign corporation's tested interest expense and tested interest income. Section 1.951A–5 provides rules relating to the application of section 951A and the section 951A regulations to domestic partnerships and their partners. Section 1.951A–6 provides rules relating to the treatment of the inclusion of global intangible low-taxed income for certain purposes and adjustments to earnings and profits and basis of a controlled foreign corporation related to a tested loss. Section 1.951A–7 provides dates of applicability.

(2) *Scope.* Paragraph (b) of this section provides the general rule requiring a United States shareholder to include in gross income its global intangible low-taxed income for a U.S. shareholder inclusion year. Paragraph (c) of this section provides rules for determining the amount of a United States shareholder's global intangible low-taxed income for the U.S. shareholder inclusion year, including a rule for the application of section 951A and the section 951A regulations to consolidated groups. Paragraph (d) of this section provides rules for determining a United States shareholder's pro rata share of certain items for purposes of determining the United States shareholder's global intangible low-taxed income. Paragraph (e) of this section provides additional general definitions for purposes of this section and the section 951A regulations.

(b) *Inclusion of global intangible low-taxed income.* Each person who is a United States shareholder (as defined in section 951(b)) of any controlled foreign corporation (as defined in section 957) and owns section 958(a) stock (as defined in paragraph (e)(3) of this section) in any such controlled foreign corporation includes in gross income in the U.S. shareholder inclusion year (as defined in paragraph (e)(4) of this section) the shareholder's GILTI inclusion amount (as defined in paragraph (c) of this section), if any, for the U.S. shareholder inclusion year.

(c) *Determination of GILTI inclusion amount*—(1) *In general.* Except as provided in paragraph (c)(4) of this section, the term *GILTI inclusion amount* means, with respect to a United States shareholder and a U.S. shareholder inclusion year, the excess (if any) of—

(i) The shareholder's net CFC tested income (as defined in paragraph (c)(2) of this section) for the year, over

(ii) The shareholder's net deemed tangible income return (as defined in paragraph (c)(3) of this section) for the year.

(2) *Definition of net CFC tested income.* The term *net CFC tested income* means, with respect to a United States shareholder and a U.S. shareholder inclusion year, the excess (if any) of—

(i) The aggregate of the shareholder's pro rata share of the tested income of each tested income CFC (as defined in § 1.951A–2(b)(1)) for the year, over

(ii) The aggregate of the shareholder's pro rata share of the tested loss of each tested loss CFC (as defined in § 1.951A–2(b)(2)) for the year.

(3) *Definition of net deemed tangible income return*—(i) *In general.* The term *net deemed tangible income return* means, with respect to a United States shareholder and a U.S. shareholder inclusion year, the excess (if any) of—

(A) The shareholder's deemed tangible income return (as defined in paragraph (c)(3)(ii) of this section) for the year, over

(B) The shareholder's specified interest expense (as defined in paragraph (c)(3)(iii) of this section) for the year.

(ii) *Definition of deemed tangible income return.* The term *deemed tangible income return* means, with respect to a United States shareholder and a U.S. shareholder inclusion year, 10 percent of the aggregate of the shareholder's pro rata share of the qualified business asset investment (as defined in § 1.951A–3(b)) of each tested income CFC for the year.

(iii) *Definition of specified interest expense.* The term *specified interest expense* means, with respect to a United States shareholder and a U.S. shareholder inclusion year, the excess (if any) of—

(A) The aggregate of the shareholder's pro rata share of the tested interest expense (as defined in § 1.951A–4(b)(1)) of each controlled foreign corporation for the year, over

(B) The aggregate of the shareholder's pro rata share of the tested interest income (as defined in § 1.951A–4(b)(2)) of each controlled foreign corporation for the year.

(4) *Determination of GILTI inclusion amount for consolidated groups.* For purposes of section 951A and the section 951A regulations, a member of a consolidated group (as defined in § 1.1502–1(h)) determines its GILTI inclusion amount under the rules provided in § 1.1502–51.

(d) *Determination of pro rata share*—(1) *In general.* For purposes of paragraph (c) of this section, each United States shareholder that owns section 958(a) stock in a controlled foreign corporation as of a CFC inclusion date (as defined in paragraph (e)(1) of this section) determines for a U.S. shareholder inclusion year that includes such CFC inclusion date its pro rata share (if any) of the controlled foreign corporation's tested income, tested loss, qualified business asset investment, tested interest expense, and tested interest income (each a *CFC tested item*), as applicable, for the CFC inclusion year (as defined in paragraph (e)(2) of this section). Except as otherwise provided in this paragraph (d), a United States shareholder's pro rata share of each CFC tested item is determined independently of its pro rata share of any other CFC tested item. Except as modified in this paragraph (d), a United States shareholder's pro rata share of any CFC tested item is determined under the rules of section 951(a)(2) and § 1.951–1(b) and (e) in the same manner as those provisions apply to subpart F income. Under section 951(a)(2) and § 1.951–1(b) and (e), as modified by this paragraph (d), a United States shareholder's pro rata share of any CFC tested item for a U.S. shareholder inclusion year is

determined with respect to the section 958(a) stock of the controlled foreign corporation owned by the United States shareholder on the CFC inclusion date. A United States shareholder's pro rata share of any CFC tested item is translated into United States dollars using the average exchange rate for the CFC inclusion year of the controlled foreign corporation. Paragraphs (d)(2) through (5) of this section provide rules for determining a United States shareholder's pro rata share of each CFC tested item of a controlled foreign corporation.

(2) *Tested income*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, a United States shareholder's pro rata share of the tested income of each tested income CFC for a U.S. shareholder inclusion year is determined under section 951(a)(2) and § 1.951–1(b) and (e), substituting ''tested income'' for ''subpart F income'' each place it appears, other than in § 1.951–1(e)(1)(ii)(B).

(ii) *Special rule for prior allocation of tested loss.* In any case in which tested loss has been allocated to any class of stock in a prior CFC inclusion year under paragraph (d)(4)(iii) of this section, tested income is first allocated to each such class of stock in the order of its liquidation priority to the extent of the excess (if any) of the sum of the tested loss allocated to each such class of stock for each prior CFC inclusion year under paragraph (d)(4)(iii) of this section, over the sum of the tested income allocated to each such class of stock for each prior CFC inclusion year under this paragraph (d)(2)(ii). Paragraph (d)(2)(i) of this section applies for purposes of determining a United States shareholder's pro rata share of the remainder of the tested income, except that, for purposes of the hypothetical distribution of section 951(a)(2)(A) and § 1.951–1(b) and (e), the amount of current earnings and profits of the tested income CFC is reduced by the amount of tested income allocated under the first sentence of this paragraph (d)(2)(ii). For an example of the application of this paragraph (d)(2), see *Example 2* of paragraph (d)(4)(iv) of this section.

(3) *Qualified business asset investment*—(i) *In general.* Except as provided in paragraph (d)(3)(ii) of this section, a United States shareholder's pro rata share of the qualified business asset investment of a tested income CFC for a U.S. shareholder inclusion year bears the same ratio to the total qualified business asset investment of the tested income CFC for the CFC inclusion year as the United States shareholder's pro rata share of the tested income of the tested income CFC for the U.S. shareholder inclusion year bears to the total tested income of the tested income CFC for the CFC inclusion year.

(ii) *Special rule for preferred stock in case of excess QBAI.* If a tested income CFC's qualified business asset investment for a CFC inclusion year exceeds 10 times its tested income for the CFC inclusion year (such excess, *excess QBAI*), a United States shareholder's pro rata share of the tested income CFC's qualified business asset investment is the sum of its pro rata share determined under paragraph (d)(3)(i) of this section without regard to the excess QBAI, plus its pro rata share determined under paragraph (d)(3)(i) of this section solely with respect to the excess QBAI and without regard to tested income allocated to any share of preferred stock of the tested income CFC under paragraph (d)(2) of this section.

(iii) *Examples.* The following examples illustrate the application of paragraphs (d)(2) and (3) of this section. See also § 1.951–1(e)(7), *Example 6* (illustrating a United States shareholder's pro rata share of tested income).

(A) Example 1— (1) Facts. FS, a controlled foreign corporation, has outstanding 70 shares of common stock and 30 shares of 4% nonparticipating, cumulative preferred stock with a par value of $10x per share. P Corp, a domestic corporation and a United States shareholder of FS, owns all of the common shares. Individual A, a United States shareholder, owns all of the preferred shares. Both FS and P Corp use the calendar year as their taxable year. Individual A and P Corp are shareholders of FS for all of Year 4. At the beginning of Year 4, FS had no dividend arrearages with respect to its preferred stock. For Year 4, FS has $100x of earnings and profits, $120x of tested income, and no subpart F income within the meaning of section 952. FS also has $750x of qualified business asset investment for Year 4.

(*2*) *Analysis*—(*i*) *Determination of pro rata share of tested income.* For purposes of determining P Corp's pro rata share of FS's tested income under paragraph (d)(2) of this section, the amount of FS's current earnings and profits for purposes of the hypothetical distribution described in § 1.951–1(e)(1)(i) is $120x, the greater of its earnings and profits as determined under section 964 ($100x) or the sum of its subpart F income and tested income ($0 + $120x). Under paragraph (d)(2) of this section and § 1.951–1(e)(3), the amount of FS's current earnings and profits distributed in the hypothetical distribution is $12x (.04 × $10x × 30) with respect to Individual A's preferred shares and $108x ($120x − $12x) with respect to P Corp's common shares. Accordingly, under paragraph (d)(2) of this section and § 1.951–1(e)(1), Individual A's pro rata share of FS's tested income is $12x, and P Corp's pro rata share of FS's tested income is $108x for Year 4.

(*ii*) *Determination of pro rata share of qualified business asset investment.* The special rule of paragraph (d)(3)(ii) of this section does not apply because FS's qualified business asset investment of $750x does not exceed $1,200x, which is 10 times FS's tested income of $120x. Accordingly, under the general rule of paragraph (d)(3)(i) of this section, Individual A's and P Corp's pro rata share of FS's qualified business asset investment bears the same ratio to FS's total qualified business asset investment as Individual A's and P Corp's pro rata share, respectively, of FS's tested income bears to FS's total tested income. Thus, Individual A's pro rata share of FS's qualified business asset investment is $75x ($750x × $12x/$120x), and P Corp's pro rata share of FS's qualified business asset investment is $675x ($750x × $108x/$120x).

(B) Example 2— (1) Facts. The facts are the same as in paragraph (1) of *Example 1,* except that FS has $1,500x of qualified business asset investment for Year 4.

(*2*) *Analysis.* (*i*) *Determination of pro rata share of tested income.* The analysis and the result are the same as in paragraph (*2*)(*i*) of *Example 1.*

(*ii*) *Determination of pro rata share of qualified business asset investment.* The special rule of paragraph (d)(3)(ii) of this section applies because FS's qualified business asset investment of $1,500x exceeds $1,200x, which is 10 times FS's tested income of $120x. Under paragraph (d)(3)(ii) of this section, Individual A's and P Corp's pro rata share of FS's qualified business asset investment is the sum of their pro rata share determined under paragraph (d)(3)(i) of this section without regard to the excess QBAI plus their pro rata share with respect to the excess QBAI but without regard to tested income allocated to preferred stock under paragraph (d)(2) of this section. Without regard to the excess QBAI of $300x, Individual A's pro rata share of FS's qualified business asset investment is $120x ($1,200x × $12x/$120x), and P Corp's pro rata share of FS's qualified business asset investment is $1,080x ($1,200x × $108x/$120x). Solely with respect to the excess QBAI and without regard to tested income allocated to the preferred stock under paragraph (d)(2) of this section, Individual A's pro rata share of FS's qualified business asset investment is $0 ($300x × $0/$108x), and P Corp's pro rata share of FS's qualified business asset investment is $300x ($300x × $108x/$108x). Thus, Individual A's pro rata share of FS's qualified business asset investment is $120x ($120x + $0), and P Corp's pro rata share of FS's qualified business asset investment is $1,380x ($1,080x + $300x).

(4) *Tested loss*—(i) *In general.* A United States shareholder's pro rata share of the tested loss of each tested loss CFC for a U.S. shareholder inclusion year is determined under section 951(a)(2) and § 1.951–1(b) and (e) with the following modifications—

(A) ''Tested loss'' is substituted for ''subpart F income'' each place it appears;

(B) For purposes of the hypothetical distribution described in section

951(a)(2)(A) and § 1.951–1(e)(1)(i), the amount of current earnings and profits of a controlled foreign corporation for a CFC inclusion year is treated as being equal to the tested loss of the tested loss CFC for the CFC inclusion year;

(C) Except as provided in paragraphs (d)(4)(ii) and (iii) of this section, the hypothetical distribution described in section 951(a)(2)(A) and § 1.951–1(e)(1)(i) is treated as made solely with respect to the common stock of the tested loss CFC; and

(D) The amount of the dividend received by any other person for purposes of section 951(a)(2)(B) and § 1.951–1(b)(1)(ii) is treated as being equal to the amount of the tested loss of the tested loss CFC for the CFC inclusion year (regardless of whether, or the extent to which, the other person actually receives a dividend).

(ii) *Special rule in case of accrued but unpaid dividends.* If a tested loss CFC's earnings and profits that have accumulated since the issuance of preferred shares are reduced below the amount necessary to satisfy any accrued but unpaid dividends with respect to such preferred shares, then the amount by which the tested loss reduces the earnings below the amount necessary to satisfy the accrued but unpaid dividends is distributed in the hypothetical distribution described in section 951(a)(2)(A) and § 1.951–1(e)(1)(i) with respect to the preferred stock of the tested loss CFC and the remainder of the tested loss is distributed with respect to the common stock of the tested loss CFC.

(iii) *Special rule for stock with no liquidation value.* If a tested loss CFC's common stock has a liquidation value of zero and there is at least one other class of equity with a liquidation preference relative to the common stock, then the tested loss is distributed in the hypothetical distribution described in section 951(a)(2)(A) and § 1.951–1(e)(1)(i) with respect to the most junior class of equity with a positive liquidation value to the extent of such liquidation value. Thereafter, tested loss is distributed with respect to the next most junior class of equity to the extent of its liquidation value and so on. All determinations of liquidation value are to be made as of the beginning of the CFC inclusion year of the tested loss CFC.

(iv) *Examples.*The following examples illustrate the application of this paragraph (d)(4). See also § 1.951–1(e)(7), *Example 7* (illustrating a United States shareholder's pro rata share of subpart F income and tested loss).

(A) Example— (1) Facts. FS, a controlled foreign corporation, has outstanding 70 shares of common stock and 30 shares of 4% nonparticipating, cumulative preferred stock with a par value of $10x per share. P Corp, a domestic corporation and a United States shareholder of FS, owns all of the common shares. Individual A, a United States citizen and a United States shareholder, owns all of the preferred shares. FS, Individual A, and P Corp all use the calendar year as their taxable year. Individual A and P Corp are shareholders of FS for all of Year 5. At the beginning of Year 5, FS had earnings and profits of $120x, which accumulated after the issuance of the preferred stock. At the end of Year 5, the accrued but unpaid dividends with respect to the preferred stock are $36x. For Year 5, FS has a $100x tested loss, and no other items of income, gain, deduction or loss. At the end of Year 5, FS has earnings and profits of $20x.

(*2*) *Analysis.* FS is a tested loss CFC for Year 5. Before taking into account the tested loss in Year 5, FS had sufficient earnings and profits to satisfy the accrued but unpaid dividends of $36x. The amount of the reduction in earnings below the amount necessary to satisfy the accrued but unpaid dividends attributable to the tested loss is $16x ($36x − ($120x − $100x)). Accordingly, under paragraph (d)(4)(ii) of this section, Individual A's pro rata share of the Year 5 tested loss is $16x, and P Corp's pro rata share of the tested loss is $84x ($100x–$16x).

(B) Example 2—(1) Facts. FS, a controlled foreign corporation, has outstanding 100 shares of common stock and 50 shares of 4% nonparticipating, cumulative preferred stock with a par value of $100x per share. P Corp, a domestic corporation and a United States shareholder of FS, owns all of the common shares. Individual A, a United States citizen and a United States shareholder, owns all of the preferred shares. FS, Individual A, and P Corp all use the calendar year as their taxable year. Individual A and P Corp are shareholders of FS for all of Year 1 and Year 2. At the beginning of Year 1, the common stock had no liquidation value and the preferred stock had a liquidation value of $5,000x and no accrued but unpaid dividends. In Year 1, FS has a tested loss of $1,000x and no other items of income, gain, deduction, or loss. In Year 2, FS has tested income of $3,000x and no other items of income, gain, deduction, or loss and paid no dividends. FS has earnings and profits of $3,000x for Year 2. At the end of Year 2, FS has accrued but unpaid dividends of $400x with respect to the preferred stock ($5000x × 0.04 for Year 1 and $5000x × 0.04 for Year 2). (*2*) *Analysis*—(*i*) *Year 1.* FS is a tested loss CFC in Year 1. The common stock of FS has liquidation value of zero and the preferred stock has a liquidation preference relative to the common stock. The tested loss ($1,000x) does not exceed the liquidation value of the preferred stock ($5,000x). Accordingly, under paragraph (d)(4)(iii) of this section, the tested loss is distributed with respect to the preferred stock in the hypothetical distribution described in section 951(a)(2)(A) and § 1.951–1(e). Individual A's pro rata share of the tested loss is $1,000x, and P Corp's pro rata share of the tested loss is $0.

(*ii*) *Year 2.* FS is a tested income CFC in Year 2. Because $1,000x of tested loss was allocated to the preferred stock in Year 1 under paragraph (d)(4)(iii) of this section, the first $1,000x of tested income in Year 2 is allocated to the preferred stock under paragraph (d)(2)(ii) of this section. P Corp's and Individual A's pro rata shares of the remaining $2,000x of tested income are determined under the general rule of paragraph (d)(2)(i) of this section, except that for purposes of the hypothetical distribution the amount of FS's current earnings and profits is reduced by the tested income allocated under paragraph (d)(2)(ii) of this section to $2,000x ($3,000x − $1,000x). Accordingly, under paragraph (d)(2)(i) of this section, the amount of FS's current earnings and profits distributed in the hypothetical distribution with respect to Individual A's preferred stock is $400x ($400x of accrued but unpaid dividends) and with respect to P Corp's common stock is $1,600x ($2,000x − $400x). Individual A's pro rata share of the tested income is $1,400x ($1,000x + $400x), and P Corp's pro rata share of the tested income is $1,600x.

(5) *Tested interest expense.* A United States shareholder's pro rata share of tested interest expense of a controlled foreign corporation for a U.S. shareholder inclusion year is equal to the amount by which the tested interest expense reduces the shareholder's pro rata share of tested income of the controlled foreign corporation for the U.S. shareholder inclusion year, increases the shareholder's pro rata share of tested loss of the controlled foreign corporation for the U.S. shareholder inclusion year, or both.

(6) *Tested interest income.* A United States shareholder's pro rata share of tested interest income of a controlled foreign corporation for a U.S. shareholder inclusion year is equal to the amount by which the tested interest income increases the shareholder's pro rata share of tested income of the controlled foreign corporation for the U.S. shareholder inclusion year, reduces the shareholder's pro rata share of tested loss of the controlled foreign corporation for the U.S. shareholder inclusion year, or both.

(e) *Definitions.* This paragraph (e) provides additional definitions that apply for purposes of the section 951A regulations. Other definitions relevant to the section 951A regulations are included in §§ 1.951A–2 through 1.951A–6.

(1) *CFC inclusion date.* The term *CFC inclusion date* means the last day of a CFC inclusion year on which a foreign corporation is a controlled foreign corporation.

(2) *CFC inclusion year.* The term *CFC inclusion year* means any taxable year of a foreign corporation beginning after December 31, 2017, at any time during which the corporation is a controlled foreign corporation.

(3) *Section 958(a) stock.* The term *section 958(a) stock* means stock of a controlled foreign corporation owned (directly or indirectly) by a United States shareholder within the meaning of section 958(a).

(4) *U.S. shareholder inclusion year.* The term *U.S. shareholder inclusion year* means a taxable year of a United States shareholder that includes a CFC inclusion date of a controlled foreign corporation of the United States shareholder.

■ **Par. 5.** Section 1.951A–2 is added to read as follows:

§ 1.951A–2 Tested income and tested loss.

(a) *Scope.* This section provides general rules for determining the tested income or tested loss of a controlled foreign corporation for purposes of determining a United States shareholder's net CFC tested income under § 1.951A–1(c)(2). Paragraph (b) of this section provides definitions related to tested income and tested loss. Paragraph (c) of this section provides rules for determining the gross tested income of a controlled foreign corporation and the deductions that are properly allocable to gross tested income.

(b) *Definitions related to tested income and tested loss*—(1) *Tested income and tested income CFC.* The term *tested income* means the excess (if any) of a controlled foreign corporation's gross tested income for a CFC inclusion year, over the allowable deductions (including taxes) properly allocable to the gross tested income for the CFC inclusion year (a controlled foreign corporation with tested income for a CFC inclusion year, a *tested income CFC*).

(2) *Tested loss and tested loss CFC.* The term *tested loss* means the excess (if any) of a controlled foreign corporation's allowable deductions (including taxes) properly allocable to gross tested income (or that would be allocable to gross tested income if there were gross tested income) for a CFC inclusion year, over the gross tested income of the controlled foreign corporation for the CFC inclusion year (a controlled foreign corporation without tested income for a CFC inclusion year, a *tested loss CFC*).

(c) *Rules relating to the determination of tested income and tested loss*—(1) *Definition of gross tested income.* The term *gross tested income* means the gross income of a controlled foreign corporation for a CFC inclusion year determined without regard to—

(i) Items of income described in section 952(b),

(ii) Gross income taken into account in determining the subpart F income of the corporation,

(iii) Gross income excluded from the foreign base company income (as defined in section 954) or the insurance income (as defined in section 953) of the corporation solely by reason of an election made under section 954(b)(4) and § 1.954–1(d)(5),

(iv) Dividends received by the corporation from related persons (as defined in section 954(d)(3)), and

(v) Foreign oil and gas extraction income (as defined in section 907(c)(1)) of the corporation.

(2) *Determination of gross income and allowable deductions.* For purposes of determining tested income and tested loss, the gross income and allowable deductions of a controlled foreign corporation for a CFC inclusion year are determined under the rules of § 1.952–2 for determining the subpart F income of a controlled foreign corporation.

(3) *Allocation of deductions to gross tested income.* Any deductions of a controlled foreign corporation allowable under paragraph (c)(2) of this section are allocated and apportioned to gross tested income under the principles of section 954(b)(5) and § 1.954–1(c), by treating gross tested income that falls within a single separate category (as defined in § 1.904–5(a)(1)) as a single item of gross income, in addition to the items set forth in § 1.954–1(c)(1)(iii).

(4) *Nonapplication of section 952(c)*—(i) *In general.* The gross tested income and allowable deductions properly allocable to gross tested income of a controlled foreign corporation for a CFC inclusion year are determined without regard to the application of section 952(c).

(ii) *Example.* The following example illustrates the application of this paragraph (c)(4).

(A) Example—(1) Facts. A Corp, a domestic corporation, owns 100% of the single class of stock of FS, a controlled foreign corporation. Both A Corp and FS use the calendar year as their taxable year. In Year 1, FS has foreign base company income of $100x, a loss in foreign oil and gas extraction income of $100x, and earnings and profits of $0. FS has no other income. In Year 2, FS has gross income of $100x and earnings and profits of $100x. Without regard to section 952(c)(2), in Year 2 FS has no income described in any of the categories of income excluded from gross tested income in paragraphs (c)(1)(i) through (v) of this section. FS has no allowable deductions properly allocable to gross tested income for Year 2. (2) *Analysis.* As a result of the earnings and profits limitation of section 952(c)(1), FS has no subpart F income in Year 1, and A Corp has no inclusion with respect to FS under section 951(a)(1)(A). Under paragraph (c)(4)(i) of this section, the gross tested income of FS is determined without regard to section 952(c)(1). Therefore, in determining the gross tested income of FS in Year 1, the $100x foreign base company income of FS in Year 1 is excluded under paragraph (c)(1)(ii) of this section, and FS has no gross tested income in Year 1. In Year 2, under section 952(c)(2), FS's earnings and profits ($100x) in excess of its subpart F income ($0) are treated as subpart F income. Therefore, FS has subpart F income of $100x in Year 2, and A Corp has an inclusion of $100x with respect to FS under section 951(a)(1)(A). Under paragraph (c)(4)(i) of this section, the gross tested income of FS is determined without regard to section 952(c)(2). Accordingly, FS's income in Year 2 is not subpart F income described in paragraph (c)(1)(ii) of this section, and FS has $100x of gross tested income in Year 2.

(5) *Disregard of basis in property related to certain transfers during the disqualified period*—(i) *In general.* Any deduction or loss attributable to disqualified basis of any specified property allocated and apportioned to gross tested income under paragraph (c)(3) of this section is disregarded for purposes of determining tested income or tested loss of a controlled foreign corporation. For purposes of this paragraph (c)(5), in the case that a deduction or loss arises with respect to specified property with disqualified basis and adjusted basis other than disqualified basis, the deduction or loss is treated as attributable to the disqualified basis in the same proportion that the disqualified basis bears to the total adjusted basis of the property.

(ii) *Definition of specified property.* The term *specified property* means property that is of a type with respect to which a deduction is allowable under section 167 or 197.

(iii) *Definition of disqualified basis.* Solely for purposes of paragraph (c)(5)(i) of this section, the term *disqualified basis* has the meaning set forth in § 1.951A–3(h)(2)(ii) (including with respect to property owned by a partnership by reason of § 1.951A–3(g)(3)), except that, in applying the provisions of § 1.951A–3(h)(2) to determine the disqualified basis, the term ''specified property'' is substituted for ''specified tangible property'' and the term ''controlled foreign corporation'' is substituted for ''tested income CFC'' each place they appear.

(iv) Example— (A) *Facts.* USP, a domestic corporation, owns all of the stock of CFC1 and CFC2, each a controlled foreign corporation. Both USP and CFC1 use the calendar year as their taxable year. CFC2 uses a taxable year ending November 30. On November 1, 2018, before the start of its first CFC inclusion year, CFC2 sells intangible property to CFC1 that is amortizable under

section 197 in exchange for $100x of cash. The intangible property has a basis of $20x in the hands of CFC2, and CFC2 recognizes $80x of gain as a result of the sale ($100x − $20x). CFC2's gain is not subject to U.S. tax or taken into account in determining USP's inclusion under section 951(a)(1)(A).

(B) *Analysis.* The sale by CFC1 is a disqualified transfer (within the meaning of § 1.951A–3(h)(2)(ii)(C), as modified by paragraph (c)(5)(iii) of this section) because it is a transfer of specified property, CFC2 and CFC1 are related persons, and the transfer occurs during the disqualified period (within the meaning of § 1.951A–3(h)(2)(ii)(D)). The disqualified basis is $80x, the excess of CFC1's adjusted basis in the property immediately after the disqualified transfer ($100x), over the sum of CFC2's basis in the property immediately before the transfer ($20x) and the qualified gain amount (as defined in § 1.951A–3(h)(2)(ii)(B)) ($0). Accordingly, under paragraph (c)(5)(i) of this section, any deduction or loss attributable to the disqualified basis is disregarded for purposes of determining the tested income or tested loss of any CFC for any CFC inclusion year.

■ **Par. 6.** Section 1.951A–3 is added to read as follows:

§ 1.951A–3 Qualified business asset investment.

(a) *Scope.* This section provides general rules for determining the qualified business asset investment of a controlled foreign corporation for purposes of determining a United States shareholder's deemed tangible income return under § 1.951A–1(c)(3)(ii). Paragraph (b) of this section defines qualified business asset investment. Paragraph (c) of this section defines tangible property and specified tangible property. Paragraph (d) of this section provides rules and examples for determining the portion of property that is specified tangible property when the property is used in the production of both gross tested income and gross income that is not gross tested income. Paragraph (e) of this section provides rules for determining the adjusted basis of specified tangible property. Paragraph (f) of this section provides rules for determining qualified business asset investment of a tested income CFC with a short taxable year. Paragraph (g) of this section provides rules and examples for increasing the qualified business asset investment of a tested income CFC by reason of property owned through a partnership. Paragraph (h) of this section provides anti-abuse rules that disregard the basis of specified tangible property transferred in certain transactions when determining the qualified business asset investment of a tested income CFC.

(b) *Definition of qualified business asset investment.* The term *qualified business asset investment* means the average of a tested income CFC's aggregate adjusted bases as of the close of each quarter of a CFC inclusion year in specified tangible property that is used in a trade or business of the tested income CFC and is of a type with respect to which a deduction is allowable under section 167. A tested loss CFC has no qualified business asset investment. See paragraph (f) of this section for rules relating to the qualified business asset investment of a tested income CFC with a short taxable year.

(c) *Specified tangible property*—(1) *In general.* The term *specified tangible property* means, subject to paragraph (d) of this section, tangible property used in the production of gross tested income. None of the tangible property of a tested loss CFC is specified tangible property.

(2) *Tangible property.* The term *tangible property* means property for which the depreciation deduction provided by section 167(a) is eligible to be determined under section 168 without regard to section 168(f)(1), (2), or (5) and the date placed in service.

(d) *Dual use property*—(1) *In general.* In the case of tangible property of a tested income CFC that is used in both the production of gross tested income and the production of gross income that is not gross tested income in a CFC inclusion year, the portion of the adjusted basis in the property treated as adjusted basis in specified tangible property for the CFC inclusion year is determined by multiplying the average of the tested income CFC's adjusted basis in the property by the dual use ratio with respect to the property for the CFC inclusion year.

(2) *Dual use ratio.* The term *dual use ratio* means, with respect to specified tangible property:

(i) In the case of specified tangible property that produces directly identifiable income for a CFC inclusion year, the ratio of the gross tested income produced by the property for the CFC inclusion year to the total amount of gross income produced by the property for the CFC inclusion year.

(ii) In the case of specified tangible property that does not produce directly identifiable income for a CFC inclusion year, the ratio of the gross tested income of the tested income CFC for the CFC inclusion year to the total amount of gross income of the tested income CFC for the CFC inclusion year.

(3) *Example.* The following example illustrates the application of this paragraph (d).

(i) Example— (A) *Facts.* FS is a tested income CFC. FS owns a machine that only packages Product A. In Year 1, FS sells Product A to related and unrelated resellers and earns $1,000x of gross income. For Year 1, sales of Product A produce gross tested income of $750x and foreign base company sales income (as defined in section 954(d)) of $250x. The average adjusted basis of the machine for Year 1 in the hands of FS is $4,000x. FS also owns an office building for its administrative functions with an average adjusted basis for Year 1 of $10,000x. The office building does not produce directly identifiable income. FS has no other specified tangible property. For year 1, FS also earns $1,250x of gross tested income and $2,750x of foreign base company sales income from sales of Product B. Neither the machine nor the office building is used in the production of income related to Product B. For Year 1, FS's gross tested income is $2,000x and its total gross income is $5,000x.

(B) *Analysis.* The machine and office building are both property for which the depreciation deduction provided by section 167(a) is eligible to be determined under section 168. Therefore, under paragraph (c)(2) of this section, the machine and office building are tangible property. Under paragraph (d)(1) of this section, the portion of the basis in the machine treated as basis in specified tangible property is equal to FS's average basis in the machine for the year ($4,000x), multiplied by the dual use ratio under paragraph (d)(2)(i) of this section (75%), which is the proportion that the gross tested income produced by the property ($750x) bears to the total gross income produced by the property ($1,000x). Accordingly, $3,000x ($4,000x × 75%) of FS's adjusted basis in the machine is taken into account in determining the average of FS's aggregate adjusted bases described in paragraph (b) of this section. Under paragraph (d)(1) of this section, the portion of the basis in the office building treated as basis in specified tangible property is equal to FS's average basis in the office building for the year ($10,000x), multiplied by the dual use ratio under paragraph (d)(2)(ii) of this section (40%), which is the ratio of FS's gross tested income for Year 1 ($2,000x) to FS's total gross income for Year 1 ($5,000x). Accordingly, $4,000x ($10,000x × 40%) of FS's adjusted basis in the office building is taken into account in determining the average of FS's aggregate adjusted bases described in paragraph (b) of this section.

(e) *Determination of adjusted basis of specified tangible property*—(1) *In general.* The adjusted basis in specified tangible property is determined by using the alternative depreciation system under section 168(g), and by allocating the depreciation deduction with respect to such property for the CFC inclusion year ratably to each day during the period in the taxable year to which such depreciation relates.

(2) *Effect of change in law.* The determination of adjusted basis for purposes of paragraph (b) of this section is made without regard to any provision of law enacted after December 22, 2017, unless such later enacted law specifically and directly amends the

definition of qualified business asset investment under section 951A.

(3) *Specified tangible property placed in service before enactment of section 951A.* The adjusted basis in property placed in service before December 22, 2017, is determined using the alternative depreciation system under section 168(g), as if this system had applied from the date that the property was placed in service.

(f) *Special rules for short taxable years*—(1) *In general.* In the case of a tested income CFC that has a CFC inclusion year that is less than twelve months (a *short taxable year*), the rules for determining the qualified business asset investment of the tested income CFC under this section are modified as provided in paragraphs (f)(2) and (3) of this section with respect to the CFC inclusion year.

(2) *Determination of quarter closes.* For purposes of determining quarter closes, in determining the qualified business asset investment of a tested income CFC for a short taxable year, the quarters of the tested income CFC for purposes of this section are the full quarters beginning and ending within the short taxable year (if any), determining quarter length as if the tested income CFC did not have a short taxable year, plus one or more short quarters (if any).

(3) *Reduction of qualified business asset investment.* The qualified business asset investment of a tested income CFC for a short taxable year is the sum of—

(i) The sum of the tested income CFC's aggregate adjusted bases in specified tangible property as of the close of each full quarter (if any) in the CFC inclusion year divided by four, plus

(ii) The tested income CFC's aggregate adjusted bases in specified tangible property as of the close of each short quarter (if any) in the CFC inclusion year multiplied by the sum of the number of days in each short quarter divided by 365.

(4) *Example.* The following example illustrates the application of this paragraph (f).

(i) Example— (A) *Facts.* USP1, a domestic corporation, owns all of the stock of FS, a controlled foreign corporation. USP1 owns FS from the beginning of Year 1. On July 15, Year 1, USP1 sells FS to USP2, an unrelated person. USP2 makes a section 338(g) election with respect to the purchase of FS, as a result of which FS's taxable year is treated as ending on July 15. USP1, USP2, and FS all use the calendar year as their taxable year. FS's aggregate adjusted bases in specified tangible property are $250x as of March 31, $300x as of June 30, $275x as of July 15, $500x as of September 30, and $450x as of December 31.

(B) *Analysis*—(*1*) *Determination of short taxable years and quarters.* FS has two short taxable years in Year 1. The first short taxable year is from January 1 to July 15, with two full quarters (January 1–March 31 and April 1–June 30) and one short quarter (July 1–July 15). The second taxable year is from July 16 to December 31, with one short quarter (July 16–September 30) and one full quarter (October 1–December 31).

(*2*) *Calculation of qualified business asset investment for the first short taxable year.* Under paragraph (f)(2) of this section, for the first short taxable year in Year 1, FS has three quarter closes (March 31, June 30, and July 15). Under paragraph (f)(3) of this section, the qualified business asset investment of FS for the first short taxable year is $148.80x, the sum of $137.50x (($250x + $300x)/4) attributable to the two full quarters and $11.30x ($275x × 15/365) attributable to the short quarter.

(*3*) *Calculation of qualified business asset investment for the second short taxable year.* Under paragraph (f)(2) of this section, for the second short taxable year in Year 1, FS has two quarter closes (September 30 and December 31). Under paragraph (f)(3) of this section, the qualified business asset investment of FS for the second short taxable year is $217.98x, the sum of $112.50x ($450x/4) attributable to the one full quarter and $105.48x ($500x × 77/365) attributable to the short quarter.

(g) *Partnership property*—(1) *In general.* For purposes of paragraph (b) of this section, if a tested income CFC holds an interest in one or more partnerships as of the close of the CFC inclusion year, the qualified business asset investment of the tested income CFC for the CFC inclusion year is increased by the sum of the tested income CFC's partnership QBAI with respect to each partnership for the CFC inclusion year. A tested loss CFC has no partnership QBAI for a CFC inclusion year.

(2) *Definitions related to partnership QBAI*—(i) *In general.* The term *partnership QBAI* means the sum of the tested income CFC's share of the partnership's adjusted basis in partnership specified tangible property as of the close of a partnership taxable year that ends with or within a CFC inclusion year. A tested income CFC's share of the partnership's adjusted basis in partnership specified tangible property is determined separately with respect to each partnership specified tangible property of the partnership by multiplying the partnership's adjusted basis in the property by the partnership QBAI ratio with respect to the property. If the partnership's taxable year is less than twelve months, the principles of paragraph (f) of this section apply in determining a tested income CFC's partnership QBAI with respect to the partnership.

(ii) *Partnership QBAI ratio.* The term *partnership QBAI ratio* means, with respect to partnership specified tangible property:

(A) In the case of partnership specified tangible property that produces directly identifiable income for a partnership taxable year, the ratio of the tested income CFC's distributive share of the gross income produced by the property for the partnership taxable year that is included in the gross tested income of the tested income CFC for the CFC inclusion year to the total gross income produced by the property for the partnership taxable year.

(B) In the case of partnership specified tangible property that does not produce directly identifiable income for a partnership taxable year, the ratio of the tested income CFC's distributive share of the gross income of the partnership for the partnership taxable year that is included in the gross tested income of the tested income CFC for the CFC inclusion year to the total amount of gross income of the partnership for the partnership taxable year.

(iii) *Partnership specified tangible property.* The term *partnership specified tangible property* means tangible property (as defined in paragraph (c)(2) of this section) of a partnership that is—

(A) Used in the trade or business of the partnership,

(B) Of a type with respect to which a deduction is allowable under section 167, and

(C) Used in the production of tested income.

(3) *Determination of adjusted basis.* For purposes of this paragraph (g), a partnership's adjusted basis in partnership specified tangible property is determined based on the average of the partnership's adjusted basis in the property as of the close of each quarter in the partnership taxable year. The principles of paragraphs (e) and (h) of this section apply for purposes of determining a partnership's adjusted basis in partnership specified tangible property and the portion of such adjusted basis taken into account in determining a tested income CFC's partnership QBAI.

(4) *Examples.* The following examples illustrate the rules of this paragraph (g).

(i) Example 1— (A) *Facts.* FC, a tested income CFC, is a partner in PRS. Both FC and PRS use the calendar year as their taxable year. PRS owns two assets, Asset A and Asset B, both of which are tangible property used in PRS's trade or business that it depreciates under section 168. The average of PRS's adjusted basis as of the close of each quarter of PRS's taxable year in Asset A is $100x and the average of PRS's adjusted basis as of the end of each quarter of PRS's taxable year in

Asset B is $50x. Asset A produces $10x of directly identifiable gross income in Year 1, and Asset B produces $50x of directly identifiable gross income in Year 1. FC's distributive share of the gross income from Asset A is $8x and its distributive share of the gross income from Asset B is $10x. FC's entire distributive share of income from Asset A and Asset B is included in FC's gross tested income for Year 1. PRS partners' distributive shares satisfy the requirements of section 704.

(B) *Analysis.* Each of Asset A and Asset B is partnership specified tangible property because each is tangible property, of a type with respect to which a deduction is allowable under section 167, used in PRS's trade or business, and used in the production of tested income. FC's partnership QBAI ratio for Asset A is 80%, the ratio of FC's distributive share of the gross income from Asset A for Year 1 that is included in FC's gross tested income ($8x) to the total gross income produced by Asset A for Year 1 ($10x). FC's partnership QBAI ratio for Asset B is 20%, the ratio of FC's distributive share of the gross income from Asset B for Year 1 that is included in FC's gross tested income ($10x) to the total gross income produced by Asset B for Year 1 ($50x). FC's share of the average of PRS's adjusted basis of Asset A is $80x, PRS's adjusted basis in Asset A of $100x multiplied by FC's partnership QBAI ratio for Asset A of 80%. FC's share of the average of PRS's adjusted basis of Asset B is $10x, PRS's adjusted basis in Asset B of $50x multiplied by FC's partnership QBAI ratio for Asset B of 20%. Therefore, FC's partnership QBAI with respect to PRS is $90x ($80x + $10x). Accordingly, under paragraph (g)(1) of this section, FC increases its qualified business asset investment for Year 1 by $90x.

(ii) Example 2— (A) *Facts.* FC, a tested income CFC, owns a 50% interest in PRS. PRS owns Asset A, which is specified tangible property. The average of PRS's adjusted basis as of the close of each quarter of PRS's taxable year in Asset A is $100x. FC has the same taxable year as PRS. Asset A produces $20x of directly identifiable gross income in Year 1, and PRS has $22x of expenses in Year 1 that are properly allocable to such income. Therefore, FC's allocation of net income or loss from PRS is $1x loss, which is comprised of FC's distributive share of the gross income from Asset A of $10x, all of which is included in FC's gross tested income for Year 1, and FC's distributive share of the expenses related to Asset A of $11x, all of which is taken into account in determining its tested income under § 1.951–2(c). PRS has no other income or loss in Year 1. FC also has $8x of gross tested income from other sources in Year 1, and no deductions properly allocable to such income. PRS partners' distributive shares satisfy the requirements of section 704.

(B) *Analysis.* FC's partnership QBAI ratio for Asset A is 50%, the ratio of FC's distributive share of the gross income from Asset A for Year 1 that is included in FC's gross tested income ($10x) to the total gross income produced by Asset A for Year 1 ($20x). FC's share of the average of PRS's adjusted basis in Asset A is $50x, PRS's adjusted basis in Asset A of $100x multiplied by FC's partnership QBAI ratio for Asset A of 50%. FC increases its qualified business asset investment by $50x, notwithstanding that FC would not be a tested income CFC but for its $8x of gross tested income from other sources.

(h) *Anti-abuse rules for certain transfers of property*—(1) *Disregard of basis in specified tangible property held temporarily.* If a tested income CFC (*acquiring CFC*) acquires specified tangible property (as defined in paragraph (c)(1) of this section) with a principal purpose of reducing the GILTI inclusion amount of a United States shareholder for any U.S. shareholder inclusion year, and the tested income CFC holds the property temporarily but over at least the close of one quarter, the specified tangible property is disregarded in determining the acquiring CFC's average adjusted basis in specified tangible property for purposes of determining the acquiring CFC's qualified business asset investment for any CFC inclusion year during which the tested income CFC held the property. For purposes of this paragraph (h)(1), specified tangible property held by the tested income CFC for less than a twelve month period that includes at least the close of one quarter during the taxable year of a tested income CFC is treated as temporarily held and acquired with a principal purpose of reducing the GILTI inclusion amount of a United States shareholder for a U.S. shareholder inclusion year if such acquisition would, but for this paragraph (h)(1), reduce the GILTI inclusion amount of a United States shareholder for a U.S. shareholder inclusion year.

(2) *Disregard of basis in specified tangible property related to transfers during the disqualified period*—(i) *In general.* For purposes of determining the qualified business asset investment of a tested income CFC for a CFC inclusion year, in applying the alternative depreciation system under section 168(g) to determine the tested income CFC's adjusted basis in specified tangible property, any disqualified basis with respect to the specified tangible property is not taken into account.

(ii) *Determination of disqualified basis*—(A) *In general.* The term *disqualified basis* means, with respect to specified tangible property, the excess (if any) of the property's adjusted basis immediately after a disqualified transfer, over the sum of the property's adjusted basis immediately before the disqualified transfer and the qualified gain amount with respect to the disqualified transfer. Disqualified basis may be reduced or eliminated through depreciation, amortization, sales or exchanges, section 362(e), and other methods. In such circumstances, in the case of specified tangible property with disqualified basis and adjusted basis other than disqualified basis, the disqualified basis is reduced or eliminated in the same proportion that the disqualified basis bears to the total adjusted basis of the property.

(B) *Definition of qualified gain amount.* The term *qualified gain amount* means, with respect to a disqualified transfer, the sum of the following amounts:

(*1*) The amount of gain recognized by a controlled foreign corporation (*transferor CFC*) on the disqualified transfer of the specified tangible property that is subject to U.S. federal income tax under section 882 (except to the extent the gain is subject to a reduced rate of tax, or is exempt from tax, pursuant to an applicable treaty obligation of the United States); and

(*2*) Any United States shareholder's pro rata share of the gain recognized by the transferor CFC on the disqualified transfer of the specified tangible property (determined without regard to properly allocable deductions) taken into account in determining the United States shareholder's inclusion under section 951(a)(1)(A), excluding any amount that is described in paragraph (h)(2)(ii)(B)(*1*) of this section.

(C) *Definition of disqualified transfer.* The term *disqualified transfer* means a transfer of specified tangible property during a transferor CFC's disqualified period by the transferor CFC to a related person in which gain was recognized, in whole or in part, by the transferor CFC, regardless of whether the property was specified tangible property in the hands of the transferor CFC. For purposes of the preceding sentence, a transfer includes any disposition, sale or exchange, contribution, or distribution of the specified tangible property, and includes an indirect transfer (for example, a transfer of an interest in a partnership is treated as a transfer of the assets of the partnership and transfer by or to a partnership is treated as a transfer by or to its partners).

(D) *Definition of disqualified period.* The term *disqualified period* means, with respect to a transferor CFC, the period beginning on January 1, 2018, and ending as of the close of the transferor CFC's last taxable year that is not a CFC inclusion year. A transferor CFC that has a CFC inclusion year beginning January 1, 2018, has no disqualified period.

(E) *Related person.* For purposes of this paragraph (h)(2), a person is related to a controlled foreign corporation if the

person bears a relationship to the controlled foreign corporation described in section 267(b) or 707(b) immediately before or immediately after the transfer.

(iii) *Examples.* The following examples illustrate the application of this paragraph (h)(2).

(A) Example 1— (*1*) *Facts.* USP, a domestic corporation, owns all of the stock of CFC1 and CFC2, each a controlled foreign corporation. Both USP and CFC1 use the calendar year as their taxable year. CFC2 uses a taxable year ending November 30. On November 1, 2018, before the start of its first CFC inclusion year, CFC2 sells specified tangible property that has a basis of $10x in the hands of CFC2 to CFC1 in exchange for $100x of cash. CFC2 recognizes $90x of gain as a result of the sale ($100x − $10x), $30x of which is foreign base company income (within the meaning of section 954). USP includes in gross income under section 951(a)(1)(A) its pro rata share of the subpart F income of $30x. CFC2's gain is not otherwise subject to U.S. tax or taken into account in determining USP's inclusion under section 951(a)(1)(A).

(*2*) *Analysis.* The transfer is a disqualified transfer because it is a transfer of specified tangible property; CFC1 and CFC2 are related persons; and the transfer occurs during the disqualified period, the period that begins on January 1, 2018, and ends the last day before the first CFC inclusion year of CFC2 (November 30, 2018). The disqualified basis is $60x, the excess of CFC1's adjusted basis in the property immediately after the disqualified transfer ($100x), over the sum of CFC2's basis in the property immediately before the transfer ($10x) and USP's pro rata share of the gain recognized by CFC1 on the transfer of the property taken into account by USP under section 951(a)(1)(A) ($30x). Accordingly, under paragraph (h)(2)(i) of this section, for purposes of determining the qualified business asset investment of any tested income CFC for any CFC inclusion year, in applying section 168(g) to determine the CFC's basis in the specified tangible property, the $60x disqualified basis of the property is not taken into account.

(B) Example 2— (1) Facts. The facts are the same as in paragraph (1) of *Example 1,* except that CFC2 uses the calendar year as its taxable year.

(*2*) *Analysis.* Because CFC2 has a taxable year beginning January 1, 2018, CFC2 has no disqualified period. Accordingly, the property was not transferred during a disqualified period of CFC2, and there is no disqualified basis with respect to the property.

■ **Par. 7** Section 1.951A–4 is added to read as follows:

§ 1.951A–4 Tested interest expense and tested interest income.

(a) *Scope.* This section provides general rules for determining the tested interest expense and tested interest income of a controlled foreign corporation for purposes of determining a United States shareholder's specified interest expense under § 1.951A–1(c)(3)(iii). Paragraph (b) of this section provides the definitions related to tested interest expense and tested interest income. Paragraph (c) of this section provides examples illustrating these definitions and the application of § 1.951A–1(c)(3)(iii). The amount of specified interest expense determined under § 1.951A–1(c)(3)(iii) and this section is the amount of interest expense described in section 951A(b)(2)(B).

(b) *Definitions related to specified interest expense*—(1) *Tested interest expense*—(i) *In general.* The term *tested interest expense* means interest expense paid or accrued by a controlled foreign corporation taken into account in determining the tested income or tested loss of the controlled foreign corporation for the CFC inclusion year under § 1.951A–2(c), reduced by the qualified interest expense of the controlled foreign corporation.

(ii) *Interest expense.* The term *interest expense* means any expense or loss that is treated as interest expense by reason of the Internal Revenue Code or the regulations thereunder, and any other expense or loss incurred in a transaction or series of integrated or related transactions in which the use of funds is secured for a period of time if such expense or loss is predominately incurred in consideration of the time value of money.

(iii) *Qualified interest expense.* The term *qualified interest expense* means, with respect to a qualified CFC, the interest expense paid or accrued by the qualified CFC taken into account in determining the tested income or tested loss of the qualified CFC for the CFC inclusion year, multiplied by the fraction (not to exceed one) described in paragraph (b)(1)(iii)(A) of this section, and then reduced (but not to less than zero) by the amount described in paragraph (b)(1)(iii)(B) of this section.

(A) The numerator of the fraction described in this paragraph (b)(1)(iii)(A) is the average of the aggregate adjusted bases as of the close of each quarter of obligations or financial instruments held by the qualified CFC that give rise to income excluded from foreign personal holding company income (as defined in section 954(c)(1)) by reason of section 954(h) or (i), and the denominator is the average of the aggregate adjusted bases as of the close of each quarter of all assets held by the qualified CFC. For purposes of this paragraph (b)(1)(iii)(A), the basis of the stock of another qualified CFC held by a qualified CFC is treated as basis of an obligation or financial instrument giving rise to income excluded from foreign personal holding company income by reason of section 954(h) or (i) in an amount equal to the basis of the stock multiplied by the fraction described in this paragraph (b)(1)(iii)(A) determined with respect to the assets of such other qualified CFC.

(B) The amount described in this paragraph (b)(1)(iii)(B) is the amount of interest income of the qualified CFC for the CFC inclusion year that is excluded from foreign personal holding company income (as defined in section 954(c)(1)) by reason of section 954(c)(3) or (6).

(iv) *Qualified CFC.* The term *qualified CFC* means an eligible controlled foreign corporation (within the meaning of section 954(h)(2)) or a qualifying insurance company (within the meaning of section 953(e)(3)).

(2) *Tested interest income*—(i) *In general.* The term *tested interest income* means interest income included in the gross tested income of a controlled foreign corporation for the CFC inclusion year, reduced by qualified interest income of the controlled foreign corporation.

(ii) *Interest income.* The term *interest income* means any income or gain that is treated as interest income by reason of the Internal Revenue Code or the regulations thereunder, and any other income or gain recognized in a transaction or series of integrated or related transactions in which the forbearance of funds is secured for a period of time if such income or gain is predominately derived from consideration of the time value of money.

(iii) *Qualified interest income.* The term *qualified interest income* means, with respect to a qualified CFC, interest income of the qualified CFC included in the gross tested income of the qualified CFC for the CFC inclusion year that is excluded from foreign personal holding company income (as defined in section 954(c)(1)) by reason of section 954(h) or (i).

(c) *Examples.* The following examples illustrate the application of this section.

(1) Example 1: Wholly-owned CFCs— (i) Facts. A Corp, a domestic corporation, owns 100% of the single class of stock of each of FS1 and FS2, each a controlled foreign corporation. A Corp, FS1, and FS2 all use the calendar year as their taxable year. In Year 1, FS1 pays $100x of interest to FS2. Also, in Year 1, FS2 pays $100x of interest to a bank that is not related to A Corp, FS1, or FS2. The interest paid by each of FS1 and FS2 is taken into account in determining the tested income and tested loss of FS1 and FS2 under § 1.951A–2(c), and the interest received by FS2 is not foreign personal holding company income (as defined in section 954(c)(1)) by reason of section 954(c)(6) and thus is included in gross tested income. For Year 1, taking into account

interest income and expense, FS1 has $500x of tested income and FS2 has $400x of tested loss. Neither FS1 nor FS2 is a qualified CFC.

(ii) *Analysis*—(A) *CFC-level determination; tested interest expense and tested interest income.* FS1 has $100x of tested interest expense for Year 1. FS2 has $100x of tested interest expense and $100x of tested interest income for Year 1.

(B) *United States shareholder-level determination; pro rata share and specified interest expense.* Under § 1.951A–1(d)(5) and (6), A Corp's pro rata share of FS1's tested interest expense is $100x, its pro rata share of FS2's tested interest expense is $100x, and its pro rata share of FS2's tested interest income is $100x. For Year 1, A Corp's aggregate pro rata share of tested interest expense is $200x and its aggregate pro rata share of tested interest income is $100x. Accordingly, under § 1.951A–1(c)(3)(iii), A Corp's specified interest expense is $100x ($200x − $100x) for Year 1.

(2) Example 2: Less than wholly-owned CFCs— *(i) Facts.* The facts are the same as in paragraph (i) of *Example 1,* except that A Corp owns 50% of the single class of stock of FS1 and 80% of the single class of stock of FS2.

(ii) *Analysis.* (A) *CFC-level determination; tested interest expense and tested interest income.* The analysis is the same as in paragraph (ii)(A) of *Example 1.*

(B) *United States shareholder-level determination; pro rata share and specified interest expense.* Under § 1.951A–1(d)(5) and (6), A Corp's pro rata share of FS1's tested interest expense is $50x ($100x × 0.50), its pro rata share of FS2's tested interest expense is $80x ($100x × 0.80), and its pro rata share of FS2's tested interest income is $80x ($100x × 0.80). For Year 1, A Corp's aggregate pro rata share of the tested interest expense is $130x and its aggregate pro rata share of the tested interest income is $80x. Accordingly, under § 1.951A–1(c)(3)(iii), A Corp's specified interest expense is $50x ($130x − $80x) for Year 1.

(3) Example 3: Qualified CFC—(i) Facts. B Corp, a domestic corporation, owns 100% of the single class of stock of each of FS1 and FS2, each a controlled foreign corporation. B Corp, FS1, and FS2 all use the calendar year as their taxable year. FS2 is an eligible controlled foreign corporation within the meaning of section 954(h)(2). In Year 1, FS1 pays $100x of interest to FS2, which interest income is excluded from the foreign personal holding company income (as defined in section 954(c)(1)) of FS2 by reason of section 954(c)(6). Also, in Year 1, FS2 pays $250x of interest to a bank, and receives an additional $300x of interest from customers that are not related to FS2, which interest income is excluded from foreign personal holding company income by reason of section 954(h). The interest paid by each of FS1 and FS2 is taken into account in determining the tested income and tested loss of FS1 and FS2, and the interest received by FS2 is included in gross tested income. FS1 is not a qualified CFC. FS2 does not own stock in any qualified CFC. FS2's average adjusted bases in obligations or financial instruments that give rise to income excluded from foreign personal holding company income by reason of section 954(h) is $8,000x, and FS2's average adjusted bases in all its assets is $10,000x.

(ii) *Analysis*—(A) *CFC-level determination; tested interest expense and tested interest income.* FS1 has $100x of tested interest expense for Year 1. FS2 is a qualified CFC because it is an eligible controlled foreign corporation within the meaning of section 954(h)(2). As a result, in determining the tested interest income and tested interest expense of FS2, the qualified interest income and qualified interest expense of FS2 are excluded. FS2 has qualified interest income of $300x, the amount of FS2's interest income that is excluded from foreign personal holding company income by reason of section 954(h). In addition, FS2 has qualified interest expense of $100x, the amount of FS2's interest expense taken into account in determining FS2's tested income or tested loss under § 1.951A–2(c) ($250x), multiplied by a fraction, the numerator of which is FS2's average adjusted bases in obligations or financial instruments that give rise to income excluded from foreign personal holding company income by reason of section 954(h) ($8,000x), and the denominator of which is F2's average adjusted bases in all its assets ($10,000x), and then reduced by the amount of the interest income received from FS1 excluded from foreign personal holding company income by reason of section 954(c)(6) ($100x). Therefore, for Year 1, FS2 has tested interest income of $100x ($400x − $300x) and tested interest expense of $150x ($250x − $100x).

(B) *United States shareholder-level determination; pro rata share and specified interest expense.* Under § 1.951A–1(d)(5) and (6), B Corp's pro rata share of FS1's tested interest expense is $100x, its pro rata share of FS2's tested interest expense is $150x, and its pro rata share of FS2's tested interest income is $100x. For Year 1, B Corp's aggregate pro rata share of tested interest expense is $250x ($100x + $150x) and its aggregate pro rata share of tested interest income is $100x ($0 + $100x). Accordingly, under § 1.951A–1(c)(3)(iii), B Corp's specified interest expense is $150x ($250x − $100x) for Year 1.

■ **Par. 8.** Section 1.951A–5 is added to read as follows:

§ 1.951A–5 Domestic partnerships and their partners.

(a) *Scope.* This section provides rules regarding the application of section 951A and the section 951A regulations to domestic partnerships that own (within the meaning of section 958(a)) stock in one or more controlled foreign corporations and to partners of such domestic partnerships, including United States persons (within the meaning of section 957(c)). Paragraph (b) of this section provides rules for the determination of the GILTI inclusion amount of a domestic partnership and the distributive share of such amount of a partner that is not a United States shareholder with respect to one or more controlled foreign corporations owned by the domestic partnership. Paragraph (c) of this section provides rules for the determination of the GILTI inclusion amount of a partner that is a United States shareholder with respect to one or more controlled foreign corporations owned by a domestic partnership. Paragraph (d) of this section provides rules for tiered domestic partnerships. Paragraph (e) of this section provides the definitions of CFC tested item, partnership CFC, U.S. shareholder partner, and U.S. shareholder partnership. Paragraph (f) of this section requires a domestic partnership to provide certain information to each partner necessary for the partner to determine its GILTI inclusion amount or its distributive share of the partnership's GILTI inclusion amount. Paragraph (g) of this section provides examples illustrating the rules of this section. For rules regarding the treatment of certain controlled domestic partnerships owned through one or more foreign corporations as foreign partnerships for purposes of sections 951 through 964, including section 951A and the section 951A regulations, see § 1.951–1(h).

(b) *In general*—(1) *Determination of GILTI inclusion amount of a U.S. shareholder partnership.* A U.S. shareholder partnership determines its GILTI inclusion amount for its U.S. shareholder inclusion year under the general rules applicable to United States shareholders in section 951A and the section 951A regulations.

(2) *Determination of distributive share of U.S. shareholder partnership's GILTI inclusion amount of a partner other than a U.S. shareholder partner.* Each partner of a U.S. shareholder partnership that is not a U.S. shareholder partner takes into account its distributive share of the U.S. shareholder partnership's GILTI inclusion amount (if any) for the U.S. shareholder inclusion year in accordance with section 702 and § 1.702–1(a)(8)(ii).

(c) *Determination of GILTI inclusion amount of a U.S. shareholder partner.* For purposes of section 951A and the section 951A regulations, section 958(a) stock of a partnership CFC owned by a U.S. shareholder partnership is treated as section 958(a) stock owned proportionately by each U.S. shareholder partner that is a United States shareholder of the partnership CFC in the same manner as if the U.S. shareholder partnership were a foreign partnership under section 958(a)(2) and § 1.958–1(b). Accordingly, for purposes of determining a U.S. shareholder partner's GILTI inclusion amount, the U.S. shareholder partner determines its pro rata share of any CFC tested item of

a partnership CFC based on the section 958(a) stock owned by the U.S. shareholder partner by reason of this paragraph (c). In addition, a U.S. shareholder partner's distributive share of the GILTI inclusion amount of a U.S. shareholder partnership is determined without regard to the partnership's pro rata share of any CFC tested item of a partnership CFC with respect to which the U.S. shareholder partner is a United States shareholder.

(d) *Tiered U.S. shareholder partnerships.* In the case of tiered U.S. shareholder partnerships, section 958(a) stock of a partnership CFC treated as owned under paragraph (c) of this section by a U.S. shareholder partner that is also a U.S. shareholder partnership is treated as section 958(a) stock owned by the U.S. shareholder partnership for purposes of applying paragraph (c) of this section to a U.S. shareholder partner of such U.S. shareholder partnership.

(e) *Definitions.* The following definitions apply for purposes of this section:

(1) *CFC tested item.* The term *CFC tested item* has the meaning set forth in § 1.951A–1(d)(1).

(2) *Partnership CFC.* The term *partnership CFC* means, with respect to a U.S. shareholder partnership, a controlled foreign corporation stock of which is owned (within the meaning of section 958(a)) by the U.S. shareholder partnership.

(3) *U.S. shareholder partner.* The term *U.S. shareholder partner* means, with respect to a U.S. shareholder partnership and a partnership CFC of the U.S. shareholder partnership, a United States person that is a partner in the U.S. shareholder partnership and that is also a United States shareholder (as defined in section 951(b)) of the partnership CFC.

(4) *U.S. shareholder partnership.* The term *U.S. shareholder partnership* means a domestic partnership (within the meaning of section 7701(a)(4)) that is a United States shareholder of one or more controlled foreign corporations.

(f) *Reporting requirement.* A U.S. shareholder partnership must furnish to each partner on or with such partner's Schedule K–1 (Form 1065 or successor form) for each U.S. shareholder inclusion year of the partnership the partner's distributive share of the partnership's GILTI inclusion amount (if any) and, with respect to a U.S. shareholder partner, the partner's proportionate share of the partnership's pro rata share (if any) of each CFC tested item of each partnership CFC of the partnership and any other information required in the form or instructions. See section 6031(b).

(g) *Examples.* The following examples illustrate the rules of this section. None of the persons in the following examples own an interest in any controlled foreign corporation other than as described.

(1) Example 1: Domestic partnership with partners that are not United States shareholders— (i) *Facts.* Eleven U.S. citizens (''individuals'') each own a 9% interest of PRS, a domestic partnership. The remaining 1% interest of PRS is owned by X Corp, a domestic corporation. None of the individuals or X Corp are related. PRS owns 100% of the single class of stock of FC, a controlled foreign corporation. The individuals, X Corp, PRS, and FC all use the calendar year as their taxable year. In Year 1, FC has $130x of tested income and $50x of qualified business asset investment.

(ii) *Analysis*—(A) *Partnership-level calculation.* PRS is a U.S. shareholder partnership with respect to FC. Under paragraph (b)(1) of this section, PRS determines its GILTI inclusion amount for Year 1. PRS's pro rata share of FC's tested income is $130x. PRS's pro rata share of FC's qualified business asset investment is $50x. PRS's net CFC tested income is $130x. PRS's net deemed tangible income return is $5x ($50x × 0.10). PRS's GILTI inclusion amount for Year 1 is $125x ($130x − $5x).

(B) *Partner-level calculation.* Neither X Corp nor the individuals are U.S. shareholder partners with respect to FC. Accordingly, under paragraph (b)(2) of this section, each of the individuals and X Corp includes its distributive share of PRS's GILTI inclusion amount ($11.25x each for the individuals and $1.25x for X Corp) in gross income for Year 1.

(2) Example 2: Domestic partnership with partners that are United States shareholders; multiple partnership CFCs—

(i) *Facts.* X Corp and Y Corp are domestic corporations that own 40% and 60%, respectively, of PRS, a domestic partnership. PRS owns 100% of the single class of stock of FC1 and of FC2, each a controlled foreign corporation. X Corp, Y Corp, PRS, FC1, and FC2 all use the calendar year as their taxable year. In Year 1, FC1 has $130x of tested income and $50x of qualified business asset investment, and FC2 has $30x of tested loss.

(ii) *Analysis*—(A) *Partnership-level calculation.* PRS is a U.S. shareholder partnership with respect to each of FC1 and FC2. Under paragraph (b)(1) of this section, PRS determines its GILTI inclusion amount for Year 1. PRS's pro rata share of FC1's tested income is $130x and of FC2's tested loss is $30x. PRS's pro rata share of FC1's qualified business asset investment is $50x. PRS's net CFC tested income is $100x ($130x − $30x). PRS's net deemed tangible income return is $5x ($50x × 0.10). PRS's GILTI inclusion amount for Year 1 is $95x ($100x − $5x).

(B) *Partner-level calculation.* X Corp and Y Corp are U.S. shareholder partners with respect to FC1 and FC2. Accordingly, under paragraph (c) of this section, X Corp and Y Corp are treated as owning section 958(a) stock of FC1 and FC2 proportionately as if PRS were a foreign partnership. Thus, X Corp's pro rata share of FC1's tested income is $52x ($130x × 0.40), and its pro rata share of FC2's tested loss is $12x ($30x × 0.40). X Corp's pro rata share of FC1's qualified business asset investment is $20x ($50x × 0.40). Accordingly, X Corp's net CFC tested income is $40x ($52x − $12x), and its net deemed tangible income return is $2x ($20x × 0.10). X Corp's GILTI inclusion amount for Year 1 is $38x ($40x − $2x). Y Corp's pro rata share of FC1's tested income is $78x ($130x × 0.60), and its pro rata share of FC2's tested loss is $18x ($30x × 0.60). Y Corp's pro rata share of FC1's qualified business asset investment is $30x ($50x × 0.60). Accordingly, Y Corp's net CFC tested income is $60x ($78x − $18x), and its net deemed tangible income return is $3x ($30x × 0.10). Y Corp's GILTI inclusion amount for Year 1 is $57x ($60x − $3x). Because X Corp and Y Corp are both U.S. shareholder partners with respect to FC1 and FC2, the only partnership CFCs of PRS, X Corp and Y Corp each includes its proportionate share of PRS's share of each CFC tested item of FC1 and FC2 under paragraph (c) of this section rather than including a distributive share of the GILTI inclusion amount of PRS.

(3) Example 3: Domestic partnership with partners that are United States shareholders with respect to some, but not all, of the controlled foreign corporations owned by the domestic partnership— *(i) Facts.* X Corp and Y Corp are domestic corporations that own 40% and 60%, respectively, of PRS, a domestic partnership. PRS owns 20% of the single class of stock of FC1 and 10% of the single class of stock of FC2. In addition, Y Corp owns 100% of the single class of stock of FC3. FC1, FC2, and FC3 are controlled foreign corporations. X Corp, Y Corp, PRS, FC1, FC2, and FC3 all use the calendar year as their taxable year. In Year 1, FC1 has $100x of tested income, FC2 has $80x of tested income, and FC3 has $10x of tested loss.

(ii) *Analysis.* (A) *Partnership-level calculation.* PRS is a U.S. shareholder partnership with respect to each of FC1 and FC2. Under paragraph (b)(1) of this section, PRS determines its GILTI inclusion amount for Year 1. PRS's pro rata share of FC1's tested income is $20x ($100x × 0.20) and of FC2's tested income is $8x ($80x × 0.10). PRS's net CFC tested income is $28x ($20x + $8x). PRS has no net deemed tangible income return. PRS's GILTI inclusion amount for Year 1 is $28x.

(B) *Partner-level calculation*—(*1*) *X Corp.* X Corp is not a U.S. shareholder partner with respect to either FC1 or FC2 because X Corp owns (within the meaning of section 958) less than 10% of each of FC1 (40% × 20% = 8%) and FC2 (40% × 10% = 4%). Accordingly, under paragraph (b)(2) of this section, X Corp includes in income its distributive share, or $11.20x ($28x × 0.40), of PRS's GILTI inclusion amount in Year 1.

(*2*) *Y Corp.* Y Corp is a United States shareholder of FC3. Y Corp is also a U.S. shareholder partner with respect to FC1, because it owns (within the meaning of section 958) at least 10% (60% × 20% = 12%) of the stock of FC1, but not with respect to

FC2, because Y Corp owns (within the meaning of section 958) less than 10% of the stock of FC2 (60% × 10% = 6%). Accordingly, under paragraph (c) of this section, Y Corp is treated as owning section 958(a) stock of FC1 proportionately as if PRS were a foreign partnership. Thus, Y Corp's pro rata share of FC1's tested income is $12x ($20x × 0.60). Y Corp's pro rata share of FC3's tested loss is $10x ($10x × 1). Accordingly, Y Corp's net CFC tested income is $2x ($12x − $10x) and Y Corp has no net deemed tangible income return. Y Corp's GILTI inclusion amount for Year 1 is $2x. In addition, under paragraph (c) of this section, for purposes of determining Y Corp's distributive share of PRS's GILTI inclusion amount, Y Corp's distributive share of PRS's GILTI inclusion amount is determined without regard to PRS's pro rata share of any item of FC1. PRS's GILTI inclusion amount computed solely with respect to FC2 is $8x ($80x × 0.10). Y Corp's distributive share of PRS's GILTI inclusion amount is $4.80x ($8x × 0.60) in Year 1.

(4) *Example 4: Tiered domestic partnerships*—(i) *Facts.* X Corp and Y Corp are domestic corporations that own, respectively, a 20% interest and an 80% interest in PRS1, an upper-tier domestic partnership. PRS1 owns a 40% interest in PRS2, a lower-tier domestic partnership. The remaining 60% of PRS2 is owned by Z Corp, a controlled foreign corporation. PRS2 is not a controlled domestic partnership within the meaning of § 1.951–1(h)(2) (because no United States shareholder of Z Corp (or related persons) controls PRS2). PRS2 owns 80% of the single class of stock of FC, a controlled foreign corporation. X Corp, Y Corp, Z Corp, PRS1, PRS2, and FC all use the calendar year as their taxable year. In Year 1, FC has $100x of tested income and $50x of qualified business asset investment.

(ii) *Analysis.* (A) *Lower-tier partnership-level calculation.* PRS2 is a U.S. shareholder partnership with respect to FC, because PRS2 directly owns 80% of the single class of stock of FC. Under paragraph (b)(1) of this section, PRS2 determines its GILTI inclusion amount for its taxable year. PRS2's pro rata share of FC's tested income is $80x ($100x × 0.80). PRS2's pro rata share of FC's qualified business asset investment is $40x ($50x × 0.80). PRS2's net CFC tested income is $80x, and its net deemed tangible income return is $4x ($40x × 0.10). PRS2's GILTI inclusion amount for Year 1 is $76x ($80x − $4x).

(B) *Non-U.S. shareholder partner calculation.* Z Corp is not a U.S. shareholder partner of FC. Therefore, under paragraph (b)(2) of this section, in Year 1, Z Corp includes in income Z Corp's distributive share of PRS2's GILTI inclusion amount, or $45.60x ($76x × 0.60). Z Corp's gross tested income in Year 1 includes this amount.

(C) *Upper-tier partnership-level calculation.* PRS1 is a U.S. shareholder partner with respect to FC because it owns (within the meaning of section 958) more than 10% of the stock of FC (40% × 100% (by reason of the application of section 958(b)(2)) = 40%). Accordingly, under paragraph (c) of this section, PRS1 is treated as owning section 958(a) stock of FC proportionately as if PRS2 were a foreign partnership. Thus, PRS1's pro rata share of FC's tested income is $32x ($100x × 0.80 × 0.40), and its pro rata share of FC's qualified business asset investment is $16x ($50x × 0.80 × 0.40). PRS1's net CFC tested income is $32x, and its net deemed tangible income return is $1.60x ($16x × 0.10). PRS1's GILTI inclusion amount for Year 1 is $30.40x ($32x − $1.60x).

(D) *Upper-tier partnership partner-level calculation*—(*1*) *Treatment of upper-tier partnership.* For purposes of applying paragraph (c) of this section to determine X Corp and Y Corp's GILTI inclusion amount, PRS1 is treated as owning section 958(a) stock of FC.

(*2*) *X Corp.* X Corp is not a U.S. shareholder partner with respect to FC because it owns (within the meaning of section 958) less than 10% (20% × 40% × 100% (by reason of the application of section 958(b)(2)) = 8%) of the stock of FC. Accordingly, under paragraph (b)(2) of this section, X Corp includes its distributive share of PRS1's GILTI inclusion amount in Year 1, which is $6.08x ($30.40x × 0.20).

(*3*) *Y Corp.* Y Corp is a U.S. shareholder partner with respect to FC because it owns (within the meaning of section 958) more than 10% (80% × 40% × 100% (by reason of the application of section 958(b)(2)) = 32%) of the stock of FC. Accordingly, under paragraphs (c) and (d) of this section, Y Corp is treated as owning section 958(a) stock of FC proportionately as if PRS1 and PRS2 were foreign partnerships. Thus, Y Corp's pro rata share of FC's tested income is $25.60x ($100x × 0.80 × 0.40 × 0.80), and its pro rata share of FC's qualified business asset investment is $12.80x ($50x × 0.80 × 0.40 × 0.80). Y Corp's net CFC tested income is $25.60x, its net deemed tangible income return is $1.28x ($12.80x × 0.10), and its GILTI inclusion amount is $24.32x ($25.60x − $1.28x). Because Y Corp is a U.S. shareholder partner with respect to FC, the only partnership CFC of PRS1, Y Corp has no distributive share of the GILTI inclusion amount of PRS1 under paragraph (c) of this section.

(5) Example 5: S corporation and its shareholders— (i) *Facts.* Individual A, a U.S. citizen, and Grantor Trust, a trust all of which is treated under sections 671 through 679 as owned by Individual B, a U.S. citizen, respectively own 5% and 95% of the single class of stock of Corporation X, an S corporation. Corporation X owns 100% of the single class of stock of FC, a controlled foreign corporation. Individual A, Grantor Trust, Individual B, Corporation X, and FC all use the calendar year as their taxable year. In Year 1, FC has $200x of tested income and $100x of qualified business asset investment.

(ii) *Analysis*—(A) *S corporation-level calculation.* An S corporation is treated as a partnership for purposes of sections 951 through 965 under section 1373. Corporation X is a U.S. shareholder partnership with respect to FC, a partnership CFC. Accordingly, under paragraph (b)(1) of this section, Corporation X determines its GILTI inclusion amount for Year 1. Corporation X's pro rata share of FC's tested income is $200x, and its pro rata share of FC's qualified business asset investment is $100x. Corporation X's net CFC tested income is $200x, and its net deemed tangible income return is $10x ($100x × 0.10). Corporation X's GILTI inclusion amount for Year 1 is $190x ($200x − $10x).

(B) *S corporation shareholder-level calculation*—(*1*) *Individual A.* Individual A is not a U.S. shareholder partner with respect to FC because it owns (within the meaning of section 958) less than 10% (5% × 100% = 5%) of the FC stock. Accordingly, under paragraph (b)(2) of this section, Individual A includes in gross income its proportionate share of Corporation X's GILTI inclusion amount, which is $9.50x ($190x × 0.05).

(*2*) *Grantor Trust.* Because Individual B is treated as owning all of Grantor Trust under sections 671 through 679, Individual B is treated as if it directly owns the shares of stock in Corporation X owned by Grantor Trust. As a result, Individual B is treated as a U.S. shareholder partner with respect to FC because it owns (within the meaning of section 958) more than 10% (95% × 100% = 95%) of the FC stock. Accordingly, under paragraph (c) of this section, Individual B is treated as owning section 958(a) stock of FC proportionately as if Corporation X were a foreign partnership. Thus, Individual B's pro rata share of FC's tested income is $190x ($200x × 0.95) and its pro rata share of FC's qualified business asset investment is $95x ($100x × 0.95). Individual B's net CFC tested income is $190x, and its net deemed tangible income return is $9.50x ($95x × 0.10). Individual B's GILTI inclusion amount for Year 1 is $180.5x ($190x − $9.50x). Because Individual B is a U.S. shareholder partner with respect to FC, the only partnership CFC of Corporation X, Individual B has no distributive share of the GILTI inclusion amount of Corporation X under paragraph (c) of this section.

(6) Example 6: Domestic partnership with no GILTI inclusion amount— (i) *Facts.* X Corp is a domestic corporation that owns a 90% interest in PRS, a domestic partnership. The remaining 10% of PRS is owned by Y, a foreign individual. PRS owns 100% of the single class of stock of FC1, a controlled foreign corporation, and 100% of the single class of stock of FC2, a controlled foreign corporation. X Corp owns 100% of the single class of stock of FC3, a controlled foreign corporation. X Corp, PRS, FC1, FC2, and FC3 all use the calendar year as their taxable year. In Year 1, FC1 has $100x of tested loss and $80x of tested interest expense, FC2 has $50x of tested income, and FC3 has $150x of tested income and $500x of qualified business asset investment in Year 1.

(ii) *Analysis*—(A) *Partnership-level calculation.* PRS is a U.S. shareholder partnership with respect to FC1 and FC2. Under paragraph (b)(1) of this section, PRS determines its GILTI inclusion amount for Year 1. PRS's pro rata share of FC1's tested loss is $100x, and PRS's pro rata share of FC2's tested income is $50x. PRS's net CFC tested income is $0 ($50x − 100x), and therefore PRS has no GILTI inclusion amount for Year 1.

(B) *Partner-level calculation.* X Corp is a U.S. shareholder partner with respect to FC1 and FC2 because X Corp owns (within the meaning of section 958) at least 10% of each (90% × 100% = 90%). Accordingly, under

paragraph (c) of this section, X Corp is treated as owning section 958(a) stock of FC1 and FC2 proportionately as if PRS were a foreign partnership. X Corp's pro rata share of FC1's tested loss is $90x ($100x × 0.90), and X Corp's pro rata share of FC1's tested interest expense is $72x ($80 × 0.90). X Corp's pro rata share of FC2's tested income is $45x ($50x × 0.90). X Corp's pro rata share of FC3's tested income is $150x, and its pro rata share of FC3's qualified business asset investment is $500x. X Corp's net CFC tested income is $105x ($45x + $150x − $90x). X Corp's deemed tangible income return is $50x ($500x × 0.10), but its net deemed tangible income return is $0 ($50x − $72x). X Corp has a GILTI inclusion amount of $105x ($105x − $0) for Year 1.

■ **Par. 9.** Section 1.951A–6 is added to read as follows:

§ 1.951A–6 Treatment of GILTI inclusion amount and adjustments to earnings and profits and basis related to tested loss CFCs.

(a) *Scope.* This section provides rules relating to the treatment of GILTI inclusion amounts and adjustments to earnings and profits and basis to account for tested losses. Paragraph (b) of this section provides that a GILTI inclusion amount is treated in the same manner as an amount included under section 951(a)(1)(A) for purposes of applying certain sections of the Code. Paragraph (c) of this section provides rules for the treatment of amounts taken into account in determining the net CFC tested income when applying sections 163(e)(3)(B)(i) and 267(a)(3)(B). Paragraph (d) of this section provides rules that increase the earnings and profits of a tested loss CFC for purposes of section 952(c)(1)(A). Paragraph (e) of this section provides rules for certain basis adjustments to the stock of a controlled foreign corporation by reason of tested losses used to reduce a domestic corporation's net CFC tested income upon the disposition of the stock of the controlled foreign corporation.

(b) *Treatment as subpart F income for certain purposes*—(1) *In general.* A GILTI inclusion amount is treated in the same manner as an amount included under section 951(a)(1)(A) for purposes of applying sections 168(h)(2)(B), 535(b)(10), 851(b), 904(h)(1), 959, 961, 962, 993(a)(1)(E), 996(f)(1), 1248(b)(1), 1248(d)(1), 1411, 6501(e)(1)(C), 6654(d)(2)(D), and 6655(e)(4), and with respect to other sections of the Internal Revenue Code as provided in other guidance published in the Internal Revenue Bulletin.

(2) *Allocation of GILTI inclusion amount to tested income CFCs*—(i) *In general.* For purposes of the sections referred to in paragraph (b)(1) of this section, the portion of the GILTI inclusion amount of a United States shareholder treated as being with respect to each controlled foreign corporation of the United States shareholder for the U.S. shareholder inclusion year is—

(A) In the case of a tested loss CFC, zero, and

(B) In the case of a tested income CFC, the portion of the GILTI inclusion amount of the United States shareholder which bears the same ratio to such inclusion amount as the United States shareholder's pro rata share of the tested income of the tested income CFC for the U.S. shareholder inclusion year bears to the aggregate amount of the United States shareholder's pro rata share of the tested income of each tested income CFC for the U.S. shareholder inclusion year.

(ii) Example— (A) *Facts.* USP, a domestic corporation, owns all of the stock of three controlled foreign corporations, CFC1, CFC2, and CFC3. USP, CFC1, CFC2, and CFC3 all use the calendar year as their taxable year. In Year 1, CFC1 has tested income of $100x, CFC2 has tested income of $300x, and CFC3 has tested loss of $50x. Neither CFC1 nor CFC2 has qualified business asset investment.

(B) *Analysis.* In Year 1, USP has a GILTI inclusion amount of $350x ($100x + $300x − $50x). The aggregate amount of USP's pro rata share of tested income from CFC1 and CFC2 is $400x ($100x + $300x). The portion of USP's GILTI inclusion amount treated as being with respect to CFC1 is $87.50x ($350x x $100x/$400x). The portion of USP's GILTI inclusion amount treated as being with respect to CFC2 is $262.50x ($350x x $300x/$400x). The portion of USP's GILTI inclusion amount treated as being with respect to CFC3 is $0 because CFC3 is a tested loss CFC.

(iii) *Translation of portion of GILTI inclusion amount allocated to tested income CFC.* The portion of the GILTI inclusion amount of a United States shareholder allocated to a tested income CFC under section 951A(f)(2) and paragraph (b)(2)(i) of this section is translated into the functional currency of the tested income CFC using the average exchange rate for the CFC inclusion year of the tested income CFC.

(c) *Treatment as an amount includible in the gross income of a United States person*—(1) *In general.* For purposes of sections 163(e)(3)(B)(i) and 267(a)(3)(B), an item (including original issue discount) is treated as includible in the gross income of a United States person to the extent that such item increases a United States shareholder's pro rata share of tested income of a controlled foreign corporation for a U.S. shareholder inclusion year, reduces the shareholder's pro rata share of tested loss of a controlled foreign corporation for the U.S. shareholder inclusion year, or both.

(2) *Special rule for a United States shareholder that is a domestic partnership.* In the case of a United States shareholder that is a domestic partnership (within the meaning of section 7701(a)(4)), an item is described in paragraph (c)(1) of this section only to the extent one or more United States persons (other than domestic partnerships) that are direct or indirect partners of the domestic partnership include in gross income their distributive share of the GILTI inclusion amount (if any) of the domestic partnership for the U.S. shareholder inclusion year of the domestic partnership in which such item accrues or such item is taken into account under paragraph (c)(1) of this section by a U.S. shareholder partner (within the meaning of § 1.951A–5(e)(3)) of the domestic partnership by reason of § 1.951A–5(c).

(d) *Increase of earnings and profits of tested loss CFC for purposes of section 952(c)(1)(A).* For purposes of section 952(c)(1)(A) with respect to a CFC inclusion year, the earnings and profits of a tested loss CFC are increased by an amount equal to the tested loss of the tested loss CFC for the CFC inclusion year.

(e) *Adjustments to basis related to net used tested loss*—(1) *In general*—(i) *Disposition of stock of a controlled foreign corporation.* In the case of a disposition of section 958(a) stock of a controlled foreign corporation owned (directly or indirectly) by a domestic corporation (*specified stock*), the adjusted basis of the specified stock is reduced immediately before the disposition by the domestic corporation's net used tested loss amount with respect to the controlled foreign corporation (if any) attributable to the specified stock. If the reduction described in the preceding sentence exceeds the adjusted basis in the specified stock immediately before the disposition, such excess is treated as gain from the sale or exchange of the stock for the taxable year in which the disposition occurs.

(ii) *Disposition of stock of an upper-tier controlled foreign corporation.* In the case of a disposition of specified stock of a controlled foreign corporation (*upper-tier CFC*) by reason of which a domestic corporation owns, or has owned, section 958(a) stock of any other controlled foreign corporation (*lower-tier CFC*), for purposes of determining the reduction under paragraph (e)(1)(i) of this section, the domestic corporation's net used tested loss amount (if any) with respect to the

upper-tier CFC attributable to the specified stock is—

(A) Increased by the sum of the domestic corporation's net used tested loss amounts with respect to each lower-tier CFC attributable to the specified stock; and

(B) Reduced (but not below zero) by the sum of the domestic corporation's net offset tested income amounts with respect to the upper-tier CFC and each lower-tier CFC attributable to the specified stock.

(iii) *Disposition of an interest in a foreign entity other than a controlled foreign corporation.* In the case of a disposition of an interest in a foreign entity other than a controlled foreign corporation through which entity a domestic corporation owns section 958(a) stock of a controlled foreign corporation, for purposes of paragraph (e)(1)(i) and (ii) of this section, the controlled foreign corporation is treated as a lower-tier CFC, the interest in the entity is treated as specified stock of a controlled foreign corporation, and the entity is treated as an upper-tier CFC with respect to which the domestic corporation has neither a net used tested loss amount nor a net offset tested income amount.

(iv) *Order of application of basis reductions.* In the event of an indirect disposition described in paragraph (e)(6)(ii)(B) of this section, the basis reduction described in paragraph (e)(1)(i) of this section is deemed to occur at the lowest-tier CFC first and, thereafter, up the chain of ownership until adjustments are made to the specified stock directly owned by the person making the disposition described in paragraph (e)(6)(ii)(A) of this section.

(v) *No duplicative adjustments.* No item is taken into account under this paragraph (e)(1) to adjust the basis of specified stock of a controlled foreign corporation to the extent that such amount has previously been taken into account with respect to a prior basis adjustment with respect to such stock under this paragraph (e)(1). Moreover, the basis of specified stock is not reduced to the extent a taxpayer can demonstrate to the satisfaction of the Secretary that such adjustments would duplicate prior reductions to the basis of such stock under section 362(e)(2).

(2) *Net used tested loss amount*—(i) *In general.* The term *net used tested loss amount* means, with respect to a domestic corporation and a controlled foreign corporation, the excess (if any) of—

(A) The aggregate of the domestic corporation's used tested loss amount with respect to the controlled foreign corporation for each U.S. shareholder inclusion year, over

(B) The aggregate of the domestic corporation's offset tested income amount with respect to the controlled foreign corporation for each U.S. shareholder inclusion year.

(ii) *Used tested loss amount.* The term *used tested loss amount* means, with respect to a domestic corporation and a tested loss CFC for a U.S. shareholder inclusion year—

(A) In the case of a domestic corporation that has net CFC tested income for the U.S. shareholder inclusion year, the domestic corporation's pro rata share of the tested loss of the tested loss CFC for the U.S. shareholder inclusion year, or

(B) In the case of a domestic corporation without net CFC tested income for the U.S. shareholder inclusion year, the amount that bears the same ratio to the domestic corporation's pro rata share of the tested loss of the tested loss CFC for the U.S. shareholder inclusion year as the aggregate of the domestic corporation's pro rata share of the tested income of each tested income CFC for the U.S. shareholder inclusion year bears to the aggregate of the domestic corporation's pro rata share of the tested loss of each tested loss CFC for the U.S. shareholder inclusion year.

(3) *Net offset tested income amount*—(i) *In general.* The term *net offset tested income amount* means, with respect to a domestic corporation and a controlled foreign corporation, the excess (if any) of the amount described in paragraph (e)(2)(i)(B) of this section over the amount described in paragraph (e)(2)(i)(A) of this section.

(ii) *Offset tested income amount.* The term *offset tested income amount* means, with respect to a domestic corporation and a tested income CFC for a U.S. shareholder inclusion year—

(A) In the case of a domestic corporation that has net CFC tested income for the U.S. shareholder inclusion year, the amount that bears the same ratio to the domestic corporation's pro rata share of the tested income of the tested income CFC for the U.S. shareholder inclusion year as the aggregate of the domestic corporation's pro rata share of the tested loss of each tested loss CFC for the U.S. shareholder inclusion year bears to the aggregate of the domestic corporation's pro rata share of the tested income of each tested income CFC for the U.S. shareholder inclusion year, or

(B) In the case of a domestic corporation without net CFC tested income for the U.S. shareholder inclusion year, the domestic corporation's pro rata share of the tested income of the tested income CFC for the U.S. shareholder inclusion year.

(4) *Attribution to stock*—(i) *In general.* The portion of a domestic corporation's net used tested loss amount or net offset tested income amount with respect to a controlled foreign corporation (including a lower-tier CFC) attributable to specified stock for purposes of paragraph (e)(1) of this section is determined based on the domestic corporation's pro rata share of the tested loss and tested income, as applicable, of the controlled foreign corporation for each U.S. shareholder inclusion year with respect to such specified stock. See § 1.951A–1(d)(1), (2), and (4) for rules regarding the determination of pro rata share amounts of tested income and tested loss.

(ii) *Nonrecognition transactions.* In the case of specified stock acquired by a domestic corporation in a nonrecognition transaction (as defined in section 7701(a)(45)), the principles of § 1.1248–8 apply to determine the domestic corporation's net used tested loss amount or net offset tested income amount with respect to a controlled foreign corporation attributable to specified stock. For purposes of applying the principles of § 1.1248–8, tested income is treated as earnings and profits and tested loss is treated as a deficit in earnings and profits.

(5) *Section 381 transactions.* If a controlled foreign corporation with respect to which a United States shareholder has a net used tested loss amount or net offset tested income amount is a distributor or transferor corporation in a transaction described in section 381(a) (*acquired CFC*) in which a controlled foreign corporation is the acquiring corporation (*acquiring CFC*), the domestic corporation's net used tested loss amount or net offset tested income amount with respect to the acquiring CFC is increased by the amount of the net used tested loss amount or net offset tested income amount of the acquired CFC. This paragraph (e)(5) does not apply to the extent that the acquiring CFC is an upper-tier CFC and such amounts would be taken into account under paragraph (e)(1)(ii) of this paragraph if the stock of the acquiring CFC were disposed of.

(6) *Other definitions.* The following additional definitions apply for purposes of this paragraph (e):

(i) *Domestic corporation.* The term *domestic corporation* means a domestic corporation other than a real estate investment trust (as defined in section 856) or a regulated investment company (as defined in section 851).

(ii) *Disposition.* The term *disposition* means—

(A) Any transfer of specified stock that is taxable, in whole or in part, including a sale or exchange, contribution, or distribution of the stock, including a deemed sale or exchange by reason of the specified stock becoming worthless within the meaning of section 165(g), or

(B) Any indirect disposition of specified stock of a lower-tier CFC as a result of a disposition described in paragraph (e)(6)(ii)(A) of this section of specified stock of an upper-tier CFC.

(7) *Special rule for disposition by controlled foreign corporation less than 100 percent owned by a single domestic corporation.* In the case of a disposition by a controlled foreign corporation that is not 100 percent owned, within the meaning of section 958(a), by a single domestic corporation, if a reduction to basis described in paragraph (e)(1) of this section by reason of a domestic corporation's net used tested loss amount results in an increase to the controlled foreign corporation's foreign personal holding company income (as defined in section 954(c)(1)), the domestic corporation's pro rata share of the subpart F income of the controlled foreign corporation, as otherwise determined under section 951(a)(2) and § 1.951–1(b) and (e), is increased by the amount of such increase, and no other shareholder takes such subpart F income into account under section 951(a)(1)(A).

(8) *Special rules for members of a consolidated group.* For purposes of the section 951A regulations, a member determines its net used tested loss amount and the adjustments made as a result of the amount under the rules provided in § 1.1502–51(c).

(9) *Examples.* The following examples illustrate the application of the rules in this paragraph (e).

(i) Example 1— (A) *Facts.* USP, a domestic corporation, owns 100% of the single class of stock of CFC1 and CFC2. USP1, CFC1, and CFC2 all use the calendar year as their taxable year. In Year 1, CFC2 has $90x of tested loss and CFC1 has $100x of tested income. At the beginning of Year 2, USP sells all of the stock of CFC2 to an unrelated buyer for cash. USP has no used tested loss amount or offset tested income amount with respect to CFC2 in any year prior to Year 1. USP has not owned stock in any other CFC by reason of owning stock of CFC1 and CFC2.

(B) *Analysis.* At the time of the disposition, USP has a net used tested loss amount of $90x with respect to CFC2 attributable to the CFC2 stock, which is the specified stock. Because USP does not own (and has not owned), within the meaning of section 958(a)(2), stock in any lower-tier CFCs by reason of the CFC2 stock, there is no adjustment to the net used tested loss amount of $90x pursuant to paragraph (e)(1)(ii) of this section. Accordingly, immediately before the disposition of the CFC2 stock, the basis of the CFC2 stock is reduced by $90x under paragraph (e)(1)(i) of this section.

(ii) Example 2— (A) *Facts.* The facts are the same as in paragraph (A) of *Example 1,* except that USP sells only 90% of the shares of CFC2.

(B) *Analysis.* The analysis is the same as in paragraph (B) of *Example 1,* except that USP's net used tested loss amount attributable to the CFC2 stock that was disposed of is only $81x (90% x $90x) under paragraph (e)(4)(i) of this section. Accordingly, immediately before the disposition of such stock, the basis in the CFC2 stock disposed of is reduced by $81x under paragraph (e)(1)(i) of this section.

(iii) Example 3— (A) Facts. The facts are the same as in paragraph (A) of *Example 1,* except that USP sells the CFC2 stock at the beginning of Year 3 and during Year 2 CFC1 has $10x of tested loss that offsets Year 2 tested income of CFC2.

(B) *Analysis.* USP has a net used tested loss amount of $80x with respect to CFC2 attributable to the CFC2 stock, the amount of USP's used tested loss amount with respect to CFC2 attributable to the CFC2 stock in Year 1 of $90x reduced by USP's offset tested income amount with respect to CFC2 attributable to the CFC2 stock in Year 2 of $10x. Accordingly, immediately before the disposition of the CFC2 stock, the basis of the CFC2 stock is reduced by $80x under paragraph (e)(1)(i) of this section.

(iv) Example 4— (A) *Facts.* USP, a domestic corporation, owns 100% of the single class of stock of CFC1, and CFC1 owns 100% of the single class of stock of CFC2. USP1, CFC1, and CFC2 all use the calendar year as their taxable year. In Year 1, CFC1 has $100x of tested loss that offsets CFC2's $100x of tested income. USP sells the stock of CFC1 at the beginning of Year 2. USP has no used tested loss amount or offset tested income amount with respect to CFC1 or CFC2 in any year prior to Year 1. USP has not owned stock in any other CFC by reason of owning stock of CFC1 and CFC2.

(B) *Analysis*—(*1*) *Direct disposition.* At the time of the disposition, USP has a net used tested loss amount of $100x with respect to CFC1 attributable to the CFC1 stock. However, because USP owns, within the meaning of section 958(a)(2), CFC2 stock by reason of the CFC1 stock, USP's $100x net used tested loss amount with respect to CFC1 attributable to the CFC1 stock is reduced by USP's $100x net offset tested income amount with respect to CFC2 attributable to the CFC1 stock. Accordingly, there is no adjustment to the basis of the CFC1 stock under paragraph (e)(1)(i) of this section.

(*2*) *Indirect disposition.* Under paragraph (e)(6)(ii)(B) of this section, USP's disposition of the CFC1 stock also constitutes an indirect disposition of the CFC2 stock because CFC1 is an upper-tier CFC and CFC2 is a lower-tier CFC within the meaning of paragraph (e)(1)(ii) of this section. However, USP has no net used tested loss amount with respect to CFC2 attributable to the CFC2 stock. Accordingly, there is no adjustment to the basis of the CFC2 stock under paragraph (e)(1) of this section.

(v) Example 5— (A) *Facts.* The facts are the same as in paragraph (A) of *Example 4,* except that in Year 1 CFC2 has $100x of tested loss that offsets CFC1's $100x of tested income. CFC1 sells the stock of CFC2 at the beginning of Year 2.

(B) *Analysis.* USP, a domestic corporation, owns within the meaning of section 958(a) stock of CFC2. Accordingly, immediately before the disposition, CFC1's basis in the CFC2 stock is reduced by USP's net used tested loss amount with respect to CFC2 attributable to the CFC2 stock of $100x under paragraph (e)(1)(i) of this section.

(*2*) *Indirect disposition.*

(vi) Example 6— (A) *Facts.* The facts are the same as in paragraph (A) of *Example 5,* except that instead of CFC1 selling the stock of CFC2, USP sells the stock of CFC1.

(B) *Analysis*—(*1*) *Direct disposition.* USP has no net used tested loss amount with respect to CFC1 attributable to the stock of CFC1. However, because USP owns, within the meaning of section 958(a)(2), stock of CFC2 by reason of owning stock of CFC1, under paragraph (e)(1)(ii) of this section, USP's net used tested loss amount attributable to the stock of CFC1 ($0) is increased by USP's net used tested loss amount with respect to CFC2 attributable to the CFC1 stock ($100x), and reduced by USP's net offset tested income amount with respect to CFC1 attributable to the CFC1 stock ($100x). Accordingly, there is no adjustment to the basis of the CFC1 stock under paragraph (e)(1) of this section.

(*2*) *Indirect disposition.* Under paragraph (e)(6)(ii)(B) of this section, USP's disposition of CFC1 stock also constitutes an indirect disposition of the CFC2 stock because CFC1 is an upper-tier CFC and CFC2 is a lower-tier CFC within the meaning of paragraph (e)(1)(ii) of this section. Accordingly, immediately before the disposition, CFC1's basis in the CFC2 stock is reduced by USP's net used tested loss amount with respect to CFC2 attributable to the CFC2 stock of $100x under paragraph (e)(1)(i) of this section. Under paragraph (e)(1)(iv) of this section, the basis reduction to CFC2's shares is deemed to occur immediately before any reductions occur with respect to the stock of CFC1, of which there are none.

(vii) Example 7— (A) *Facts.* USP1, a domestic corporation, owns 90% of the single class of stock of CFC1, and CFC1 owns 100% of the single class of stock of CFC2. USP1 also owns 100% of the single class of stock of CFC3. The remaining 10% of the stock of CFC1 is owned by USP2, a person unrelated to USP1. USP2 owns no other CFCs. USP1, USP2, CFC1, CFC2, and CFC3 all use the calendar year as their taxable year. In Year 1, CFC1 has no tested income or tested loss, CFC2 has tested loss of $100x, and CFC3 has tested income of $100x. CFC1 has no other earnings or income in Year 1. At the beginning of Year 2, CFC1 sells CFC2. Without regard to this paragraph (e), CFC1 would recognize no gain or loss with respect to the CFC2 stock. USP1 has not owned stock in any other controlled foreign corporation by reason of owning stock of CFC1, CFC2, and CFC3.

(B) *Analysis.* At the time of the disposition, USP2 has no net used tested loss amount with respect to CFC2. At the time of the disposition, USP1 has a net used tested loss amount of $90x with respect to CFC2 attributable to the CFC2 stock, which is the specified stock. Because USP1 does not own (and has not owned), within the meaning of section 958(a)(2), stock in any lower-tier CFCs by reason of the CFC2 stock, there is no adjustment to the net used tested loss amount of $90x pursuant to paragraph (e)(1)(ii) of this section. Accordingly, immediately before the disposition of the CFC2 stock, the basis of the CFC2 stock is reduced by $90x under paragraph (e)(1)(i) of this section. As a result, CFC1 recognizes gain of $90x on the disposition of the CFC2 stock, which results in $90x of foreign personal holding company income and $90x of earnings and profits. Under paragraph (e)(7) of this section, USP1's pro rata share of the subpart F income of CFC1 is increased by $90x, and USP2 does not take such subpart F income into account under section 951(a)(1)(A).

(viii) *Example 8*—(A) *Facts.* USP, a domestic corporation, owns 100% of the single class of stock of CFC1 and CFC2, and CFC1 owns 100% of the single class of stock of CFC3 and CFC4. USP, CFC1, CFC2, CFC3, and CFC4 all use the calendar year as their taxable year. In Year 1, CFC1 has no tested income or tested loss, CFC2 has $200x of tested income, and CFC3 and CFC4 each have tested loss of $100x. During Year 2, CFC3 liquidates into CFC1 in a nontaxable transaction described under section 332, and CFC1 sells the stock of CFC4 to an unrelated third party for cash. During Year 2, none of CFC1, CFC2, CFC3, or CFC4 earn tested income or tested loss. At the beginning of Year 3, USP sells the stock of CFC1 to an unrelated third party for cash. USP has not owned stock in any other CFC by reason of owning stock in CFC1, CFC2, CFC3, or CFC4.

(B) *Analysis.* (*1*) CFC3's liquidation into CFC1 is not a disposition within the meaning of paragraph (e)(6)(ii)(A) of this section because CFC1 does not recognize gain or loss in whole or in part with respect to the stock of CFC3 under section 332. Furthermore, CFC1 does not inherit CFC3's net used tested loss amount under paragraph (e)(5) of this section because CFC1 is an upper-tier CFC with respect to CFC3 and would take such amounts into account under paragraph (e)(1)(ii) of this section at the time of a future disposition. That is, the CFC3 stock is section 958(a) stock that USP has owned by reason of its ownership of CFC1 within the meaning of paragraph (e)(1)(ii) of this section.

(*2*) At the time of CFC1's sale of the stock of CFC4, USP has a $100x net used tested loss amount with respect to CFC4 attributable to the CFC4 stock, which is the specified stock. Because USP has not owned, within the meaning of section 958(a)(2), stock in any lower-tier CFCs by reason of the CFC4 stock, there is no adjustment to the net used tested loss amount of $100x pursuant to paragraph (e)(1)(ii) of this section. Accordingly, immediately before the disposition of the CFC4 stock, the basis of the CFC4 stock is reduced by $100x under paragraph (e)(1)(i) of this section.

(*3*) At the time of USP's sale of CFC1, USP has no net used tested loss amount with respect to CFC1 attributable to the CFC1 stock. However, USP has owned, within the meaning of section 958(a)(2), stock of lower-tier CFCs (CFC3 and CFC4) by reason of its ownership of CFC1. Thus, USP's net used tested loss amount attributable to the stock of CFC1 ($0) is increased by USP's net used tested loss amounts with respect to CFC3 and CFC4 attributable to the CFC1 stock ($200x). Accordingly, immediately before the disposition of the CFC1 stock, the basis of the CFC1 stock is reduced by $200x under paragraph (e)(1)(i) of this section. The rule prohibiting duplicative adjustments under paragraph (e)(1)(v) of this section does not prevent this basis reduction because the net used tested loss amounts with respect to the CFC3 and CFC4 stock were not previously taken into account to reduce the basis of CFC1 stock.

■ **Par. 10.** Section 1.951A–7 is added to read as follows:

§ 1.951A–7 Applicability dates.

Sections 1.951A–1 through 1.951A–6 apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

■ **Par. 11.** Section 1.1502–12 is amended by adding paragraph (s) to read as follows:

§ 1.1502–12 Separate taxable income.

* * * * *

(s) See § 1.1502–51 for rules relating to the computation of a member's GILTI inclusion amount under section 951A and related basis adjustments.

■ **Par. 12.** Section 1.1502–13 is amended by adding paragraph (c) to *Example 4* in paragraph (f)(7).

The addition reads as follows:

§ 1.1502–13 Intercompany transactions.

* * * * *

(f) * * *

(7) * * *

Example 4. * * *

(c) *Application of § 1.1502–51(c)(5) to all cash intercompany reorganization under section 368(a)(1)(D).* The facts are the same as in paragraph (a) of this *Example 4,* except that S's sole asset is stock of a controlled foreign corporation, within the meaning of section 957, with respect to which S has a net used tested loss amount (within the meaning of § 1.1502–51(e)(15)) of $15. As in paragraph (b) of this *Example 4,* S is treated as receiving additional B stock with a fair market value of $100 (in lieu of the $100) and, under section 358, a basis of $25 which S distributes to M in liquidation. Immediately after the sale, pursuant to § 1.1502–51(c)(5), the basis in the B stock received by M is reduced by $15 (the amount of the net used tested loss amount with respect to the controlled foreign corporation) to $10. Following the basis reduction pursuant to § 1.1502–51(c)(5), the B stock (with the exception of the nominal share which is still held by M) received by M is treated as redeemed for $100, and the redemption is treated under section 302(d) as a distribution to which section 301 applies. M's basis of $10 in the B stock is reduced under § 1.1502–32(b)(3)(v), resulting in an excess loss account of $90 in the nominal share. (See § 1.302–2(c).) M's deemed distribution of the nominal share of B stock to P under § 1.368–2(l) will result in M generating an intercompany gain under section 311(b) of $90, to be subsequently taken into account under the matching and acceleration rules.

* * * * *

■ **Par. 13.** Section 1.1502–32 is amended by:

■ 1. Adding paragraphs (b)(3)(ii)(E), (b)(3)(ii)(F), and (b)(3)(iii)(C).

■ 2. Revising paragraph (j).

The revision and additions read as follows:

§ 1.1502–32 Investment adjustments.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(E) *Adjustment for the offset tested income amount of a controlled foreign corporation in relation to section 951A.* S's tax-exempt income for a taxable year includes the aggregate of S's offset tested income amounts (within the meaning of § 1.1502–51(c)(3)) with respect to a controlled foreign corporation (within the meaning of section 957) for all of its U.S. shareholder inclusion years (within the meaning of § 1.951A–1(e)(4)), to the extent such aggregate does not exceed the excess (if any) of—

(*1*) The aggregate of S's used tested loss amounts (within the meaning of § 1.1502–51(c)(2)) with respect to the controlled foreign corporation for all of its U.S. shareholder inclusion years, over

(*2*) The aggregate of S's offset tested income amounts with respect to the controlled foreign corporation for all of its U.S. shareholder inclusion years previously treated as tax-exempt income pursuant to this paragraph.

(F) *Adjustment for the net offset tested income amount of a controlled foreign corporation in relation to section 951A.* S will be treated as having tax-exempt income immediately prior to a transaction (*recognition event*) in which another member of the group recognizes income, gain, deduction, or loss with respect to a share of S's stock to the extent provided in this paragraph (b)(3)(ii)(F). S's tax-exempt income is equal to the portion of the allocable amount that would have been characterized as a dividend to which

section 245A, but not section 1059, would have applied if the allocable amount had been distributed by a controlled foreign corporation to the owner of the transferred shares immediately before the recognition event. For purposes of this paragraph—

(*1*) The term *transferred shares* means the shares of a controlled foreign corporation that S owns within the meaning of section 958(a) or is considered to own by applying the rules of ownership of section 958(b) and that are indirectly transferred as part of the recognition event; and

(*2*) The term *allocable amount* means the net offset tested income amount (within the meaning of § 1.1502–51(e)(14)) allocable to the transferred shares.

(iii) * * *

(C) *Adjustment for the used tested loss amount of a controlled foreign corporation in relation to section 951A.* S's noncapital, nondeductible expense includes its amount of used tested loss amount (within the meaning of § 1.1502–51(c)(2)) with respect to a controlled foreign corporation (within the meaning of section 957) for a U.S. shareholder inclusion year (within the meaning of § 1.951A–1(e)(4)).

* * * * *

(j) *Applicability date*—(1) *In general.* Paragraph (b)(4)(iv) of this section applies to any original consolidated Federal income tax return due (without extensions) after June 14, 2007. For original consolidated Federal income tax returns due (without extensions) after May 30, 2006, and on or before June 14, 2007, see § 1.1502–32T as contained in 26 CFR part 1 in effect on April 1, 2007. For original consolidated Federal income tax returns due (without extensions) on or before May 30, 2006, see § 1.1502–32 as contained in 26 CFR part 1 in effect on April 1, 2006.

(2) *Adjustment for the offset tested income amount, net offset tested income amount, and used tested loss amount of a controlled foreign corporation.* Paragraphs (b)(3)(ii)(E), (b)(3)(ii)(F), and (b)(3)(iii)(C) of this section apply to any consolidated Federal income tax return for a taxable year in which or with which the taxable year of a controlled foreign corporation beginning after December 31, 2017, ends.

* * * * *

■ **Par. 14.** Section 1.1502–51 is added to read as follows:

§ 1.1502–51 Consolidated section 951A.

(a) *In general.* This section provides rules for applying section 951A and §§ 1.951A–1 through 1.951A–7 (the *section 951A regulations*) to each member of a consolidated group (each, a *member*) that is a United States shareholder of any controlled foreign corporation. Paragraph (b) describes the inclusion of the GILTI inclusion amount by a member of a consolidated group. Paragraph (c) modifies the rules provided in § 1.951A–6(e) for adjustments to basis related to used tested loss amount. Paragraph (d) provides rules governing basis adjustments to member stock resulting from the application of § 1.951A–6(e) and paragraph (c) of this section. Paragraph (e) provides definitions for purposes of this section. Paragraph (f) provides examples illustrating the rules of this section. Paragraph (g) provides an applicability date.

(b) *Calculation of the GILTI inclusion amount for a member of a consolidated group.* Each member who is a United States shareholder of any controlled foreign corporation includes in gross income in the U.S. shareholder inclusion year the member's GILTI inclusion amount, if any, for the U.S. shareholder inclusion year. See section 951A(a) and § 1.951A–1(b). The GILTI inclusion amount of a member for a U.S. shareholder inclusion year is the excess (if any) of the member's net CFC tested income for the U.S. shareholder inclusion year, over the member's net deemed tangible income return for the U.S. shareholder inclusion year, determined using the definitions provided in paragraph (e) of this section.

(c) *Adjustments to basis related to used tested loss amount*—(1) *In general.* The adjusted basis of the section 958(a) stock of a controlled foreign corporation that is owned (directly or indirectly) by a member (*specified stock*) or an interest in a foreign entity other than a controlled foreign corporation by reason of which a domestic corporation owns (within the meaning of section 958(a)(2)) stock of a controlled foreign corporation is adjusted immediately before its disposition pursuant to § 1.951A–6(e). The amount of the adjustment is determined using the rules provided in paragraphs (c)(2), (3), and (4) of this section.

(2) *Determination of used tested loss amount.* For purposes of the section 951A regulations and this section, the term *used tested loss amount* means, with respect to a member and a tested loss CFC for a U.S. shareholder inclusion year—

(i) In the case of the consolidated group tested income equaling or exceeding the consolidated group tested loss for a U.S. shareholder inclusion year, the member's pro rata share (determined under § 1.951A–1(d)(4)) of the tested loss of the tested loss CFC for the U.S. shareholder inclusion year.

(ii) In the case of the consolidated group tested income being less than the consolidated group tested loss for a U.S. shareholder inclusion year, the amount that bears the same ratio to the member's pro rata share (determined under § 1.951A–1(d)(4)) of the tested loss of the tested loss CFC for the U.S. shareholder inclusion year as the consolidated group tested income for the U.S. shareholder inclusion year bears to the consolidated group tested loss for the U.S. shareholder inclusion year.

(3) *Determination of offset tested income amount.* For purposes of the section 951A regulations and this section, the term *offset tested income amount* means, with respect to a member and a tested income CFC for a U.S. shareholder inclusion year—

(i) In the case of the consolidated group tested income exceeding the consolidated group tested loss for a U.S. shareholder inclusion year, the amount that bears the same ratio to the member's pro rata share (determined under § 1.951A–1(d)(2)) of the tested income of the tested income CFC for the U.S. shareholder inclusion year as the consolidated group tested loss for the U.S. shareholder inclusion year bears to the consolidated group tested income for the U.S. shareholder inclusion year.

(ii) In the case of the consolidated group tested income equaling or being less than the consolidated group tested loss for a U.S. shareholder inclusion year, the member's pro rata share (determined under § 1.951A–1(d)(2)) of the tested income of the tested income CFC for the U.S. shareholder inclusion year.

(4) *Special rule for disposition by a controlled foreign corporation less than 100 percent owned by a single domestic corporation.* For purposes of determining the application of § 1.951A–6(e)(7), the amount of stock in the controlled foreign corporation a member owns, within the meaning of section 958(a), includes any stock that the member is considered as owning by applying the rules of ownership of section 958(b).

(5) *Special rule for intercompany nonrecognition transactions.* If a member engages in a nonrecognition transaction (within the meaning of section 7701(a)(45)), with another member in which stock of a controlled foreign corporation that has a net used tested loss amount is directly transferred, the adjusted basis of the nonrecognition property (within the meaning of section 358) received in the nonrecognition transaction is

immediately reduced by the amount of the net used tested loss amount. In cases of intercompany transactions that are governed by § 1.368–2(l), the reduction in basis pursuant to this paragraph (c)(5) is made prior to the application of § 1.1502–13(f)(3). See § 1.1502–13(f)(7), Example 4(c).

(d) *Adjustments to the basis of a member.* For adjustments to the basis of a member related to paragraph (c) of this section, see § 1.1502–32(b)(3)(ii)(E), (b)(3)(ii)(F), and (b)(3)(iii)(C).

(e) *Definitions.* The following definitions apply for purposes of the section—

(1) *Aggregate tested income.* With respect to a member, the term *aggregate tested income* means the aggregate of the member's pro rata share (determined under § 1.951A–1(d)(2)) of the tested income of each tested income CFC for a U.S. shareholder inclusion year.

(2) *Aggregate tested loss.* With respect to a member, the term *aggregate tested loss* means the aggregate of the member's pro rata share (determined under § 1.951A–1(d)(4)) of the tested loss of each tested loss CFC for a U.S. shareholder inclusion year.

(3) *Allocable share.* The term *allocable share* means, with respect to a member that is a United States shareholder and a U.S. shareholder inclusion year—

(i) With respect to consolidated group QBAI, the product of the consolidated group QBAI of the member's consolidated group and the member's GILTI allocation ratio.

(ii) With respect to consolidated group specified interest expense, the product of the consolidated group specified interest expense of the member's consolidated group and the member's GILTI allocation ratio.

(iii) With respect to consolidated group tested loss, the product of the consolidated group tested loss of the member's consolidated group and the member's GILTI allocation ratio.

(4) *Consolidated group QBAI.* With respect to a consolidated group, the term *consolidated group QBAI* means the sum of each member's pro rata share (determined under § 1.951A–1(d)(3)) of the qualified business asset investment of each tested income CFC for a U.S. shareholder inclusion year.

(5) *Consolidated group specified interest expense.* With respect to a consolidated group, the term *consolidated group specified interest expense* means the excess (if any) of—

(i) The sum of each member's pro rata share (determined under § 1.951A–1(d)(5)) of the tested interest expense of each controlled foreign corporation for the U.S. shareholder inclusion year, over

(ii) The sum of each member's pro rata share (determined under § 1.951A–1(d)(6)) of the tested interest income of each controlled foreign corporation for the U.S. shareholder inclusion year.

(6) *Consolidated group tested income.* With respect to a consolidated group, the term *consolidated group tested income* means the sum of each member's aggregate tested income for a U.S. shareholder inclusion year.

(7) *Consolidated group tested loss.* With respect to a consolidated group, the term *consolidated group tested loss* means the sum of each member's aggregate tested loss for a U.S. shareholder inclusion year.

(8) *Controlled foreign corporation.* The term *controlled foreign corporation* means a controlled foreign corporation as defined in section 957.

(9) *Deemed tangible income return.* With respect to a member, the term *deemed tangible income return* means 10 percent of the member's allocable share of the consolidated group QBAI.

(10) *GILTI allocation ratio.* With respect to a member, the term *GILTI allocation ratio* means the ratio of—

(i) The aggregate tested income of the member for a U.S. shareholder inclusion year, to

(ii) The consolidated group tested income of the consolidated group of which the member is a member for the U.S. shareholder inclusion year.

(11) *GILTI inclusion amount.* With respect to a member, the term *GILTI inclusion amount* has the meaning provided in paragraph (b) of this section.

(12) *Net CFC tested income.* With respect to a member, the term *net CFC tested income* means the excess (if any) of—

(i) The member's aggregate tested income, over

(ii) The member's allocable share of the consolidated group tested loss.

(13) *Net deemed tangible income return.* With respect to a member, the term *net deemed tangible income return* means the excess (if any) of the member's deemed tangible income return over the member's allocable share of the consolidated group specified interest expense.

(14) *Net offset tested income amount.* The term *net offset tested income amount* means, with respect to a member and a controlled foreign corporation, the excess (if any) of the amount described in paragraph (e)(15)(ii) of this section over the amount described in paragraph (e)(15)(i) of this section.

(15) *Net used tested loss amount.* The term *net used tested loss amount* means, with respect to a member and a controlled foreign corporation, the excess (if any) of —

(i) The aggregate of the member's pro rata share of each used tested loss amount of the controlled foreign corporation for each U.S. shareholder inclusion year over

(ii) The aggregate of the member's pro rata share of each offset tested income amount of the controlled foreign corporation for each U.S. shareholder inclusion year.

(16) *Offset tested income amount.* The term *offset tested income amount* has the meaning provided in paragraph (c)(3) of this section.

(17) *Qualified business asset investment.* The term *qualified business asset investment* has the meaning provided in § 1.951A–3(b).

(18) *Tested income.* The term *tested income* has the meaning provided in § 1.951A–2(b)(1).

(19) *Tested income CFC.* The term *tested income CFC* has the meaning provided in § 1.951A–2(b)(1).

(20) *Tested interest expense.* The term *tested interest expense* has the meaning provided in § 1.951A–4(b)(1).

(21) *Tested interest income.* The term *tested interest income* has the meaning provided in § 1.951A–4(b)(2).

(22) *Tested loss.* The term *tested loss* has the meaning provided in § 1.951A–2(b)(2).

(23) *Tested loss CFC.* The term *tested loss CFC* has the meaning provided in § 1.951A–2(b)(2).

(24) *United States shareholder.* The term *United States shareholder* has the meaning provided in § 1.951–1(g)(1).

(25) *U.S. shareholder inclusion year.* The term *U.S. shareholder inclusion year* has the meaning provided in § 1.951A–1(e)(4).

(26) *Used tested loss amount.* The term *used tested loss amount* has the meaning provided in paragraph (c)(2) of this section.

(f) *Examples.* The following examples illustrate the rules of this section. For purposes of the examples in this section, unless otherwise stated: P is the common parent of the P consolidated group; P owns all of the single class of stock of subsidiaries USS1, USS2, and USS3, all of whom are members of the P consolidated group; CFC1, CFC2, CFC3, and CFC4 are all controlled foreign corporations (within the meaning of paragraph (e)(8) of this section); and the taxable year of all persons is the calendar year.

(1) Example 1: Calculation of net CFC tested income within a consolidated group

when all CFCs are wholly owned by a member— (i) *Facts.* USS1 owns all of the single class of stock of CFC1. USS2 owns all of the single class of stock of each of CFC2 and CFC3. USS3 owns all of the single class of stock of CFC4. In Year 1, CFC1 has tested loss of $100, CFC2 has tested income of $200x, CFC3 has tested loss of $200x, and CFC4 has tested income of $600x. Neither CFC2 nor CFC4 has qualified business asset investment in Year 1.

(ii) *Analysis*—(A) *Consolidated group tested income and GILTI allocation ratio.* USS1 has no aggregate tested income; USS2's aggregate tested income is $200x, its pro rata share (within the meaning of § 1.951A–1(d)(2)) of CFC2's tested income; and USS3's aggregate tested income is $600x, its pro rata share (within the meaning of § 1.951A–1(d)(2)) of CFC4's tested income. Therefore, under paragraph (e)(6) of this section, the P consolidated group's consolidated group tested income is $800x ($200x + $600x). As a result, the GILTI allocation ratios of USS1, USS2, and USS3 are 0 ($0/$800x), 0.25 ($200x/$800x), and 0.75 ($600x/$800x), respectively.

(B) *Consolidated group tested loss.* Under paragraph (e)(7) of this section, the P consolidated group's consolidated group tested loss is $300x ($100x + $200x), the aggregate of USS1's aggregate tested loss, which is equal to its pro rata share (within the meaning of § 1.951A–1(d)(4)) of CFC1's tested loss ($100x), and USS2's aggregate tested loss, which is equal to its pro rata share (within the meaning of § 1.951A–1(d)(4)) of CFC3's tested loss ($200x). Under paragraph (e)(3)(iii) of this section, a member's allocable share of the consolidated group tested loss is the product of the consolidated group tested loss of the member's consolidated group and the member's GILTI allocation ratio. Therefore, the allocable shares of the consolidated group tested loss of USS1, USS2, and USS3 are $0 (0 × $300x), $75x (0.25 × $300x), and $225x (0.75 × $300x), respectively.

(C) *Calculation of net CFC tested income.* Under paragraph (e)(12) of this section, a member's net CFC tested income is the excess (if any) of the member's aggregate tested income over the member's allocable share of the consolidated group tested loss. As a result, USS1's, USS2's, and USS3's net CFC tested income amounts are $0 ($0 − $0), $125x ($200x − $75x), and $375x ($600x − $225x), respectively.

(2) Example 2: Calculation of net CFC tested income within a consolidated group when ownership of a tested loss CFC is split between members— (i) *Facts.* The facts are the same as in paragraph (i) of *Example 1,* except that USS2 and USS3 each own 50% of the single class of stock of CFC3.

(ii) *Analysis.* As in paragraph (ii) of *Example 1,* USS1 has no aggregate tested income and a GILTI allocation ratio of 0, USS2 has $200x of aggregate tested income and a GILTI allocation ratio of 0.25, and USS3 has $600x of aggregate tested income and a GILTI allocation ratio of 0.75. Additionally, the P consolidated group's consolidated group tested loss is $300x (the aggregate of USS1's aggregate tested loss, which is equal to its pro rata share (within the meaning of § 1.951A–1(d)(4)) of CFC1's tested loss ($100x); USS2's aggregate tested loss, which is equal to its pro rata share (within the meaning of § 1.951A–1(d)(4)) of CFC3's tested loss ($100x); and USS3's aggregate tested loss, which is equal to its pro rata share (within the meaning of § 1.951A–1(d)(4)) of CFC3's tested loss ($100x)). As a result, under paragraph (e)(12) of this section, as in paragraph (ii)(C) of *Example 1,* USS1's, USS2's, and USS3's net CFC tested income amounts are $0 ($0—$0), $125x ($200x—$75x), and $375x ($600x—$225x), respectively.

(3) Example 3: Calculation of GILTI inclusion amount— (i) *Facts.* The facts are the same as in paragraph (i) of *Example 1,* except that CFC2 and CFC4 have qualified business asset investment of $500x and $2000x, respectively, for Year 1. In Year 1, CFC1 and CFC4 each have tested interest expense (within the meaning of § 1.951A–4(b)(1)) of $25x, and CFC1, CFC2, CFC3, and CFC4 have $0 of tested interest income (within the meaning of § 1.951A–4(b)(2)). CFC1's tested loss of $100x and CFC4's tested income of $600x take into account the interest paid.

(ii) *Analysis*—(A) *GILTI allocation ratio.* As in paragraph (ii) of *Example* 1, the GILTI allocation ratios of USS1, USS2, and USS3 are 0 ($0/$800x), 0.25 ($200x/$800x), and 0.75 ($600x/$800x), respectively.

(B) *Consolidated group QBAI.* Under paragraph (e)(4) of this section, the P consolidated group's consolidated group QBAI is $2,500x ($500x + $2,000x), the aggregate of USS2's pro rata share (determined under § 1.951A–1(d)(3)) of the qualified business asset investment of CFC2 and USS3's pro rata share (determined under § 1.951A–1(d)(3)) of the qualified business asset investment of CFC4. Under paragraph (e)(3)(i) of this section, a member's allocable share of consolidated group QBAI is the product of the consolidated group QBAI of the member's consolidated group and the member's GILTI allocation ratio. Therefore, the allocable shares of the consolidated group QBAI of each of USS1, USS2, and USS3 are $0 (0 × $2,500x), $625x (0.25 × $2,500x), and $1,875x (0.75 × $2,500x), respectively.

(C) *Consolidated group specified interest expense*—*(1) Pro rata share of tested interest expense.* USS1's pro rata share of the tested interest expense of CFC1 is $25x, the amount by which the tested interest expense increases USS1's pro rata share of CFC1's tested loss (from $75x to $100x) for Year 1. USS3's pro rata share of the tested interest expense of CFC4 is also $25x, the amount by which the tested interest expense decreases USS1's pro rata share of CFC4's tested income (from $625x to $600x). See § 1.951A–1(d)(5).

(*2*) *Consolidated group specified interest expense.* Under paragraph (e)(5) of this section, the P consolidated group's consolidated group specified interest expense is $50x, the excess of the sum of each member's pro rata share of the tested interest expense of each controlled foreign corporation ($50x, $25x from USS1 + $25x from USS3), over the sum of each member's pro rata share of tested interest income ($0). Under paragraph (e)(3)(ii) of this section, a member's allocable share of consolidated group specified interest expense is the product of the consolidated group specified interest expense of the member's consolidated group and the member's GILTI allocation ratio. Therefore, the allocable shares of consolidated group specified interest expense of USS1, USS2, and USS3 are $0 (0 × $50x), $12.50x (0.25 × $50x), and $37.50x (0.75 × $50x), respectively.

(D) *Calculation of deemed tangible income return.* Under paragraph (e)(9) of this section, a member's deemed tangible income return means 10 percent of the member's allocable share of the consolidated group QBAI. As a result, USS1's, USS2's, and USS3's deemed tangible income returns are $0 (0 − $0), $62.50x (0.1 − $625x), and $187.50x (0.1 − $1,875x), respectively.

(E) *Calculation of net deemed tangible income return.* Under paragraph (e)(13) of this section, a member's net deemed tangible income return means the excess (if any) of a member's deemed tangible income return over the member's allocable share of the consolidated group specified interest. As a result, USS1's, USS2's, and USS3's net deemed tangible income returns are $0 ($0 − $0), $50x ($62.50x − $12.50x), and $150x ($187.50x − $37.50x), respectively.

(F) *Calculation of GILTI inclusion amount.* Under paragraph (b) of this section, a member's GILTI inclusion amount for a U.S. shareholder inclusion year is the excess (if any) of the member's net CFC tested income for the U.S. shareholder inclusion year, over the shareholder's net deemed tangible income return for the U.S. shareholder inclusion year. As described in paragraph (ii)(C) of *Example 1,* the amounts of USS1's, USS2's, and USS3's net CFC tested income are $0, $125x, and $375x, respectively. As described in paragraph (ii)(E) of this *Example 3,* the amounts of USS1's, USS2's, and USS3's net deemed tangible income return are $0, $50x, and $150x, respectively. As a result, under paragraph (b) of this section, USS1's, USS2's, and USS3's GILTI inclusion amounts are $0 ($0 − $0), $75x ($125x − $50x), and $225x ($375x − $150x), respectively.

(G) *Calculation of used tested loss amount and offset tested income amount.* As described in paragraph (ii)(A) of *Example 1,* P consolidated group's consolidated group tested income is $800x. As described in paragraph (ii)(B) of *Example 1,* P consolidated group's consolidated group tested loss is $300x. Therefore, the P consolidated group's consolidated group tested income exceeds its consolidated group tested loss. As a result, USS1 has a $100x used tested loss amount with respect to CFC1 and USS2 has a $200x used tested loss amount with respect to CFC3. Additionally, USS2 has a $75x offset tested income amount with respect to CFC2 ($200x x $300x/$800x) and USS3 has a $225x offset tested income amount with respect to CFC3 ($600x x $300x/$800x). See paragraph (c) of this section. P will adjust its basis in USS1 and USS2 pursuant to the rule in § 1.1502–32(b)(3)(iii)(C).

(g) *Applicability date.* This section applies to taxable years of foreign corporations beginning after December

31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

■ **Par. 15.** Section 1.6038–2 is amended by:

■ 1. Revising the section heading.

■ 2. Revising the first sentence in paragraph (a).

■ 3. Revising paragraph (m).

The revisions read as follows:

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations.

(a) *Requirement of return.* Every U.S. person shall make a separate annual information return with respect to each annual accounting period (described in paragraph (e) of this section) of each foreign corporation which that person controls (as defined in paragraph (b) of this section) at any time during such annual accounting period. * * *

* * * * *

(m) *Applicability dates.* This section applies to taxable years of foreign corporations beginning on or after October 3, 2018. See 26 CFR 1.6038–2 (revised as of April 1, 2018) for rules applicable to taxable years of foreign corporations beginning before such date.

■ **Par. 16.** Section 1.6038–5 is added to read as follows:

§ 1.6038–5 Information returns required of certain United States persons to report amounts determined with respect to certain foreign corporations for global intangible low-taxed income (GILTI) purposes.

(a) *Requirement of return.* Except as provided in paragraph (d) of this section, each United States person who is a United States shareholder (as defined in section 951(b)) of any controlled foreign corporation must make an annual return on Form 8992, ''U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI),'' (or successor form) for each U.S. shareholder inclusion year (as defined in § 1.951A–1(e)(4)) setting forth the information with respect to each such controlled foreign corporation, in such form and manner, as Form 8992 (or successor form) prescribes.

(b) *Time and manner for filing.* Returns on Form 8992 (or successor form) required under paragraph (a) of this section for a taxable year must be filed with the United States person's income tax return on or before the due date (taking into account extensions) for filing that person's income tax return.

(c) *Failure to furnish information*—(1) *Penalties.* If any person required to file Form 8992 (or successor form) under section 6038 and this section fails to furnish the information prescribed on Form 8992 within the time prescribed by paragraph (b) of this section, the penalties imposed by section 6038(b) and (c) may apply.

(2) *Increase in penalty.* If a failure described in paragraph (c)(1) of this section continues for more than 90 days after the date on which the Director of Field Operations, Area Director, or Director of Compliance Campus Operations mails notice of such failure to the person required to file Form 8992, such person shall pay a penalty of $10,000, in addition to the penalty imposed by section 6038(b)(1), for each 30-day period (or a fraction of) during which such failure continues after such 90-day period has expired. The additional penalty imposed by section 6038(b)(2) and this paragraph (c)(2) shall be limited to a maximum of $50,000 for each failure.

(3) *Reasonable cause*—(i) For purposes of section 6038(b) and (c) and this section, the time prescribed for furnishing information under paragraph (b) of this section, and the beginning of the 90-day period after mailing of notice by the director under paragraph (c)(2) of this section, shall be treated as being not earlier than the last day on which reasonable cause existed for failure to furnish the information.

(ii) To show that reasonable cause existed for failure to furnish information as required by section 6038 and this section, the person required to report such information must make an affirmative showing of all facts alleged as reasonable cause for such failure in a written statement containing a declaration that it is made under the penalties of perjury. The statement must be filed with the director where the return is required to be filed. The director shall determine whether the failure to furnish information was due to reasonable cause, and if so, the period of time for which such reasonable cause existed. In the case of a return that has been filed as required by this section except for an omission of, or error with respect to, some of the information required, if the person who filed the return establishes to the satisfaction of the director that the person has substantially complied with this section, then the omission or error shall not constitute a failure under this section.

(d) *Exception from filing requirement.* Any United States person that does not own, within the meaning of section 958(a), stock of a controlled foreign corporation in which the United States person is a United States shareholder for a taxable year is not required to file Form 8992. For this purpose, a U.S. shareholder partner (as defined in § 1.951A–5(e)(3)) with respect to a partnership CFC (as defined in § 1.951A–5(e)(2)) is treated as owning, within the meaning of section 958(a), stock of the partnership CFC.

(e) *Applicability date.* This section applies to taxable years of controlled foreign corporations beginning on or after October 3, 2018.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2018–20304 Filed 10–3–18; 4:15 pm]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 83 Wednesday,

No. 196 October 10, 2018

Part III

Department of Homeland Security

8 CFR Parts 103, 212, 213, et al.
Inadmissibility on Public Charge Grounds; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 212, 213, 214, 245 and 248

[CIS No. 2499–10; DHS Docket No. USCIS–2010–0012]

RIN 1615–AA22

Inadmissibility on Public Charge Grounds

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Homeland Security (DHS) proposes to prescribe how it determines whether an alien is inadmissible to the United States under section 212(a)(4) of the Immigration and Nationality Act (INA) because he or she is likely at any time to become a public charge. Aliens who seek adjustment of status or a visa, or who are applicants for admission, must establish that they are not likely at any time to become a public charge, unless Congress has expressly exempted them from this ground of inadmissibility or has otherwise permitted them to seek a waiver of inadmissibility. Moreover, DHS proposes to require all aliens seeking an extension of stay or change of status to demonstrate that they have not received, are not currently receiving, nor are likely to receive, public benefits as defined in the proposed rule.

DHS proposes to define ''public charge'' as the term is used in sections 212(a)(4) of the Act. DHS also proposes to define the types of public benefits that are considered in public charge inadmissibility determinations. DHS would consider an alien's receipt of public benefits when such receipt is above the applicable threshold(s) proposed by DHS, either in terms of dollar value or duration of receipt. DHS proposes to clarify that it will make public charge inadmissibility determinations based on consideration of the factors set forth in section 212(a)(4) and in the totality of an alien's circumstances. DHS also proposes to clarify when an alien seeking adjustment of status, who is inadmissible under section 212(a)(4) of the Act, may be granted adjustment of status in the discretion of DHS upon the giving of a public charge bond. DHS is also proposing revisions to existing USCIS information collections and new information collection instruments to accompany the proposed regulatory changes. With the publication of this proposed rule, DHS withdraws the proposed regulation on public charge that the former Immigration and Naturalization Service (INS) published on May 26, 1999.

DATES: Written comments and related material to this proposed rule, including the proposed information collections, must be received to the online docket via *www.regulations.gov,* or to the mail address listed in the **ADDRESSES** section below, on or before December 10, 2018.

ADDRESSES: You may submit comments on this proposed rule, including the proposed information collection requirements, identified by DHS Docket No. USCIS–2010–0012, by any one of the following methods:

- *Federal eRulemaking Portal (preferred): www.regulations.gov.* Follow the website instructions for submitting comments.
- *Mail:* Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529–2140. To ensure proper handling, please reference DHS Docket No. USCIS–2010–0012 in your correspondence. Mail must be postmarked by the comment submission deadline.

FOR FURTHER INFORMATION CONTACT: Mark Phillips, Residence and Naturalization Division Chief, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts NW, Washington, DC 20529–2140; telephone 202–272–8377.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Participation
II. Executive Summary
A. Major Provisions of the Regulatory Action
B. Costs and Benefits
III. Purpose of the Proposed Rule
A. Self-Sufficiency
B. Public Charge Inadmissibility Determinations
IV. Background
A. Legal Authority
B. Immigration to the United States
C. Extension of Stay and Change of Status
D. Public Charge Inadmissibility
1. Public Laws and Case Law
2. Public Benefits Under PRWORA
(a) Qualified Aliens
(b) Public Benefits Exempt Under PRWORA
3. Changes Under IIRIRA
4. INS 1999 Interim Field Guidance
E. Public Charge Bond
V. Discussion of Proposed Rule
A. Applicability, Exemptions, and Waivers
1. Applicants for Admission
2. Extension of Stay and Change of Status Applicants
3. Adjustment of Status Applicants
4. Exemptions
5. Waivers
B. Definition of Public Charge and Related Terms
1. Public Charge
2. Public Benefit
(a) Types of Public Benefits
(b) Consideration of Monetizable and Non-Monetizable Public Benefits
i. ''Primarily Dependent'' Standard and Its Limitations
ii. Fifteen Percent of Federal Poverty Guidelines (FPG) Standard for Monetizable Benefits
iii. Twelve Month Standard for Non-Monetizable Benefits
iv. Combination of Monetizable Benefits Under 15 Percent of FPG and One or More Non-Monetizable Benefits
(c) Monetizable Public Benefits
i. Supplemental Security Income (SSI)
ii. Temporary Assistance for Needy Families (TANF)
iii. General Assistance Cash Benefits
iv. Supplemental Nutrition Assistance Program (SNAP) v. Housing Programs
a. Section 8 Housing Choice Voucher Program
b. Section 8 Project-Based Rental Assistance
(d) Non-Monetizable Public Benefits
i. Medicaid
a. Description of Program
b. Exceptions for Certain Medicaid Services
c. Exception for Receipt of Medicaid by Foreign-Born Children of U.S. Citizens
ii. Institutionalization for Long-Term Care
iii. Premium and Cost Sharing Subsidies Under Medicare Part D
iv. Subsidized Public Housing
(e) Receipt of Public Benefits by Active Duty and Reserve Servicemembers and Their Families
(f) Unenumerated Benefits
(g) Request for Comment Regarding the Children's Health Insurance Program (CHIP)
(h) Request for Comment Regarding Public Benefit Receipt by Certain Alien Children
(i) Request for Comment Regarding Potential Modifications by Public Benefit Granting Agencies
3. Likely at Any Time To Become a Public Charge
4. Household
(a) Definition of Household in Public Charge Context
(b) Definitions of ''Household'' and Similar Concepts in Other Public Benefits Contexts
(c) Definitions of Household and Similar Concepts in Other Immigration Contexts
C. Public Charge Inadmissibility Determination
1. Absence of a Required Affidavit of Support
2. Prospective Determination Based on Totality of Circumstances
D. Age
E. Health
1. USCIS Evidentiary Requirements
2. Potential Effects for Aliens With a Disability, Depending on Individual
F. Family Status

G. Assets, Resources, and Financial Status
1. Evidence of Assets and Resources
2. Evidence of Financial Status
(a) Public Benefits
(b) Fee Waivers for Immigration Benefits
(c) Credit Report and Score
(d) Financial Means To Pay for Medical Costs
I. Education and Skills
1. USCIS Evidentiary Requirements
J. Prospective Immigration Status and Expected Period of Admission
K. Affidavit of Support
1. General Consideration of Sponsorship and Affidavits of Support
2. Proposal To Consider Required Affidavits of Support
L. Heavily Weighed Factors
1. Heavily Weighed Negative Factors
(a) Lack of Employability
(b) Current Receipt of One of More Public Benefit
(c) Receipt of Public Benefits Within Last 36 Months of Filing Application
(d) Financial Means To Pay for Medical Costs
(e) Alien Previously Found Inadmissible or Deportable Based on Public Charge
2. Heavily Weighed Positive Factors
(f) Previously Excluded Benefits
M. Summary of Review of Factors in the Totality of the Circumstances
1. Favorable Determination of Admissibility
2. Unfavorable Determination of Admissibility
N. Valuation of Monetizable Benefits
O. Public Charge Bonds for Adjustment of Status Applicants
1. Overview of Immigration Bonds Generally
2. Overview of Public Charge Bonds
(a) Public Charge Bonds
(b) Current and Past Public Charge Bond Procedures
(c) Relationship of the Public Charge Bond to the Affidavit of Support
(d) Summary of Proposed Changes
3. Permission To Post a Public Charge Bond
4. Bond Amount and Submission of a Public Charge Bond
5. Public Charge Bond Substitution
6. Public Charge Bond Cancellation
(a) Conditions
(b) Definition of Permanent Departure
(c) Bond Cancellation for Lawful Permanent Residents After 5 Years and Cancellation if the Alien Obtains an Immigration Status Exempt From Public Charge Grounds of Inadmissibility Following the Initial Grant of Lawful Permanent Resident Status
(d) Request To Cancel the Bond, and Adjudication of the Cancelation Request
(e) Decision and Appeal
7. Breach of a Public Charge Bond and Appeal
(a) Breach Conditions and Adjudication
(b) Decision and Appeal
(c) Consequences of Breach
8. Exhaustion of Administrative Remedies
9. Public Charge Processing Fees
10. Other Technical Changes
11. Concurrent Surety Bond Rulemaking
VI. Statutory and Regulatory Requirements
A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)
1. Summary
2. Background and Purpose of the Rule
3. Population
(a) Population Seeking Adjustment of Status
i. Exemptions From Determination of Inadmissibility Based on Public Charge Grounds
ii. Exemptions From the Requirement To Submit an Affidavit of Support
(b) Population Seeking Extension of Stay of Change of Status
4. Cost-Benefit Analysis
(a) Baseline Estimates of Current Costs
i. Determination of Inadmissibility Based on Public Charge Grounds
a. Form I–485, Application to Register Permanent Residence or Adjust Status
b. Form I–693, Report of Medical Examination and Vaccination Record
c. Form I–912, Request for Fee Waiver
d. Affidavit of Support Forms
ii. Consideration of Receipt, or Likelihood of Receipt of Public Benefits Defined in Proposed 212.21(b) for Applicants Requesting Extension of Stay or Change of Status
a. Form I–129, Petition for a Nonimmigrant Worker
b. Form I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker
c. Form I–539, Application To Extend/Change Nonimmigrant Status
(b) Costs of Proposed Regulatory Changes
i. Form I–944, Declaration of Self-Sufficiency
ii. Extension of Stay/Change of Status Using Form I–129, Petition for a Nonimmigrant Worker; Form I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker; or Form I–539, Application To Extend/Change Nonimmigrant Status
iii. Public Charge Bond
(c) Transfer of Payments and Indirect Impacts of Proposed Regulatory Changes
(d) Discounted Direct Costs and Reduced Transfer Payments
i. Discounted Direct Costs
ii. Discounted Reduction in Transfer Payments
(e) Costs to the Federal Government
(f) Benefits of Proposed Regulatory Changes
B. Regulatory Flexibility Act
C. Congressional Review Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132 (Federalism)
F. Executive Order 12988 (Civil Justice Reform)
G. Executive Order 13175 Consultation and Coordination With Indian Tribal Governments
H. Family Assessment
I. National Environmental Policy Act (NEPA)
J. Paperwork Reduction Act
VII. List of Subjects and Regulatory Amendments

Table of Abbreviations

AFM—Adjudicator's Field Manual
ASEC—Annual Social and Economic Supplement of the Current Population Survey
BIA—Board of Immigration Appeals
BLS—U.S. Bureau of Labor Statistics
CDC—Centers for Disease Control and Prevention
CBP—U.S. Customs and Border Protection
CFR—Code of Federal Regulations
CHIP—Children's Health Insurance Program
CNMI—Commonwealth of the Northern Mariana Islands
DHS—U.S. Department of Homeland Security
DOS—U.S. Department of State
FAM—Foreign Affairs Manual
FCRA—Fair Credit Reporting Act
FPG—Federal Poverty Guidelines
FPL—Federal Poverty Level
Form DS–2054—Medical Examination For Immigrant or Refugee Applicant
Form I–129—Petition for a Nonimmigrant Worker
Form I–129CW—Petition for a CNMI-Only Nonimmigrant Transitional Worker
Form I–130—Petition for Alien Relative
Form I–140—Immigrant Petition for Alien Worker
Form I–290B—Notice of Appeal or Motion
Form I–356—Request for Cancellation of Public Charge Bond
Form I–407—Record of Abandonment of Lawful Permanent Resident Status
Form I–485—Application to Register Permanent Residence or Adjust Status
Form I–539—Application to Extend/Change Nonimmigrant Status
Form I–600—Petition to Classify Orphan as an Immediate Relative
Form I–693—Report of Medical Examination and Vaccination Record
Form I–800—Petition to Classify Convention Adoptee as an Immediate Relative
Form I–864—Affidavit of Support Under Section 213A of the INA
Form I–864A—Contract Between Sponsor and Household Member
Form I–864EZ—Affidavit of Support Under Section 213A of the Act
Form I–864P—HHS Poverty Guidelines for Affidavit of Support
Form I–864W—Request for Exemption for Intending Immigrant's Affidavit of Support
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
Form I–944—Declaration of Self-Sufficiency
Form I–945—Public Charge Bond
Form N–600—Application for Certificate of Citizenship
Form N–600K—Application for Citizenship and Issuance of Certificate Under Section 322
GA– General Assistance
GAO—U.S. Government Accountability Office
HHS—U.S. Department of Health and Human Services
ICE—U.S. Immigration and Customs Enforcement IIRIRA—Illegal Immigration Reform and Immigrant Responsibility Act of 1996
INA—Immigration and Nationality Act
INS—Immigration and Naturalization Service

IRCA—Immigration Reform and Control Act of 1986
NHE—National Health Expenditure
PRA—Paperwork Reduction Act
PRWORA—Personal Responsibility and Work Opportunity Reconciliation Act of 1996
RFE—Request for Evidence
SAVE—Systematic Alien Verification for Entitlements
Secretary—Secretary of Homeland Security
SIPP—Survey of Income and Program Participation
SNAP—Supplemental Nutrition Assistance Program
SSA—Social Security Administration
SSI—Supplemental Security Income
TANF—Temporary Assistance for Needy Families
USDA—U.S. Department of Agriculture
U.S.C.—United States Code
USCIS—U.S. Citizenship and Immigration Services
WIC—Special Supplemental Nutrition Program for Women, Infants, and Children

I. Public Participation

All interested parties are invited to participate in this rulemaking by submitting written data, views, comments and arguments on all aspects of this proposed rule. DHS also invites comments that relate to the economic, legal, environmental, or federalism effects that might result from this proposed rule. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to U.S. Citizenship and Immigration Services (USCIS) in implementing these changes will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change.

Instructions: If you submit a comment, you must include the agency name and the DHS Docket No. USCIS–2010–0012 for this rulemaking. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Docket: For access to the docket and to read background documents or comments received, go to *http://www.regulations.gov,* referencing DHS Docket No. USCIS–2010–0012. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

The docket for this rulemaking does not include any comments submitted on the related notice of proposed rulemaking published by INS in 1999.[1] Commenters to the 1999 notice of proposed rulemaking that wish to have their views considered should submit new comments in response to this notice of proposed rulemaking.

II. Executive Summary

DHS seeks to better ensure that aliens subject to the public charge inadmissibility ground are self-sufficient, *i.e.,* do not depend on public resources to meet their needs, but rather rely on their own capabilities, as well as the resources of family members, sponsors, and private organizations.[2] DHS proposes to define the term ''public charge'' in regulation and to identify the types, amount, and duration of receipt of public benefits that would be considered in public charge inadmissibility determinations. DHS proposes to amend its regulations to interpret the minimum statutory factors for determining whether an alien is inadmissible because he or she is likely to become a public charge. This proposed rule would provide a standard for determining whether an alien who seeks admission into the United States as a nonimmigrant or as an immigrant, or seeks adjustment of status, is likely at any time to become a public charge under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4). DHS also provides a more comprehensive framework under which USCIS will consider public charge inadmissibility. DHS proposes that certain paper-based applications to USCIS would require additional evidence related to public charge considerations. Due to operational limitations, this additional evidence would not generally be required at ports of entry.

DHS also proposes amending the nonimmigrant extension of stay and change of status regulations by exercising its authority to set additional conditions on granting such benefits. Finally, DHS proposes to revise its regulations governing the discretion of the Secretary of Homeland Security (Secretary) to accept a public charge bond under section 213 of the Act, 8 U.S.C. 1183, for those seeking adjustment of status.

A. Major Provisions of the Regulatory Action

DHS proposes to include the following major changes:

- Amending 8 CFR 103.6, Surety bonds. The amendments to this section set forth DHS's discretion to approve public charge bonds, cancellation, bond schedules, and breach of bond, and move principles governing public charge bonds to 8 CFR 213.1, as proposed to be revised in this NPRM.
- Amending 8 CFR 103.7, adding fees for new Form I–945, Public Charge Bond, and Form I–356, Request for Cancellation of Public Charge Bond.
- Adding 8 CFR 212.20, Applicability of public charge inadmissibility. This section identifies the categories of aliens that are subject to the public charge inadmissibility determination.
- Adding 212.21, Definitions. This section establishes key regulatory definitions, including public charge, public benefit, likely at any time to become a public charge, and household.
- Adding 212.22, Public charge determination. This section clarifies that evaluating the likelihood of becoming a public charge is a prospective determination based on the totality of the circumstances. This section provides details on how the statute's mandatory factors would be considered when making a public charge inadmissibility determination.
- Adding 212.23, Exemptions and waivers for the public charge ground of inadmissibility. This section provides a list of statutory and regulatory exemptions from and waivers of inadmissibility based on public charge.
- Adding 212.24 Valuation of monetizable benefits. This section provides the methodology for calculating the annual aggregate amount of the portion attributable to the alien for the monetizable benefits and considered in the public charge inadmissibility determination.
- Amending 8 CFR 213.1, Adjustment of status of aliens on submission of a public charge bond. The updates to this section change the title of this section and add specifics to the public charge bond provision for aliens who are seeking adjustment of status, including the discretionary availability and the minimum amount for a public charge bond.
- Amending 8 CFR 214.1, Requirements for admission, extension, and maintenance of status. These amendments provide that, with limited

[1] *See Inadmissibility and Deportability on Public Charge Grounds,* 64 FR 28676 (May 26, 1999).

[2] *See* 8 U.S.C. 1601(1), (2)(A).

exceptions, an application for extension of nonimmigrant stay will be denied unless the applicant demonstrates that he or she has not received since obtaining the nonimmigrant status he or she seeks to extend, is not receiving, and is not likely to receive, public benefits as described in 8 CFR 212.21(b). Where section 212(a)(4) of the Act does not apply to the nonimmigrant category that the alien seeks to extend, this provision does not apply.

• Amending 8 CFR 245.4 Documentary requirements. These amendments require applicants for adjustment of status to file the new USCIS Form I–944, Declaration of Self-Sufficiency, to facilitate USCIS' public charge inadmissibility determination.

• Amending 8 CFR 248.1, Change of nonimmigrant classification eligibility. This section provides that with limited exceptions, an application to change nonimmigrant status will be denied unless the applicant demonstrates that he or she has not received since obtaining the nonimmigrant status from which the alien seeks to change, is not currently receiving, nor is likely to receive public benefits in the future, as described in proposed 8 CFR 212.21(b). Where section 212(a)(4) of the Act does not apply to the nonimmigrant category to which the alien requests a change of status this provision does not apply.

B. Costs and Benefits

This proposed rule would impose new costs on the population applying to adjust status using Application to Register Permanent Residence or Adjust Status (Form I–485) that are subject to the public charge grounds on inadmissibility. DHS would now require any adjustment applicants subject to the public charge inadmissibility ground to submit Form I–944 with their Form I–485 to demonstrate they are not likely to become a public charge.

The proposed rule would also impose additional costs for seeking extension of stay or change of status by filing Form I–129 (Petition for a Nonimmigrant Worker); Form I–129CW (Petition for a CNMI-Only Nonimmigrant Transitional Worker); or Form I–539 (Application to Extend/Change Nonimmigrant Status) as applicable. The associated time burden estimate for completing these forms would increase because these applicants would be required to demonstrate that they have not received, are not currently receiving, nor are likely in the future to receive, public benefits as described in proposed 8 CFR 212.21(b). These applicants may also incur additional costs if DHS determines that they are required to submit Form I–944 in support of their applications for extension of stay or change of status. Moreover, the proposed rule would impose new costs associated with the proposed public charge bond process, including new costs for completing and filing Form I–945 (Public Charge Bond), and Form I–356 (Request for Cancellation of Public Charge Bond).

DHS estimates that the additional total cost of the proposed rule would range from approximately $45,313,422 to $129,596,845 annually for the population applying to adjust status who also would be required to file Form I–944, the population applying for extension of stay or change of status that would experience opportunity costs in time associated with the increased time burden estimates for completing Form I–485, Form I–129, FormI–129CW, and FormI–539, and the population requesting or cancelling a public charge bond using Form I–945 and Form I–356, respectively.

Over the first 10 years of implementation, DHS estimates the total quantified new direct costs of the proposed rule would range from about $453,134,220 to $1,295,968,450 (undiscounted). DHS estimates that the 10-year discounted total direct costs of this proposed rule would range from about $386,532,679 to $1,105,487,375 at a 3 percent discount rate and about $318,262,513 to $910,234,008 at a 7 percent discount rate.

The proposed rule would impose new costs on the population seeking extension of stay or change of status using Form I–129, Form I–129CW, or Form I–539. For any of these forms, USCIS officers would then be able to exercise discretion in determining whether it would be necessary to issue a request for evidence (RFE) requesting the applicant to submit Form I–944. DHS conducted a sensitivity analysis estimating the potential cost of filing Form I–129, Form I–129CW, or Form I–539 for a range of 10 to 100 percent of filers receiving an RFE requesting they submit Form I–944. The costs to Form I–129 beneficiaries who may receive an RFE to file Form I–944 range from $6,086,318 to $60,863,181 annually and the costs to Form I–129CW beneficiaries who may receive such an RFE from $114,132 to $1,141,315 annually. The costs to Form I–539 applicants who may receive an RFE to file Form I–944 range from $3,164,375 to $31,643,752 annually.

Simultaneously, DHS is proposing to eliminate the use and consideration of the Request for Exemption for Intending Immigrant's Affidavit of Support (Form I–864W), currently applicable to certain classes of aliens. In lieu of Form I–864W, the alien would indicate eligibility for the exemption of the affidavit of support requirement on Form I–485, Application to Register Permanent Residence or Adjust Status.

The proposed rule would potentially impose new costs on individuals or companies (obligors) if an alien has been found to be inadmissible on public charge grounds, but has been given the opportunity to submit a public charge bond, for which USCIS intends to use the new Form I–945. DHS estimates the total cost to file Form I–945 would be at minimum about $34,234 annually.[3] The proposed rule would also impose new costs on aliens or obligors who would submit a Form I–356; DHS estimates the total cost to file Form I–356 would be approximately $825 annually.[4]

Moreover, the proposed rule would also result in a reduction in transfer payments from the federal government to individuals who may choose to disenroll from or forego enrollment in a public benefits program. Individuals may make such a choice due to concern about the consequences to that person receiving public benefits and being found to be likely to become a public charge for purposes outlined under section 212(a)(4) of the Act, even if such individuals are otherwise eligible to receive benefits. For the proposed rule, DHS estimates that the total reduction in transfer payments from the federal and state governments would be approximately $2.27 billion annually due to disenrollment or foregone enrollment in public benefits programs by aliens who may be receiving public benefits. DHS estimates that the 10-year discounted transfer payments of this proposed rule would be approximately $19.3 billion at a 3 percent discount rate and about $15.9 billion at a 7 percent discount rate. Because state

[3] Calculation: $35.66 (cost per obligor to file Form I–945) * 960 (estimated annual population who would file Form I–945) = $34,233.60 = $34,234 (rounded) annual total cost to file Form I–945.

[4] Calculation: $33.00 (cost per obligor to file Form I–356) * 25 (estimated annual population who would file Form I–356) = $825.00 annual total cost to file Form I–356.

participation in these programs may vary depending on the type of benefit provided, DHS was only able to estimate the impact of state transfers. For example, the federal government funds all SNAP food expenses, but only 50 percent of allowable administrative costs for regular operating expenses.[5] Similarly, Federal Medical Assistance Percentages (FMAP) in some HHS programs like Medicaid can vary from between 50 percent to an enhanced rate of 100 percent in some cases.[6] However, assuming that the state share of federal financial participation (FFP) is 50 percent, the 10-year discounted amount of state transfer payments of this proposed policy would be approximately $9.65 billion at a 3 percent discount rate and about $7.95 billion at a 7 percent discount rate. DHS recognizes that reductions in federal and state transfers under federal benefit programs may have downstream and upstream impacts on state and local economies, large and small businesses, and individuals. For example, the rule might result in reduced revenues for healthcare providers participating in Medicaid, pharmacies that provide prescriptions to participants in the Medicare Part D Low Income Subsidy (LIS) program, companies that manufacture medical supplies or pharmaceuticals, grocery retailers participating in SNAP, agricultural producers who grow foods that are eligible for purchase using SNAP benefits, or landlords participating in federally funded housing programs.

Additionally, the proposed rule would add new direct and indirect costs on various entities and individuals associated with regulatory familiarization with the provisions of this rule. Familiarization costs involve the time spent reading the details of a rule to understand its changes. To the extent that an individual or entity directly regulated by the rule incurs familiarization costs, those familiarization costs are a direct cost of the rule. For example, immigration lawyers, immigration advocacy groups, health care providers of all types, non-profit organizations, non-governmental organizations, and religious organizations, among others, may need or want to become familiar with the provisions of this proposed rule. An entity, such as a non-profit or advocacy group, may have more than one person that reads the rule. Familiarization costs incurred by those not directly regulated are indirect costs. DHS estimates the time that would be necessary to read this proposed rule would be approximately 8 to 10 hours per person, resulting in opportunity costs of time.

The primary benefit of the proposed rule would be to help ensure that aliens who apply for admission to the United States, seek extension of stay or change of status, or apply for adjustment of status are self-sufficient, *i.e.,* do not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their family, sponsor, and private organizations.[7] DHS also anticipates that the proposed rule would produce some benefits from the elimination of Form I–864W. The elimination of this form would potentially reduce the number of forms USCIS would have to process, although it likely would not reduce overall processing burden. DHS estimates the amount of cost savings that would accrue from eliminating Form I–864W would be $35.78 per petitioner.[8] However, DHS is unable to determine the annual number of filings of Form I–864W and, therefore, is currently unable to estimate the total annual cost savings of this change. A public charge bond process would provide benefits to applicants as they potentially would be given the opportunity to adjust their status if otherwise admissible, at the discretion of DHS, after a determination that they are likely to become public charges.

Table 1 provides a more detailed summary of the proposed provisions and their impacts.

BILLING CODE 4410–10–P

[5] Per section 16(a) of the Food and Nutrition Act of 2008. *See also* Per section 16(a) of the Food and Nutrition Act of 2008. *See also* USDA, FNS Handbook 901, p. 41 available at: *https://fns-prod.azureedge.net/sites/default/files/apd/FNS_HB901_v2.2_internet_Ready_Format.pdf*

[6] *See* Dept. of Health and Human Services, ''Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2016 through September 30, 2017.'' ASPE FMAP 2017 Report. Dec. 29, 2015. Available at *https://aspe.hhs.gov/basic-report/fy2017-federal-medical-assistance-percentages.* Accessed Sept. 13, 2018.

[7] 8 U.S.C. 1601(2).

[8] Calculation for the opportunity cost of time for completing and submitting Form I–864W: ($34.84 per hour * 1.0 hours) = $34.84.

Table 1. Summary of Major Provisions and Economic Impacts of the Proposed Rule		
Provisions	**Purpose**	**Expected Impact of Proposed Rule**
Adding 8 CFR 212.20. Purpose and applicability of public charge inadmissibility.	To define the categories of aliens that are subject to the public charge inadmissibility determination.	**Quantitative**: Benefits • Cost savings of $35.78 per petitioner from no longer having to complete and file Form I-864W. Costs: • DHS anticipates a likely increase in the number of denials for adjustment of status applicants based on public charge inadmissibility determinations due to formalizing and standardizing the criteria and process for public charge determinations. **Qualitative**: Benefits • Better ensure that aliens who are admitted to the United States or apply for adjustment of status are self-sufficient through an improved review process of the mandatory statutory factors.
Adding 8 CFR 212.21. Definitions.	To establish key definitions, including public charge, public benefit, likely to become a public charge, and household.	
Adding 8 CFR 212.22. Public charge determination.	Clarifies that evaluating public charge is a prospective determination based on the totality of the circumstances. Outlines minimum and additional factors considered when evaluating whether an alien is inadmissible as likely to become a public charge. Positive and negative factors are weighed to determine an individual's likelihood of becoming a public charge at any time in the future.	
Adding 8 CFR 212.23. Exemptions and waivers for public charge ground of inadmissibility.	Outlines exemptions and waivers for inadmissibility based on public charge grounds.	
Adding 212.24. Valuation of monetizable benefits.	Provides the methodology for calculating value of the benefit attributable to the alien in proportion to the total number of people covered by the benefit in the public charge inadmissibility determination.	
Adding 8 CFR 214.1(a)(3)(iv) and amending 8 CFR 214.1(c)(4). Nonimmigrant general	To provide, with limited exceptions, that an application for extension of stay or change of nonimmigrant status will be denied unless the applicant demonstrates that he or she	**Quantitative**: • Potential annual costs for those filing Form I-129 range from $6.09 million to $60.9 million depending on how many

requirements; and amending 8 CFR 248.1(a) and adding 8 CFR 248.1(c)(4). Change of nonimmigrant classification eligibility.	has not received, is not currently receiving, nor is likely to receive, public benefits as defined in proposed 8 CFR 212.21(b).	beneficiaries are sent an RFE by USCIS to complete Form I-944. • Potential annual costs for those filing Form I-129CW range from $0.11 million to $1.14 million depending on how many beneficiaries are sent an RFE by USCIS to complete Form I-944. • Potential annual costs for those filing Form I-539 applicants range from $3.16 million to $31.6 million depending on how many beneficiaries are sent an RFE by USCIS to complete Form I-944 **Qualitative**: Benefits • Better ensure that aliens who are not exempt from the section 212(a)(4) inadmissibility ground who apply for extension of stay or change of status continue to be self-sufficient during the duration of their temporary stay. • Reduce the likelihood that an alien will receive a public benefit at any time in the future.

Amending 8 CFR 245. Adjustment of status to that of a person admitted for permanent residence.	To outline requirements that aliens submit a declaration of self-sufficiency on the form designated by DHS and any other evidence requested by DHS in the public charge inadmissibility determination.	**Quantitative**:
		Direct Costs
		• Total annual direct costs of the proposed rule would range from about $45.3 to $129.6 million, including:
		  • $26.0 million to applicants who must file Form I-944;
		  • $0.69 million to applicants applying to adjust status using Form I-485 with an increased time burden;
		  • $12.1 to $66.9 million for an increased time burden for completing and filing Form I-129;
		  • $0.23 to $1.25 million for an increased time burden for completing and filing Form I-129CW and potential RFE to complete Form I-944;
		  • $6.29 to $34.8 million for an increased time burden for completing and filing Form I-539 and potential RFE to complete Form I-944;
		  • $0.34 million to obligors for filing Form I-945; and
		  • $825 million to filers for filing Form I-356.

		• Total direct costs over a 10-year period would range from:
		  • $453.1 million to $1.30 billion for undiscounted costs;
		  • $386.5 million to $1.11 billion at a 3 percent discount rate; and
		  • $318.3 to $910.2 million at a 7 percent discount rate.
		
		<u>Transfer Payments</u>
		• Total annual transfer payments of the proposed rule would be about $2.27 billion from foreign-born non-citizens and their households who disenroll from or forego enrollment in public benefits programs. The federal-level share of annual transfer payments would be about $1.51 billion and the state-level share of annual transfer payments would be about $756 million.
		• Total transfer payments over a 10-year period, including the combined federal- and state-level shares, would be:
		  • $22.7 billion for undiscounted costs;
		  • $19.3 billion at a 3 percent discount rate; and
		  • $15.9 billion at a 7 percent discount rate.
		
		Qualitative:
		
		<u>Benefits</u>
		• Potential to improve the efficiency for USCIS in the review process for public charge inadmissibility.
		
		<u>Costs</u>
		• DHS anticipates a likely increase in the number of denials for adjustment of status applicants based on public charge inadmissibility determinations due to formalizing and standardizing the criteria and process for public charge determinations.
		• DHS also anticipates costs to various entities and individuals associated with regulatory familiarization with the provisions of the rule. Costs would include the opportunity cost of time to read the proposed rule and subsequently determine applicability of the proposed rule's provisions. DHS estimates that the time to read this proposed rule in its

		entirety would be 8 to 10 hours per individual.
Public Charge Bond Provisions		
Amending 8 CFR 103.6. Public charge bonds.	To set forth the Secretary's discretion to approve bonds, cancellation, bond schedules, and breach of bond, and to move principles governing public charge bonds to proposed 8 CFR 213.1.	**Quantitative**: Costs • $0.34 million annually to obligors for submitting Public Charge Bond (Form I-945); and • $825 annually to filers for submitting Request for Cancellation of Public Charge Bond (Form I-356). • Fees paid to surety bond companies to secure public charge bond. Fees could range from 1 – 15 percent of the public charge bond amount based on an individual's credit score. **Qualitative**: Benefits • Potentially enable an alien who was found inadmissible on public charge grounds to be admitted by posting a public charge bond with DHS. Costs • USCIS will need to staff a unit to administer this process.
Amending 8 CFR 103.7. Fees.	To add fees for new Form I-945, Public Charge Bond, and Form I-356, Request for Cancellation of Public Charge Bond.	
Amending 8 CFR 213.1. Adjustment of status of aliens on giving of a public charge bond.	In 8 CFR 213.1, to add specifics to the public charge bond provision for aliens who are seeking adjustment of status, including the discretionary availability and the minimum amount required for a public charge bond.	
Source: USCIS analysis.		

BILLING CODE 4410–10–C

III. Purpose of the Proposed Rule

A. Self-Sufficiency

DHS seeks to better ensure that applicants for admission to the United States and applicants for adjustment of status to lawful permanent resident who are subject to the public charge ground of inadmissibility are self-sufficient, *i.e.,* do not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their family, sponsor, and private organizations.[9] Under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), an alien is inadmissible if, at the time of an application for a visa, admission, or adjustment of status, he or she is likely at any time to become a public charge. The statute requires DHS to consider the following minimum factors that reflect the likelihood that an alien will become a public charge: The alien's age; health; family status; assets, resources, and financial status; and education and skills. DHS may also consider any affidavit of support submitted by the alien's sponsor and any other factor relevant to the likelihood of the alien becoming a public charge.

As noted in precedent administrative decisions, determining the likelihood of an alien becoming a public charge involves ''consideration of all the factors bearing on the alien's ability or potential ability to be self-supporting.'' [10] These decisions, in general, conclude that an alien who is incapable of earning a livelihood, who does not have sufficient funds in the United States for support, and who has no person in the United States willing and able to assure the alien will not need public support generally is inadmissible as likely to become a public charge.[11] Furthermore, the following congressional policy statements relating to self-sufficiency, immigration, and public benefits inform DHS's proposed administration of

[9] *See* 8 U.S.C. 1601(2).

[10] *Matter of Vindman,* 16 I&N Dec. 131, 132 (Reg'l Comm'r 1977).

[11] *See, e.g., Matter of Vindman,* 16 I&N Dec. 131 (Reg'l Comm'r 1977); *Matter of Harutunian,* 14 I&N Dec. 583 (Reg'l Comm'r 1974).

section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4).

(1) Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.

(2) It continues to be the immigration policy of the United States that—

(A) Aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations; and

(B) The availability of public benefits not constitute an incentive for immigration to the United States.[12]

Within this administrative and legislative context, DHS's view of self-sufficiency is that aliens subject to the public charge ground of inadmissibility must rely on their own capabilities and secure financial support, including from family members and sponsors, rather than seek and receive public benefits to meet their needs. Aliens subject to the public charge ground of inadmissibility include: Immediate relatives of U.S. citizens, fiancé(e)s, family-preference immigrants, most employment-based immigrants, diversity visa immigrants, and certain nonimmigrants. Most employment-based immigrants are coming to work for their petitioning employers; DHS believes that by virtue of their employment, such immigrants should have adequate income and resources to support themselves without resorting to seeking public benefits. Similarly, DHS believes that, consistent with section 212(a)(4), nonimmigrants should have sufficient financial means or employment, if authorized to work, to support themselves for the duration of their authorized admission and temporary stay. In addition, immediate relatives of U.S. citizens, fiancé(e)s, most family-preference immigrants, and some employment-based immigrants require a sponsor and a legally binding affidavit of support under section 213A of the Act showing that the sponsor agrees to provide support to maintain the alien at an annual income that is not less than 125 percent of the FPG.[13]

DHS's view of self-sufficiency also informs other aspects of this proposal. DHS proposes that aliens who seek to change their nonimmigrant status or extend their nonimmigrant stay generally should also be required to continue to be self-sufficient and not remain in the United States to avail themselves of any public benefits for which they are eligible, even though the public charge inadmissibility determination does not directly apply to them. Such aliens should have adequate financial resources to maintain the status they seek to extend or to which they seek to change for the duration of their temporary stay, and must be able to support themselves.

B. Public Charge Inadmissibility Determinations

DHS seeks to interpret the term ''public charge'' for purposes of making public charge inadmissibility determinations. As noted above, Congress codified the minimum mandatory factors that must be considered as part of the public charge inadmissibility determination under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4): Age, health, family status, assets, resources, financial status, education, and skills.[14] In addition to these minimum factors, the statute states that any affidavit of support under section 213A of the Act may also be considered.[15] In fact, since an affidavit of support is required for family-sponsored immigrant applicants and certain employment-sponsored immigrant applicants, these aliens are inadmissible as likely to become a public charge if they do not submit such a sufficient affidavit of support.[16]

Although INS[17] issued a proposed rule and Interim Field Guidance in 1999, neither the proposed rule nor Interim Field Guidance sufficiently described the mandatory factors or explained how to weigh these factors in the public charge inadmissibility determination.[18] The 1999 Interim Field Guidance allows consideration of the receipt of cash public benefits when determining whether an applicant meets the definition of ''public charge,'' but excluded consideration of non-cash public benefits. In addition, the 1999 Interim Field Guidance placed its emphasis on primary dependence on cash public benefits. This proposed rule would improve upon the 1999 Interim Field Guidance by removing the artificial distinction between cash and non-cash benefits, and aligning public charge policy with the self-sufficiency principles set forth in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).[19] The proposed rule would provide clarification and guidance on the mandatory factors, including how these factors would be evaluated in relation to the new proposed definition of public charge and in making a public charge inadmissibility determination.[20]

IV. Background

Three principal issues[21] have framed the development of public charge inadmissibility: (1) The factors involved in determining whether or not an alien is likely to become a public charge, (2) the relationship between public charge and receipt of public benefits, and (3) the consideration of a sponsor's affidavit of support within public charge inadmissibility determinations.

[12] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, 110 Stat. 2105, codified in part at.8 U.S.C. 1601.

[13] *See* INA section 213A(a), 8 U.S.C. 1183a(a).

[14] *See* INA section 212(a)(4)(B)(ii), 8 U.S.C. 1182(a)(4)(B)(ii).

[15] *See* INA section 212(a)(4)(B)(iii), 8 U.S.C. 1182(a)(4)(B)(iii).

[16] *See* INA section 212(a)(4)(C), 8 U.S.C. 1182(a)(4)(C).

[17] On March 1, 2003, INS functions were transferred from the Department of Justice to DHS. *See* Homeland Security Act of 2002, Public Law 107–296, sections 402(3), 441, 116 Stat. 2135, 2178, 2192.

[18] *See Inadmissibility and Deportability on Public Charge Grounds,* 64 FR 28676 (May 26, 1999); *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,* 64 FR 28689 (May 26, 1999). Due to a printing error, the **Federal Register** version of the field guidance appears to be dated ''March 26, 1999'' even though the guidance was actually signed May 20, 1999, became effective May 21, 1999 and was published in the **Federal Register** on May 26, 1999, along with the NPRM.

[19] Public Law 104–193, 110 Stat. 2105.

[20] Moreover, this proposed policy change is consistent with the March 6, 2017 Presidential Memorandum directing DHS to issue new rules, regulations, and/or guidance to enforce laws relating to such grounds of inadmissibility and subsequent compliance. *See Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits, Ensuring Enforcement of All Laws for Entry Into the United States, and Increasing Transparency Among Departments and Agencies of the Federal Government and for the American People,* 82 FR 16279 (Apr. 3, 2017), *available at https://www.whitehouse.gov/the-press-office/2017/03/06/memorandum-secretary-state-attorney-general-secretary-homeland-security.*

[21] *See, e.g., Report of the Committee of the Judiciary Pursuant to S. Res. 137,* S. Rep. No. 81–1515, at 346–50 (1950). Prior to passage of the INA of 1952, the Senate Judiciary Committee issued a report assessing issues within the immigration system, including public charge. The committee recommended retention of public charge exclusion in the statute but highlighted two main problems related to its implementation: (1) How to determine who is likely to become a public charge and (2) how to find a better way of meeting the purpose for which affidavits of support were executed on the alien's behalf. The committee noted that there was no definition of the term ''likely to become a public charge'' and that the meaning of the term had been left to the interpretation of administrative officials and the courts. Factors such as financial status, business ownership, health, and employability were considerations, as were decisions rendered by the courts and in public charge determinations made by consular and immigration officers. The committee advised against defining public charge in the INA. Instead, it recommended that the determination of whether an alien falls into the public charge category should rest within the discretion of consular and immigration officials because the elements constituting public charge are varied. It also recommended the use of a bond or suitable undertaking over the practice of using affidavits of support.

A. Legal Authority

DHS's authority for making public charge inadmissibility determinations and related decisions is found in several statutory provisions. Section 102 of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2135), 6 U.S.C. 112, and section 103 of the Immigration and Nationality Act (INA, or the Act), 8 U.S.C. 1103, charge the Secretary with the administration and enforcement of the immigration and naturalization laws of the United States. In addition to establishing the Secretary's general authority for the administration and enforcement of immigration laws, section 103 of the Act enumerates various related authorities including the Secretary's authority to establish regulations and prescribe such forms of bond as are necessary for carrying out her authority. Section 212 of the Act, 8 U.S.C. 1182, establishes classes of aliens that are ineligible for visas, admission, or adjustment of status and paragraph (a)(4) of that section establishes the public charge ground of inadmissibility, including the minimum factors the Secretary must consider in making a determination that an alien is likely to become a public charge. Section 212(a)(4) of the Act also establishes the affidavit of support requirement as applicable to certain family-based and employment-based immigrants, and exempts certain aliens from both the public charge ground of inadmissibility and the affidavit of support requirement. Section 213 of the Act, 8 U.S.C. 1183, provides the Secretary with discretion to admit into United States an alien who is determined to be inadmissible as a public charge under section 212(a)(4) of the Act, but is otherwise admissible, upon the giving of a proper and suitable bond. That section authorizes the Secretary to establish the amount and conditions of such bond. Section 213A of the Act, 8 U.S.C. 1183a, sets out requirements for the sponsor's affidavit of support, including reimbursement of government expenses where the sponsored alien received means-tested public benefits. Section 214 of the Act, 8 U.S.C. 1184, addresses requirements for the admission of nonimmigrants, including authorizing the Secretary to prescribe the conditions of such admission through regulations and when necessary establish a bond to ensure that those admitted as nonimmigrants or who change their nonimmigrant status under section 248 of the Act, 8 U.S.C. 1258, depart if they violate their nonimmigrant status or after such status expires. Section 245 of the Act, 8 U.S.C. 1255, generally establishes eligibility criteria for adjustment of status to lawful permanent residence. Section 248 of the Act, 8 U.S.C. 1258, authorizes the Secretary to prescribe conditions under which an alien may change his or her status from one nonimmigrant classification to another. The Secretary proposes the changes in this rule under these authorities.

B. Immigration to the United States

The INA governs whether an alien may obtain a visa, be admitted to or remain in the United States, or obtain an extension of stay, change of status, or adjustment of status.[22] The INA establishes separate processes for aliens seeking a visa, admission, change of status, and adjustment of status. For example, where an immigrant visa petition is required, USCIS will adjudicate the petition. If USCIS approves the petition, the alien may apply for a visa with the U.S. Department of State (DOS) and thereafter seek admission in the appropriate immigrant classification. If the alien is present in the United States, he or she may be eligible to apply to USCIS for adjustment of status to that of a lawful permanent resident. In the nonimmigrant context, the nonimmigrant typically applies directly to the U.S. consulate or embassy abroad for a visa to enter for a limited purpose, such as to visit for business or tourism.[23] Applicants for admission are inspected at or, when encountered, between the port of entry. The inspection is conducted by immigration officers in a timeframe and setting distinct from the visa adjudication process. If a nonimmigrant alien is present in the United States, he or she may be eligible to apply to USCIS for an extension of nonimmigrant stay or change of nonimmigrant status.

DHS has the discretion to waive certain grounds of inadmissibility as designated by Congress. Where an alien is seeking an immigration benefit that is subject to a ground of inadmissibility, DHS cannot approve the immigration benefit being sought if a waiver of that ground is unavailable under the INA, the alien does not meet the statutory and regulatory requirements for the waiver, or the alien does not warrant the waiver in any authorized exercise of discretion.

C. Extension of Stay and Change of Status

Pursuant to section 214(a)(1) of the Act, 8 U.S.C. 1184(a)(1), DHS permits certain nonimmigrants to remain in the United States beyond their current period of authorized stay to continue engaging in activities permitted under their current nonimmigrant status. The extension of stay regulations require a nonimmigrant applying for an extension of stay to demonstrate that he or she is admissible to the United States.[24] For some extension of stay applications, the applicant's financial status is an element of the eligibility determination.[25] DHS has the authority to set conditions in determining whether to grant the extension of stay request.[26] The decision to grant an extension of stay application, with certain limited exceptions, is discretionary.[27]

Under section 248 of the Act, 8 U.S.C. 1258, DHS may permit an alien to change his or her status from one nonimmigrant status to another nonimmigrant status, with certain exceptions, as long as the nonimmigrant is continuing to maintain his or her current nonimmigrant status and is not inadmissible under section 212(a)(9)(B)(i) of the Act, 8 U.S.C. 1182(a)(9)(B)(i).[28] An applicant's financial status is currently part of the determination for changes to certain nonimmigrant classifications.[29] Like extensions of stay, change of status adjudications are discretionary determinations, and DHS has the authority to set conditions that apply for a nonimmigrant to change his or her status.[30]

D. Public Charge Inadmissibility

Section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), provides that an alien applicant for a visa, admission, or adjustment of status is inadmissible if he or she is likely at any time to become a public charge. The public charge ground of inadmissibility, therefore, applies to any alien applying for a visa to come to the United States temporarily or permanently, for admission, or for

[22] *See, e.g.,* INA section 212(a), 8 U.S.C. 1182(a) (listing grounds of inadmissibility).

[23] Certain nonimmigrant classifications are subject to petition requirements and require that a petition be filed and approved by USCIS prior to application for a visa. *See, e.g.,* INA section 214(c), 8 U.S.C. 1184(c). In addition, certain aliens are not subject to a visa requirement in order to seek admission as a nonimmigrant. *See, e.g.,* INA section 217, 8 U.S.C. 1187.

[24] *See* 8 CFR 214.1(a)(3)(i).

[25] *See, e.g.,* 8 CFR 214.2(f)(1)(i)(B).

[26] *See* INA section 214(a)(1), 8 U.S.C. 1184(a)(1); 8 CFR 214.1(a)(3)(i).

[27] *See* 8 CFR 214.1(c)(5).

[28] *See* INA section 248(a), 8 U.S.C. 1258(a); 8 CFR 248.1(a).

[29] *See, e.g.,* Adjudicator's Field Manual Ch. 30.3(c)(2)(C) (applicants to change status to a nonimmigrant student must demonstrate that they have the financial resources to pay for coursework and living expenses in the United States) [hereinafter AFM].

[30] *See* INA section 248(a), 8 U.S.C. 1258(a); 8 CFR 248.1(a).

adjustment of status to that of a lawful permanent resident.[31] Section 212(a)(4) of the Act, does not, however, directly apply to applications for extension of stay or change of status because extension of stay and change of status applications are not applications for a visa, admission, or adjustment of status.

The INA does not define public charge. It does, however, specify that when determining if an alien is likely at any time to become a public charge, consular officers and immigration officers must, at a minimum, consider the alien's age; health; family status; assets, resources, and financial status; and education and skills.[32]

Some immigrant and nonimmigrant categories are exempt from the public charge inadmissibility ground. DHS proposes to list these categories in the regulation. DHS also proposes to list in the regulation the applicants that the law permits to apply for a waiver of the public charge inadmissibility ground.[33]

Additionally, section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), permits the consular officer or the immigration officer to consider any affidavit of support submitted under section 213A of the Act, 8 U.S.C. 1183a, on the applicant's behalf when determining whether the applicant may become a public charge.[34] In fact, with very limited exceptions, aliens seeking family-based immigrant visas and adjustment of status, and a limited number of employment-based immigrant visas or adjustment of status, must have a sufficient affidavit of support or will be found inadmissible as likely to become a public charge.[35]

In general, an alien whom DHS has determined to be inadmissible based on the public charge ground may, if otherwise admissible, be admitted at the discretion of the Secretary upon giving a suitable and proper bond or undertaking approved by the Secretary.[36] The purpose of issuing a public charge bond is to ensure that the alien will not become a public charge in the future.[37] Since the introduction of enforceable affidavits of support in section 213A of the Act, the use of public charge bonds has decreased and USCIS does not currently have a public charge bond process.[38] This rule would outline a process under which USCIS could, in its discretion, offer public charge bonds to applicants for adjustment of status who are inadmissible only on public charge grounds.

1. Public Laws and Case Law

Since at least 1882, the United States has denied admission to aliens on public charge grounds.[39] The INA of 1952 excluded aliens who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Government at the time of application for admission, are likely at any time to become public charges.[40] The Government has long interpreted the words ''in the opinion of'' as evincing the subjective nature of the determination.[41]

A series of administrative decisions after passage of the Act clarified that a totality of the circumstances review was the proper framework for making public charge determinations and that receipt of welfare would not, alone, lead to a finding of likelihood of becoming a public charge. In *Matter of Martinez-Lopez,* the Attorney General opined that the statute ''require[d] more than a showing of a possibility that the alien will require public support. Some *specific* circumstance, such as mental or physical disability, advanced age, or other fact showing that the burden of supporting the alien is likely to be cast on the public, must be present. A healthy person in the prime of life cannot ordinarily be considered likely to become a public charge, especially where he has friends or relatives in the United States who have indicated their ability and willingness to come to his assistance in case of emergency.'' [42] In *Matter of Perez,* the Board of Immigration Appeals (BIA) held that ''[t]he determination of whether an alien is likely to become a public charge . . . is a prediction based upon the totality of the alien's circumstances at the time he or she applies for an immigrant visa or admission to the United States. The fact that an alien has been on welfare does not, by itself, establish that he or she is likely to become a public charge.'' [43] As stated in *Matter of Harutunian,*[44] public charge determinations should take into consideration factors such as an alien's age, incapability of earning a livelihood, a lack of sufficient funds for self-support, and a lack of persons in this country willing and able to assure that the alien will not need public support.

The totality of circumstances approach to public charge inadmissibility determinations was codified in relation to one specific class of aliens in the 1980s. In 1986, Congress passed the Immigration Reform and Control Act (IRCA), providing eligibility for lawful status to certain aliens who had resided in the United States continuously prior to January 1, 1982.[45] No changes were made to the language of the public charge exclusion ground under former section 212(a)(15) of the Act, but IRCA contained special public charge rules for aliens seeking legalization under 245A of the Act. Although IRCA provided otherwise eligible aliens an exemption or waiver for some grounds of excludability, the aliens generally remained excludable on public charge grounds.[46] Under IRCA, however, if an applicant demonstrated a history of self-support through employment and without receiving public cash assistance, he or she would not be ineligible for adjustment of status on public charge grounds.[47] In addition, aliens who were ''aged, blind or disabled'' as defined in section 1614(a)(1) of the Social Security Act, could obtain a waiver from the public charge provision.[48]

[31] *See* INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

[32] *See* INA section 212(a)(4)(B)(i), 8 U.S.C. 1182(a)(4)(B)(i).

[33] *See* proposed 8 CFR 212.23.

[34] *See* INA section 212(a)(4)(B)(ii), 8 U.S.C. 1182(a)(4)(B)(ii). When required, the applicant must submit an Affidavit of Support Under Section 213A of the INA (Form I–864).

[35] *See* INA section 212(a)(4)(C), (D), 8 U.S.C. 1182(a)(4)(C), (D).

[36] *See* INA section 213, 8 U.S.C. 1183.

[37] *See Matter of Viado,* 19 I&N Dec. 252 (BIA 1985).

[38] *See* AFM Ch. 61.1(b).

[39] *See* Immigration Act of 1882, ch. 376, sections 1–2, 22 Stat. 214, 214. Section 11 of the Act also provided that an alien who became a public charge within 1 year of arrival in the United States from causes that existed prior to his or her landing, was deemed to be in violation of law, and was to be returned at the expense of the person or persons, vessel, transportation, company or corporation who brought the alien into the United States.

[40] *See* INA of 1952, ch. 477, section 212(a)(15), 66 Stat. 163, 183.

[41] *See Matter of Harutunian,* 14 I&N Dec. 583, 588 (Reg'l Cmm'r 1974) (''[T]he determination of whether an alien falls into that category [as likely to become a public charge] rests within the discretion of the consular officers or the Commissioner . . . Congress inserted the words 'in the opinion of' (the consul or the Attorney General) with the manifest intention of putting borderline adverse determinations beyond the reach of judicial review.'' (citation omitted)); *Matter of Martinez-Lopez,* 10 I&N Dec. 409, 421 (Att'y Gen. 1962) (''[U]nder the statutory language the question for visa purposes seems to depend entirely on the consular officer's subjective opinion.'').

[42] 10 I&N Dec. 409, 421–23 (BIA 1962).

[43] 15 I&N Dec. 136, 137 (BIA 1974).

[44] *See* 14 I&N Dec. 583, 589 (Reg'l Comm'r 1974).

[45] *See* IRCA of 1986, Public Law 99–603, section 201, 100 Stat. 3359, 3394.

[46] *See* INA section 245A(d)(2)(B)(ii)(IV), 8 U.S.C. 1255(d)(2)(B)(ii)(IV).

[47] *See* INA section 245A(d)(2)(B)(iii), 8 U.S.C. 1255(d)(2)(B)(iii).

[48] *See* INA section 245A(d)(2)(B)(ii); *see also* 42 U.S.C. 1382c(a)(1). DHS does not propose to apply this proposed rule to legalization applications filed pursuant to section 245A of the INA or otherwise amend the regulations at 8 CFR part 245a. That provision is subject to legal standards and settlement agreements that impact public charge inadmissibility determinations in this specific context. *See, e.g., Catholic Soc. Servs., Inc.* v. *Meese, vacated sub nom. Reno* v. *Catholic Soc.*

Continued

INS promulgated 8 CFR 245a.3,[49] which established that immigration officers would make public charge determinations by examining the ''totality of the alien's circumstances at the time of his or her application for legalization.'' [50] According to the regulation, the existence or absence of a particular factor could never be the sole criterion for determining whether a person is likely to become a public charge.[51] Further, the regulation established that the determination is a ''prospective evaluation based on the alien's age, health, income, and vocation.'' [52] A special provision in the rule stated that aliens with incomes below the poverty level are not excludable if they are consistently employed and show the ability to support themselves.[53] Finally, an alien's past receipt of public cash assistance would be a significant factor in a context that also considers the alien's consistent past employment.[54] In *Matter of A-*,[55] INS again pursued a totality of circumstances approach in public charge determinations. ''Even though the test is prospective,'' INS ''considered evidence of receipt of prior public assistance as a factor in making public charge determinations.'' INS also considered an alien's work history, age, capacity to earn a living, health, family situation, affidavits of support, and other relevant factors in their totality.[56]

The administrative practices surrounding public charge inadmissibility determinations began to crystalize into legislative changes in the 1990s. The Immigration Act of 1990 reorganized section 212(a) of the Act and re-designated the public charge provision as section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4).[57] In 1996, PRWORA [58] and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) [59] altered the legislative landscape of public charge considerably.[60] Through PRWORA, which is commonly known as the 1996 welfare reform law, Congress declared that aliens generally should not depend on public resources and that these resources should not constitute an incentive for immigration to the United States.[61] Congress also created section 213A of the Act and made a sponsor's affidavit of support for an alien beneficiary legally enforceable.[62] The affidavit of support provides a mechanism for public benefit granting agencies to seek reimbursement in the event a sponsored alien received means-tested public benefits.[63]

2. Public Benefits Under PRWORA

PRWORA also significantly restricted alien eligibility for many Federal, State, and local public benefits.[64] With certain exceptions, Congress defined the term ''Federal public benefit'' broadly as:

(A) Any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) Any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.[65]

(a) Qualified Aliens

Generally, under PRWORA, ''qualified aliens'' are eligible for federal means-tested benefits after 5 years and are not eligible for ''specified federal programs,'' and states are allowed to determine whether the qualified alien is eligible for ''designated federal programs.'' [66] The following table provides a list of immigration categories that are qualified aliens under PRWORA.[67]

Servs., Inc., 509 U.S. 43 (1993); *League of United Latin Am. Citizens* v. *INS, vacated sub nom. Reno* v. *Catholic Soc. Servs., Inc.,* 509 U.S. 43 (1993).

[49] *See Adjustment of Status for Certain Aliens,* 54 FR 29442 (Jul. 12, 1989).

[50] 8 CFR 245a.3(g)(4)(i).

[51] 8 CFR 245a.3(g)(4)(i).

[52] 8 CFR 245a.3(g)(4)(i).

[53] 8 CFR 245a.3(g)(4)(iii).

[54] *See* 8 CFR 245a.3(g)(4)(iii).

[55] 19 I&N Dec. 867 (Comm'r 1988).

[56] *See* 19 I&N Dec. 867, 869 (Comm'r 1988).

[57] *See* Immigration Act of 1990, Public Law 101–649, section 601(a), 104 Stat. 4978, 5072.

[58] Public Law 104–193, 110 Stat. 2105.

[59] Public Law 104–208, div. C, 110 Stat 3009–546.

[60] In 1990, Congress reorganized INA section 212(a), redesignated the public charge provision as INA section 212(a)(4), and eliminated the exclusion of paupers, beggars, and vagrants as these grounds were sufficiently covered under the public charge provision. *See* Immigration Act of 1990, Public Law 101–649, section 601(a), 104 Stat. 4978, 5072.

[61] *See* Public Law 104–193, section 400, 110 Stat. 2105, 2260 (codified at 8 U.S.C. 1601).

[62] *See* Public Law 104–193, section 423, 110 Stat. 2105, 2271 (codified at INA section 213A, 8 U.S.C. 1183a). The provision was further amended with the passage of IIRIRA.

[63] *See* INA section 213A(b), 8 U.S.C. 1183a(b).

[64] *See* 8 U.S.C. 1601–1646.

[65] *See* Public Law 104–193, section 401(c), 110 Stat. 2105, 2262 (1996) (codified as amended at 8 U.S.C. 1611(c)). Congress provided that such term shall not apply—

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99–239 or 99–658 (or a successor provision) is in effect;

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 *et seq.*] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State; or

(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States. 8 U.S.C. 1611(c)(2).

[66] *See* Public Law 104–193, tit. IV, 110 Stat. 2105, 2260–77.

[67] *See* Public Law 104–193, section 431, 110 Stat. 2105, 2274 (codified at 8 U.S.C. 1641); Trafficking Victims Protection Act of 2000 section 107(b)(1), 22 U.S.C. 7105(b)(1).

Table 2. Qualified Aliens under PRWORA	
Category	**Subject to Public Charge Inadmissibility under 212(a)(4)?**
An alien who is lawfully admitted for permanent residence under the INA	Generally no,[68] however, a lawful permanent resident is subject to public charge inadmissibility under section 212(a)(4) if one of the situations in section 101(a)(13)(C) of the Act, 8 U.S.C. 1101(a)(13)(C), applies.
An alien who is granted asylum under section 208 of the Act	No
A refugee who is admitted to the United States under section 207 of the Act	No
An alien who is paroled into the United States under section 212(d)(5) of the Act for a period of at least 1 year[69]	Yes[70]
An alien whose deportation is being withheld under section 243(h) of the Act[71] or section 241(b)(3) of the Act, as amended	No
An alien who is granted conditional entry under section 203(a)(7) of the Act as in effect before April 1, 1980)	No
An alien who is a Cuban and Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980	No

The Trafficking Victims Protection Act of 2000 further provided that an alien who is a victim of a severe form of trafficking in persons, or an alien classified as a nonimmigrant under section 101(a)(15)(T)(ii) of the Act, 8 U.S.C. 1101(a)(15)(T)(ii), is eligible for benefits and services under any Federal or State program or activity funded or administered by any official or agency.[72] These individuals are generally exempt from the public charge inadmissibility ground.[73]

With certain exceptions, aliens who were not ''qualified aliens,'' including nonimmigrants and unauthorized aliens, were generally barred from obtaining Federal benefits.[74] In addition to the federal public benefits definitions, PRWORA categorizes the benefits into the following categories:

- Specified Federal Programs;
- Designated Federal Programs; and
- Federal Means-Tested Benefits.

The following tables provide a summary of the definition of federal public benefit and the three categories of public benefits under PRWORA as applicable to aliens and qualified aliens.

BILLING CODE 4410–10–P

[68] Lawful permanent residents seeking entry into the United States typically are not applicants for admission, and therefore, generally are not subject to section 212(a) of the INA, 8 U.S.C. 1182(a), including INA section 212(a)(4), 8 U.S.C 1182(a)(4), but lawful permanent residents described in INA section 101(a)(13)(C), 8 U.S.C. 1101(a)(13)(C), are regarded as seeking admission and generally are subject to inadmissibility grounds.

[69] Parole is not a category of admission. *See* INA section 101(a)(13)(B), 8 U.S.C. 1101(a)(13)(B); INA section 212(d)(5), 8 U.S.C. 1182(d)(5).

[70] While an alien paroled into the United States is not subject to an admission determination at the time the decision to parole the alien is made, if an alien who has been paroled into the United States is applying for an immigration benefit for which admissibility is required, *e.g.* adjustment of status, the parolee will be subject to section 212(a)(4) of the Act in the context of seeking the subsequent immigration benefit.

[71] As in effect immediately before the effective date of section 307 of division C of Public Law 104–208, 110 Stat. 3009–546.

[72] *See* Trafficking Victims Protection Act of 2000 section 107(b)(1), 22 U.S.C. 7105(b)(1).

[73] However, while lawful permanent residents seeking entry into the United States typically are not applicants for admission, and therefore, generally are not subject to section 212(a) of the INA (including section 212(a)(4)), a lawful permanent resident described in section 101(a)(13)(C) of the INA is regarded as seeking admission and is subject to section 212(a)(4).

[74] *See* PRWORA, Public Law 104–193, section 401(a), 110 Stat. 2105, 2261 (codified at 8 U.S.C. 1611(a)).

Table 3. PRWORA Public Benefits Summary	
	Federal Public Benefit
Definition 8 U.S.C. 1611(c)(1) 8 U.S.C. 1611(c)(2)	• Any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and • Any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States. The definition of federal public benefit does not include the following: • Any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States or to a citizen of a freely associated state;[75] • Benefits where there is a reciprocal treaty agreement for payment with another country for nonimmigrants aliens authorized to work or aliens admitted as lawful permanent residents; or • Professional license issued to or renewed by a foreign national not physically present in the United States.
Exceptions from the definition 8 U.S.C. 1611(b)	• Medical assistance for emergency medical condition (42 U.S.C. 1396(v)(3)). • Short-term, non-cash, in-kind emergency disaster relief. • Public health assistance for immunizations for immunizable diseases and for testing and treatment of symptoms of communicable diseases. • Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) as specified by the Attorney General, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.[76] • Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under title V of the Housing Act of 1949 or any assistance under section 1926c of title 7 which the alien is receiving since before August 22, 1996. • Any benefit payable under title II of the Social Security Act[77] to an alien who is lawfully present[78] in the United States, any benefit if nonpayment of such benefit would contravene an international agreement described in section 233 of the Social Security Act,[79] any benefit if nonpayment would be contrary to section 202(t) of the Social Security Act,[80] or any benefit payable under title II of the Social Security Act to which entitlement is based on an application filed in or before August 1996. • Any benefit[81] relating to the Medicare program to an alien who is lawfully present in the United States[82] with respect to benefits payable under part A of such title,[83] who was authorized to be employed with respect to wages attributable such benefits. • Any benefit payable under the Railroad Retirement Act of 1974[84] or the Railroad Unemployment Insurance Act[85] to an alien who is lawfully present in the United States or to an alien residing outside the United States. • Receipt of benefits on or before August 22, 1996 (including SSI and SNAP (Food Stamps)).
Categories of Aliens Eligible 8 U.S.C. 1611(a)	• Qualified aliens
Categories of Aliens Not Eligible	• Aliens not listed as qualified aliens

8 U.S.C. 1611(a)	
Specified Federal Program	
Definition 8 U.S.C 1612(a)(3)	• SSI[86] • SNAP (Food Stamps)[87]
Exemption	• Qualified aliens eligible after 5 years Certain grandfathering provision for aliens already receiving SSI[88] and SNAP[89] SNAP (Food-Stamps) specific exemptions: • Children under 18.[90] • SNAP (Food Stamps) by- aliens who were lawfully residing in the United States on August 22, 1996 and were over the age of 65. • SNAP (Food Stamps) Hmong and Highland Laotians tribe members who are lawfully residing in the United States and were members of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era,[91] and the spouse, unmarried dependent child, or un-remarried surviving spouse of such individuals.
Categories of Aliens Eligible	• Lawful permanent residents with 40 Social Security quarters[92] • Veterans and active duty military with honorable service lawfully residing in the United States, and their spouses and unmarried dependent children[93] • American Indians born in Canada[94] or who are members of an Indian tribe[95] • Aliens who were receiving SSI on August 22, 1996[96] • Aliens who were lawfully residing in the United States on August 22, 1996 and blind or disabled[97] The following categories are eligible for benefits within the first 7 years:[98] • Refugee from the time of admission and asylee from the time status was granted; • Aliens whose deportation was withheld under section 243(h) of the Act, 8 U.S.C. 1253[99] or section 241(b)(3) of such Act, as amended;[100] • Cuban and Haitians entrant from the time the status was granted;[101] and Amerasians[102]
Categories of Aliens Not Eligible	• Qualified aliens and all other aliens
Designated Federal Programs[103]	
Definition 8 U.S.C. 1612(b)	• TANF[104] • Social Services Block Grant[105] • Medicaid[106]
Categories of Aliens Eligible	States are authorized to determine the eligibility of an alien who is a qualified alien (as defined in 8 U.S.C. 1641) for any designated Federal program. The following categories are eligible for Designated Federal programs without a time limit: • Lawful permanent residents with 40 Social Security quarters[107] • Veterans and active duty personnel lawfully residing in the United States, with a discharge of honorable service who fulfill minimum active-duty service requirements, and their spouse and unmarried dependent child or unmarried surviving spouse[108] • American Indian born in Canada or who is a member of an Indian tribe would still be eligible for Medicaid[109]

Specified Federal Program	
	Medicaid, the following categories are eligible for benefits within the first 7 years and Social Services Block Grants and TANF for the first 5 years:[110] • Refugee from the time of admission and asylee from the time status was granted; • Aliens whose deportation was withheld under section 243(h) of the Act, 8 U.S.C. 1253[111] or section 241(b)(3) of such Act, as amended;[112] • Cuban and Haitians entrant from the time the status was granted;[113] and • Amerasians[114]
Categories of Aliens Not Eligible	Aliens not listed as qualified aliens
Federal Means-Tested Benefits	
Definition 8 U.S.C. 1613	No statutory definition under PRWORA, however, some agencies have defined which benefits would be considered means-tested.[115]
Categories of Aliens Eligible	In addition, qualified aliens eligible for all other means-tested benefits after 5 years of entry. However, all aliens are eligible for the following programs:[116] • Emergency Medical assistance 8 U.S.C. 1611(b)(1)(A) • Short-term, non-cash, in-kind emergency disaster relief. • National School Lunch Act • Child Nutrition Act of 1966 • Public health assistance for immunizations • Payments for foster care and adoption • Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) • Programs of student assistance the Higher Education Act of 1965 • Means-tested programs under the Elementary and Secondary Education Act of 1965 • Benefits under the Head Start Act • Benefits under title I of the Workforce Innovation and Opportunity Act • Food Stamps for children under 18 In addition, the following aliens are eligible for federal means-tested benefits:[117] • Refugees and asylees; • Aliens whose deportation was withheld under section 243(h) of the Act, 8 U.S.C. 1253; • Cuban and Haitian entrants;[118] • Amerasians;[119] • Veterans lawfully residing in the United States, with a discharge of honorable service who fulfill minimum active-duty service requirement, and active duty personnel lawfully residing in the United States, and their spouse and unmarried dependent child or unmarried surviving spouse;[120] and • American Indian born in Canada or who is a member of an Indian tribe[121]
Categories of Aliens Not Eligible	Aliens who enter the United States on or after August 22, 1996, not listed as qualified aliens

BILLING CODE 4410–10–C

Congress chose not to restrict eligibility for certain benefits, including

[75] If section 141 of the applicable compact of free association approved in Public Law 99–239 or 99–658 (or a successor provision) is in effect.

[76] *See Final Specification of Community Programs Necessary For Protection Of Life Or Safety Under Welfare Reform Legislation,* 66 FR 3613 (Jan. 16, 2001); *see also Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation,* 61 FR 45985 (Aug. 30, 1996).

[77] *See* 42 U.S.C. 401–434.

[78] *See* 8 CFR 1.3(a).

[79] 42 U.S.C. 433.

[80] 42 U.S.C. 402(t).

[81] Benefits payable under title XVIII of the Social Security Act. *See* 42 U.S.C. 1395–1395*lll.*

[82] *See* 8 CFR 1.3(a).

emergency medical assistance; short-term, in-kind, non-cash emergency disaster relief; and public health assistance related to immunizations and treatment of the symptoms of a communicable disease.[122]

PRWORA defined the term ''State or local public benefit'' in broad terms except where the term encroached upon the definition of Federal public benefit.[123] With certain exceptions for qualified aliens, nonimmigrants, or parolees, PRWORA also limited aliens' ability to obtain certain State and local public benefits.[124] Under PRWORA, States may enact their own legislation to provide public benefits to certain aliens not lawfully present in the United States.[125] PRWORA also provided that a State that chooses to follow the Federal ''qualified alien'' definition in determining aliens' eligibility for public assistance ''shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy.'' [126] Still, some States and localities have funded public benefits (particularly medical and nutrition benefits) that aliens may be not eligible for federally.[127]

While PRWORA allows both qualified aliens and non-qualified aliens to receive certain benefits (*e.g.,* emergency benefits (all aliens); SNAP (qualified alien children under 18)), Congress did not exempt the receipt of such benefits from consideration for purposes of INA section 212(a)(4).'' [128] Therefore, DHS may take into consideration for purposes of a public charge determination, receipt of public benefits even if an alien may receive such benefits under PRWORA.

(b) Public Benefits Exempt Under PRWORA

Although PRWORA provided a broad definition of public benefits that only qualified aliens are eligible to receive,[129] it also made certain public benefits available even to non-qualified aliens.[130] Congress excluded certain benefits, such as contracts, professional licenses, and commercial licenses from the ''federal public benefit'' definition.[131] In addition, Congress further provided that the following public benefits are available to all aliens, regardless of whether an individual is a qualified alien: [132]

- Medical assistance under title XIX of the Social Security Act [42 U.S.C. 1396 *et seq.*] (or any successor program to such title) for care and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of such Act [42 U.S.C. 1396b(v)(3)]) of the alien involved and are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the State plan approved under such title (other than the requirement of the receipt of aid or assistance under title IV of such Act [42 U.S.C. 601 *et seq.*], supplemental security income benefits under title XVI of such Act [42 U.S.C. 1381 *et seq.*], or a State supplementary payment).
- Short-term, non-cash, in-kind emergency disaster relief.[133]
- Public health assistance (not including any assistance under title XIX of the Social Security Act [42 U.S.C. 1396 *et seq.*]) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.
- Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance

[83] *See* 42 U.S.C. 1395c to 1395i–5.

[84] *See* 45 U.S.C. 231–231v.

[85] *See* 45 U.S.C. 351–369.

[86] *See* 42 U.S.C. 1381–1383f.

[87] *See* Food Stamp Act of 1977.

[88] In addition, there are certain extensions for SSI benefits through fiscal year 2011. *See* 8 U.S.C. 1612(a)(2)(M).

[89] *See* 8 U.S.C. 1612(a)(2)(D).

[90] *See* 8 U.S.C. 162(a)(2)(J).

[91] As defined in 38 U.S.C. 101.

[92] *See* 8 U.S.C. 1612(a)(2)(B).

[93] *See* 8 U.S.C. 1612(a)(2)(C).

[94] *See* 8 U.S.C. 1612(a)(2)(G); *see also* INA section 289, 8 U.S.C. 1359.

[95] *See* 8 U.S.C. 1612(a)(2)(G); *see also* 25 U.S.C 5304(e) (defining Indian tribe).

[96] *See* 8 U.S.C. 1612(a)(2)(E).

[97] *See* 8 U.S.C. 1612(a)(2)(F).

[98] *See* 8 U.S.C. 1612(a)(2)(A).

[99] As in effect immediately before the effective date of section 307 of division C of Public Law 104–208.

[100] 8 U.S.C. 1231(b)(3).

[101] As defined in section 501(e) of the Refugee Education Assistance Act of 1980.

[102] *See* section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100–202, 101 Stat. 1329, and amended by the 9th proviso under migration and refugee assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100–461, 102 Stat. 2268, as amended).

[103] An alien who was lawfully residing in the United States and receiving benefits on August 2, 1996, would have continued to receive benefits until January 1, 1997. In addition, an alien who was receiving SSI would still be eligible to receive Medicaid. *See* 8 U.S.C. 1612(b)(2)(F).

[104] *See* 42 U.S.C. 601–619.

[105] *See* 42 U.S.C. 1397–1397h.

[106] *See* 42 U.S.C. 1396 to 1396w–5.

[107] *See* 8 U.S.C. 1612(b)(2)(B).

[108] *See* 8 U.S.C. 1612(b)(2)(C).

[109] *See* 8 U.S.C. 1612(b)(2)(E).

[110] *See* 8 U.S.C. 1612(b)(2)(A).

[111] As in effect immediately before the effective date of section 307 of division C of Public Law 104–208, 110 Stat. 3009.

[112] 8 U.S.C. 1231(b)(3).

[113] As defined in section 501(e) of the Refugee Education Assistance Act of 1980.

[114] *See* section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. 100–202, 101 Stat. 1329, and amended by the 9th proviso under migration and refugee assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Pub. L. 100–461, 102 Stat. 2268, as amended).

[115] *See Federal Means-Tested Public Benefits,* 63 FR 36653 (July 7, 1998).

[116] *See* 8 U.S.C. 1613(c).

[117] *See* 8 U.S.C. 1613(b)(1).

[118] *See* section 501(e) of the Refugee Education Assistance act of 1980.

[119] *See* 8 U.S.C. 1612(a)(2)(A)(i)(V).

[120] *See* 8 U.S.C. 1613(b)(2).

[121] *See* 8 U.S.C. 1613(d).

[122] *See* 8 U.S.C. 1611(b)(1); *see also Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation,* 66 FR 3613 (Jan. 16, 2001); *Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,* 62 FR 61344 (Nov. 17, 1997).

[123] *See* 8 U.S.C. 1621(c).

[124] *See generally* 8 U.S.C. 1621.

[125] *See* 8 U.S.C. 1621(d).

[126] 8 U.S.C. 1601(7).

[127] *See* U.S. Dep't of Health & Human Servs., Office of the Assistant Sec'y for Planning & Evaluation, *Overview of Immigrants Eligible for SNAP, TANF, Medicaid and CHIP* (Mar. 27, 2012), *available at http://aspe.hhs.gov/hsp/11/ImmigrantAccess/Eligibility/ib.shtml.*

[128] *See* INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

[129] *See* Public Law 104–193, section 401(c), 110 Stat. 2105, 2262 (codified as amended at 8 U.S.C. 1611(c)). Only qualified aliens may be eligible for certain benefits. *See* 8 U.S.C. 1641.

[130] *See* 8 U.S.C. 1611(b).

[131] *See* 8 U.S.C. 1611(c)(2).

[132] See 8 U.S.C. 1611(b).

[133] Such relief would include a range of services and benefits provided by the Federal Emergency Management Agency and other agencies. For instance, it would include the Disaster Supplemental Nutrition Assistance Program (D–SNAP), which ''gives food assistance to low-income households with food loss or damage caused by a natural disaster.'' *See* DHS, Disaster Assistance.gov, *Disaster Supplemental Nutrition Assistance Program (D–SNAP), available at https://www.disasterassistance.gov/get-assistance/forms-of-assistance/5769* (last updated June 25, 2018).

provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.

• Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under title V of the Housing Act of 1949 [42 U.S.C. 1471 *et seq.*], or any assistance under section 1926c of title 7, to the extent that the alien is receiving such a benefit on August 22, 1996.

These benefits, which are described in 8 U.S.C. 1611(b), were further clarified by the Department of Justice and some of the agencies that administer these public benefits. On January 16, 2001, the Department of Justice published a notice of final order, ''Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation,'' [134] which indicated that PRWORA does not preclude aliens from receiving police, fire, ambulance, transportation (including paratransit), sanitation, and other regular, widely available services programs, services, or assistance. In addition, the notice provided for a three-part test in identifying excluded benefits and services for the protection of life and safety. Specified programs must satisfy all three prongs of this test:

1. The government-funded programs, services, or assistance specified are those that: Deliver in-kind (non-cash) services at the community level, including through public or private non-profit agencies or organizations; do not condition the provision, amount, or cost of the assistance on the individual recipient's income or resources; and serve purposes of the type described in the list below, for the protection of life or safety.

2. The community-based programs, services, or assistance are limited to those that provide in-kind (non-cash) benefits and are open to individuals needing or desiring to participate without regard to income or resources. Programs, services, or assistance delivered at the community level, even if they serve purposes of the type described, are not within this specification if they condition on the individual recipient's income or resources: (a) The provision of assistance; (b) the amount of assistance provided; or (c) the cost of the assistance provided on the individual recipient's income or resources.

3. Included within the specified programs, services, or assistance determined to be necessary for the protection of life or safety are the following types of programs:

• Crisis counseling and intervention programs; services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity; or treatment of mental illness or substance abuse;

• Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children;

• Programs, services, or assistance to help individuals during periods of heat, cold, or other adverse weather conditions;

• Soup kitchens, community food banks, senior nutrition programs such as meals on wheels, and other such community nutritional services for persons requiring special assistance;

• Medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability, or substance abuse assistance necessary to protect life or safety;

• Activities designed to protect the life or safety of workers, children and youths, or community residents; and

• Any other programs, services, or assistance necessary for the protection of life or safety.

In congressional debates leading up to the passage of IIRIRA, Senator Kennedy stated that ''[t]hese benefit all, because they relate to the public health and are in the public interest. Where the public interest is not served, we should not provide the public assistance to illegal immigrants.'' [135] Therefore, these benefits were provided to all aliens including illegal aliens. These benefits would not be part of the public charge determination under the proposed rule.[136]

3. Changes Under IIRIRA

Under IIRIRA,[137] the public charge inadmissibility statute changed significantly. IIRIRA codified the following minimum factors that must be considered when making public charge determinations: [138]

• Age;
• Health;
• Family status;
• Assets, resources, and financial status; and
• Education and skills.[139]

Congress also generally permitted but did not require consular and immigration officers to consider an enforceable affidavit of support as a factor in the determination of inadmissibility,[140] except in certain cases where an affidavit of support is required and must be considered at least in that regard.[141] The law required affidavits of support for most family-based immigrants and certain employment-based immigrants and provided that these aliens are inadmissible unless a satisfactory affidavit of support is filed on their behalf.[142] In the Conference Report, the committee indicated that the amendments to INA section 212(a)(4), 8 U.S.C. 1182(a)(4), were designed to expand the public charge ground of inadmissibility.[143] The report indicated that self-reliance is one of the fundamental principles of immigration law and aliens should have affidavits of support executed.[144]

DHS believes that the policy goals articulated in PRWORA and IIRIRA should inform its administrative implementation of the public charge ground of inadmissibility. There is no tension between the availability of public benefits to some aliens as set forth in PRWORA and Congress's intent to deny visa issuance, admission, and adjustment of status to aliens who are likely to become a public charge. Indeed, Congress, in enacting PRWORA and IIRIRA very close in time, must have recognized that it made certain public benefits available to some aliens who are also subject to the public charge grounds of inadmissibility, even though receipt of such benefits could render the alien inadmissible as likely to become a public charge.

[134] *See Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation,* 66 FR 3613 (Jan. 16, 2001); *see also Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation,* 61 FR 45985 (Aug. 30, 1996).

[135] *See* 142 Cong. Rec. S3282 (daily ed. Apr. 15, 1996) (statement of Sen. Kennedy), *available at https://www.congress.gov/crec/1996/04/15/CREC-1996-04-15-pt1-PgS3276.pdf.*

[136] *See* 8 U.S.C. 1611(b)(1)(B); *see also Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation,* 66 FR 3613 (Jan. 16, 2001); *Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation,* 61 FR 45985 (Aug. 30, 1996).

[137] Public Law 104–208, div. C, 110 Stat 3009–546 (1996).

[138] Public Law 104–208, div. C, section 531, 110 Stat. 3009–546, 3009–674 (1996) (amending INA section 212(a)(4), 8 U.S.C. 1182(a)(4)).

[139] *See* INA section 212(a)(4)(B), 8 U.S.C. 1182(a)(4)(B).

[140] *See* INA section 212(a)(4)(B)(ii), 8 U.S.C. 1182(a)(4)(B)(ii).

[141] *See* INA section 212(a)(4), 8 U.S.C. 1182(a)(4); INA section 213A, 8 U.S.C. 1183A.

[142] *See* INA section 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D).

[143] *See* H.R. Rep. No. 104–828, at 240–41 (1996) (Conf. Rep.); *see also* H.R. Rep. No. 104–469(I), at 143–45 (1996).

[144] *See* H.R. Rep. No. 104–828, at 241 (1996) (Conf. Rep.).

Under the carefully devised scheme envisioned by Congress, aliens generally would not be issued visas, admitted to the United States, or permitted to adjust status if they are likely to become public charges. This prohibition may deter aliens from making their way to the United States or remaining in the United States permanently for the purpose of availing themselves of public benefits.[145] Congress must have understood, however, that certain aliens who were unlikely to become public charges when seeking a visa, admission, or adjustment of status might thereafter reasonably find themselves in need of public benefits that, if obtained, would render them a public charge. Consequently, in PRWORA, Congress made limited allowances for that possibility. But Congress also did not correspondingly limit the applicability of the public charge statute; if an alien subsequent to receiving public benefits wished to adjust status in order to remain in the United States permanently or left the United States and later wished to return, the public charge inadmissibility consideration (naturally including consideration of receipt of public benefits) would again come into play. In other words, although an alien may obtain public benefits for which he or she is eligible, the receipt of those benefits may be considered for future public charge inadmissibility determination purposes.

4. INS 1999 Interim Field Guidance

On May 26, 1999, INS issued interim *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds.*[146] This guidance identified how the agency would determine if a person is likely to become a public charge under section 212(a)(4) of the Act, 8 U.S.C. 1182(a), for admission and adjustment of status purposes, and whether a person is deportable as a public charge under section 237(a)(5) of the Act, 8 U.S.C. 1227(a)(5).[147] INS proposed promulgating these policies as regulations in a proposed rule issued on May 26, 1999.[148] DOS also issued a cable to its consular officers at that time implementing similar guidance for visa adjudications, and its Foreign Affairs Manual (FAM) was similarly updated.[149] USCIS has continued to follow the 1999 Interim Field Guidance in its adjudications, and DOS has continued following the public charge guidance set forth in the FAM.[150]

In the 1999 proposed rule, INS proposed to ''alleviate growing public confusion over the meaning of the currently undefined term 'public charge' in immigration law and its relationship to the receipt of Federal, State, or local public benefits.'' [151] INS sought to reduce negative public health and nutrition consequences generated by the confusion and to provide aliens, their sponsors, health care and immigrant assistance organizations, and the public with better guidance as to the types of public benefits that INS considered relevant to the public charge determinations.[152] INS also sought to address the public's concerns about immigrants' fears of accepting public benefits for which they remained eligible, specifically in regards to medical care, children's immunizations, basic nutrition and treatment of medical conditions that may jeopardize public health. With its guidance, INS aimed to stem the fears that were causing noncitizens to refuse limited public benefits, such as transportation vouchers and child care assistance, so that they would be better able to obtain and retain employment and establish self-sufficiency.[153]

INS defined public charge in its proposed rule and 1999 Interim Field Guidance to mean ''the likelihood of a foreign national becoming primarily dependent [154] on the government for subsistence, as demonstrated by either:

- Receipt of public cash assistance for income maintenance; or
- Institutionalization for long-term care at government expense.''

When developing the proposed rule, INS consulted with Federal benefit-granting agencies such as the Department of Health and Human Services (HHS), the Social Security Administration (SSA), and the Department of Agriculture (USDA). The Deputy Secretary of HHS, which administers Temporary Assistance for Needy Families (TANF), Medicaid, the Children's Health Insurance Program (CHIP), and other benefits, advised that the best evidence of whether an individual is relying primarily on the government for subsistence is either the receipt of public cash benefits for income maintenance purposes or institutionalization for long-term care at government expense.[155] The Deputy Commissioner for Disability and Income Security Programs at SSA agreed that the receipt of SSI ''could show primary dependence on the government for subsistence fitting the INS definition of public charge provided that all of the other factors and prerequisites for admission or deportation have been considered or met.'' [156] And the USDA's Under Secretary for Food, Nutrition and Consumer Services advised that ''neither the receipt of food stamps nor nutrition assistance provided under the Special Nutrition Programs administered by [USDA] should be considered in making a public charge determination.'' [157] While these letters supported the approach taken in the 1999 proposed rule and Interim Field Guidance, the letters specifically focused on the reasonableness of a given INS interpretation; *i.e.* primary dependence on the government for subsistence. The letters did not foreclose the agency adopting a different definition consistent with statutory authority.

The 1999 proposed rule provided that non-cash, supplemental and certain limited cash, special purpose benefits should not be considered for public charge purposes, in light of INS' decision to define public charge by reference to primary dependence on public benefits. Ultimately, however, INS did not publish a final rule conclusively addressing these issues.

E. Public Charge Bond

If an alien is determined to be inadmissible on public charge grounds under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), he or she may be admitted in the discretion of the Secretary of Homeland Security, if otherwise admissible, upon the giving of a suitable and proper bond.[158]

[145] H.R. Rep. No. 104–469(I), at 144–45 (1996).

[146] *See* 64 FR 28689 (May 26, 1999).

[147] *See* 64 FR 28689 (May 26, 1999).

[148] *See Inadmissibility and Deportability on Public Charge Grounds,* 64 FR 28676 (May 26, 1999).

[149] *See* 64 FR 28676, 28680 (May 26, 1999).

[150] *See* Children's Health Insurance Program Reauthorization Act of 2009, Public Law 111–3, section 214, 123 Stat. 8, 56; 9 FAM 302.8–2(B)(2), Determining ''Totality of Circumstances,'' (g) Public Charge Bonds, *available at https://fam.state.gov/fam/09fam/09fam030208.html.*

[151] *See* 64 FR 28676, 28676 (May 26, 1999).

[152] *See* 64 FR 28676, 28676–77 (May 26, 1999).

[153] *See* 64 FR 28676, 28676–77 (May 26, 1999).

[154] Former INS defined ''primarily dependent'' as ''the majority'' or ''more than 50 percent.''

[155] *See* 64 FR 28676, 28686–87 (May 26, 1999).

[156] 64 FR 28676, 28687 (May 26, 1999).

[157] 64 FR 28676, 28688 (May 26, 1999). The USDA letter did not include supportive reasoning. As noted in greater detail elsewhere in this preamble, DHS no longer believes that primary dependence on the government for subsistence is the appropriate standard for public charge determination purposes. In light of the proposed change in the public charge standard and the passage of time, DHS does not believe that the views expressed in those interagency consultations remain fully relevant. DHS has nonetheless considered such views, and has addressed the relevant considerations—legal authority, predictability, administrability, and adverse impacts—throughout this proposed rule.

[158] *See* INA section 213, 8 U.S.C. 1183; *see also* 8 CFR 103.6; 8 CFR 213.1.

Historically, bond provisions started with states requiring certain amounts to assure an alien would not become a public charge.[159] Bond provisions were codified in federal immigration laws in 1903.[160] Notwithstanding codification in 1903, the acceptance of a bond posting in consideration of an alien's admission and to assure that he or she will not become a public charge apparently had its origin in federal administrative practice earlier than this date. Beginning in 1893, immigration inspectors served on Boards of Special Inquiry that reviewed exclusion cases of aliens who were likely to become public charges because the aliens lacked funds or relatives or friends who could provide support.[161] In these cases, the Board of Special Inquiry usually admitted the alien if someone could post bond or one of the immigrant aid societies would accept responsibility for the alien.[162]

The present language of section 213 of the Act, 8 U.S.C. 1183, has been in the law without essential variation since 1907.[163] Under section 21 of the Immigration Act of 1917, an immigration officer could admit an alien if a suitable bond was posted. In 1970, Congress amended section 213 of the Act to permit the posting of cash received by the U.S. Department of the Treasury and to eliminate specific references to communicable diseases of public health significance.[164] At that time, Congress also added, without further explanation or consideration, the phrase that any sums or other security held to secure performance of the bond shall be returned ''except to the extent forfeited for violation of the terms thereof'' upon termination of the bond.[165] Subsequently, IIRIRA amended the provision yet again when adding a parenthetical which clarified that a bond is provided in addition to, and not in lieu of, the affidavit of support and the deeming requirements under section 213A of the Act, 8 U.S.C. 1183A.[166] Regulations implementing the public charge bond were promulgated in 1964 and 1966,[167] and are currently found at 8 CFR 103.6 and 8 CFR 213.1.

V. Discussion of Proposed Rule

This proposed rule would establish a proper nexus between public charge and receipt of public benefits by defining the terms public charge and public benefit, among other terms. DHS proposes to interpret the minimum statutory factors involved in public charge determinations and to establish a clear framework under which DHS would evaluate those factors to determine whether or not an alien is likely at any time in the future to become a public charge. DHS also proposes to clarify the role of a sponsor's affidavit of support within public charge inadmissibility determinations.

In addition, DHS proposes that certain factual circumstances would weigh heavily in favor of determining that an alien is not likely to become a public charge and other factual circumstances would weigh heavily in favor of determining that an alien is likely to become a public charge.[168] The purpose of assigning greater weight to certain factual circumstances is to provide clarity for the public and immigration officers with respect to how DHS would fulfill its statutory duty to assess public charge admissibility. Ultimately, each determination would be made in the totality of the circumstances based on consideration of the relevant factors. In addition, DHS proposes that for applications for adjustment of status, the alien would be required to submit a Form I–944.

DHS also proposes to establish a public charge bond process in the adjustment of status context, and proposes to clarify DHS's authority to set conditions for nonimmigrant extension of stay and change of status applications.

Finally, this proposed rule interprets the public charge inadmissibility ground under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), not the public charge deportability ground under section 237(a)(5) of the Act, 8 U.S.C. 1227(a)(5). Department of Justice precedent decisions would continue to govern the standards regarding public charge deportability determinations.

A. Applicability, Exemptions, and Waivers

This rule would apply to any alien subject to section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), who is applying for admission to the United States or is applying for adjustment of status to that of lawful permanent resident before DHS.[169] DOS screens applicants who are subject to public charge inadmissibility grounds and who are seeking nonimmigrant or immigrant visas at consular posts worldwide. Nearly sixty percent of the 2.7 million immediate relatives, family-sponsored,[170] employment-based, and diversity visa-based immigrants who obtained lawful permanent resident status in the United States between fiscal years 2014 and 2016 consular processed immigrant visa applications overseas prior to being admitted to the United States as lawful permanent residents at a port-of-entry. Fifty-one percent of immediate relatives, ninety-two percent of family-sponsored immigrants, and ninety-eight percent of diversity visa immigrants obtained an immigrant visa at a consular post overseas before securing admission as a lawful permanent resident at a port-of-entry between fiscal years 2014 and 2016.[171]

This rule also addresses eligibility for extension of stay and change of

[159] *See, e.g., Mayor, Aldermen & Commonalty of City of N.Y.* v. *Miln,* 36 U.S. 102 (1837) (upholding a New York statute that required vessel captains to provide certain biographical information about every passenger on the ship and further permitting the mayor to require the captain to provide a surety of not more than $300 for each noncitizen passenger to indemnify and hold harmless the government from all expenses incurred to financially support the person and the person's children); *see also* H.D. Johnson & W.C. Reddall, *History of Immigration* (Washington, 1856).

[160] *See* Immigration Act of 1903, ch. 1012, 32 Stat. 1213 (repealed by Act of Feb. 20, 1907, ch. 1134, 34 Stat. 898, and Immigration Act of 1917, ch. 29, 39 Stat. 874).

[161] Immigration Act of 1891, ch. 551, 26 Stat. 1084, created the Office of the Superintendent of Immigration within the Treasury Department. The Superintendent oversaw a new corps of U.S. Immigrant Inspectors stationed at the country's principal ports of entry. *See* USCIS History and Genealogy, Origins of Federal Immigration Service, *https://www.uscis.gov/history-and-genealogy/our-history/agency-history/origins-federal-immigration-service* (last updated Feb. 4, 2016).

[162] *See* USCIS History and Genealogy, *Origins of Federal Immigration Service, https://www.uscis.gov/history-and-genealogy/our-history/agency-history/origins-federal-immigration-service* (last updated Feb. 4, 2016).

[163] *See* Act of February 20, 1907, ch. 1134, section 26, 34 Stat. 898, 907.

[164] *See* Public Law 91–313, 84 Stat. 413, 413 (1970); *see also* 116 Cong. Rec. S9957 (daily ed. June 26, 1970).

[165] *See* Public Law 91–313, 84 Stat. 413, 413 (1970).

[166] *See* Public Law 104–208, div. C, section 564(f), 110 Stat. 3009–546, 3009–684.

[167] *See Miscellaneous Amendments to Chapter,* 29 FR 10579 (July 30, 1964); *Miscellaneous Edits to Chapter,* 31 FR 11713 (Sept. 7, 1966).

[168] *See* proposed 8 CFR 212.22.

[169] *See* proposed 8 CFR 212.20.

[170] Including first, second, third and fourth preferences of family sponsored immigrants and immediate relatives. *See* DHS, *Yearbook of Immigration Statistics 2016, Table 6, Persons Obtaining Lawful Permanent Resident Status by Type and Major Class of Admission: Fiscal Years 2014 to 2016, available at https://www.dhs.gov/immigration-statistics/yearbook/2016/table6* (last updated Dec. 18, 2017).

[171] *See* DHS, *Yearbook of Immigration Statistics 2016, Table 6, Persons Obtaining Lawful Permanent Resident Status by Type and Major Class of Admission: Fiscal Years 2014 to 2016, available at https://www.dhs.gov/immigration-statistics/yearbook/2016/table6* (last updated Dec. 18, 2017). The 2016 Yearbook of Immigration Statistics is a compendium of tables that provide data on foreign nationals who are granted lawful permanent residence (*i.e.,* immigrants who receive a ''green card''), admitted as temporary nonimmigrants, granted asylum or refugee status, or are naturalized.

status.[172] Because the processes, evidentiary requirements, and nature of the stay in the United States for aliens seeking a visa, admission, extension of stay, change of status, and adjustment of status differ, DHS proposes public charge processes appropriately tailored to the benefit the alien seeks. For instance, aliens seeking adjustment of status undergo a different process than a temporary visitor for pleasure from Canada seeking admission to the United States. The length and nature of the stay of these two subsets of aliens differs significantly, as does frequency of entry. Accordingly, the processes and evidentiary requirements proposed in this rule vary in certain respects depending on the type of benefit and status an alien is seeking, as set forth below.

1. Applicants for Admission

Under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), any alien who is applying for a visa or for admission to the United States is inadmissible if he or she is likely at any time to become a public charge. A nonimmigrant is admitted into the United States to stay for the limited period and purpose of the classification under which he or she was admitted and, in most instances, then is expected to depart the United States and return to his or her country. A visa applicant applies directly to a U.S. consulate or embassy abroad for a nonimmigrant visa to travel to the United States temporarily for a limited purpose, such as to visit for business or tourism.[173] DOS consular officers assess whether the alien would be inadmissible, including under section 212(a)(4) of the Act, as applicable.

Applicants for admission are inspected at, or when encountered between, ports of entry. They are inspected by immigration officers to assess, among other things, whether they are inadmissible under section 212(a) of the Act, including section 212(a)(4). Under the proposed rule, the type of nonimmigrant status and the duration of the nonimmigrant's stay in the United States would be considered in assessing whether the applicant has met his or her burden of demonstrating that he or she is likely to become a public charge. For example, in determining whether an applicant for admission as a B–2 nonimmigrant visitor for pleasure who is coming to the United States for a one-week vacation is inadmissible on public charge grounds, DHS would consider that this temporary visit is short in nature and that the individual likely would only need financial resources to cover the expenses associated with the vacation.

Similarly, an alien who is the beneficiary of an immigrant visa petition approved by USCIS may apply to a DOS consulate abroad for an immigrant visa to allow him or her to seek admission to the United States as an immigrant.[174] As part of the immigrant visa process, DOS determines whether the applicant is eligible for the visa, which includes a determination of whether the alien has demonstrated that he or she is admissible to the United States and that no inadmissibility grounds in section 212(a) of the Act apply. In determining whether the applicant has demonstrated that he or she is not inadmissible on the public charge ground, DOS reviews all of the mandatory factors, including any required affidavits of support submitted under section 213A of the Act, 8 U.S.C. 1183a.

This process would not change under the proposed rule, but it is likely that DOS will amend its guidance to prevent the issuance of visas to inadmissible aliens,[175] except as otherwise provided in the Act. DOS would continue to review affidavits of support and screen aliens for public charge inadmissibility in accordance with applicable regulations and instructions prior to the alien undergoing inspection and applying for admission at a pre-inspection location or port-of-entry

Additionally, although lawful permanent residents generally are not considered to be applicants for admission upon their return from a trip abroad, in certain limited circumstances a lawful permanent resident will be considered an applicant for admission and, therefore, subject to an inadmissibility determination.[176] This inadmissibility determination includes whether the alien is inadmissible as likely to become a public charge, which will be determined upon the lawful permanent resident's return to the United States.

2. Extension of Stay and Change of Status Applicants

As mentioned above, a nonimmigrant is admitted into the United States to stay for the limited period and purpose of the classification under which he or she was admitted and, in most instances, then is expected to depart the United States and return to his or her country. However, consistent with the INA and controlling regulations, DHS may, in its discretion, extend an alien's nonimmigrant status or change an alien's nonimmigrant status from one classification to another.[177] Furthermore, DHS is authorized under the INA to set conditions on the extension of stay or change of status. Consistent with this authority, DHS is proposing to require an applicant for an extension of stay or change of status to attest that he or she has neither received since obtaining the nonimmigrant status he or she seeks to extend or to which he or she seeks to change, is not receiving, nor is likely to receive at any time in the future one or more public benefits as defined in this proposed rule.

Although section 212(a)(4) of the Act by its terms only applies to applicants for visas, admission, and adjustment of status, and thus does not, by its terms, render aliens who are likely to become a public charge ineligible for the extension of stay or change of status, the government's interest in a nonimmigrant alien's ability to maintain self-sufficiency for the duration of the temporary stay does not end with his or her admission as a nonimmigrant. In particular, the government has an interest in ensuring that aliens present in the United States do not depend on public benefits to meet their needs.[178] Aliens therefore should remain self-sufficient for the entire period of their stay, including any extension of stay or additional period of stay afforded by a change of status. Accordingly, DHS is proposing to consider whether the alien

[172] *See* proposed 8 CFR 214.1(a)(3)(iv); proposed 8 CFR 214.1(c)(4)(iv); proposed 8 CFR 248.1(a); proposed 8 CFR 248.1(c)(4).

[173] Certain nonimmigrant classifications are subject to petition requirements, and a petition generally must be approved on an alien's behalf by USCIS prior to application for a visa. *See, e.g.,* INA section 214(c), 8 U.S.C. 1184(c). In addition, certain aliens are not subject to a visa requirement in order to seek admission as a nonimmigrant. *See, e.g.,* INA section 217, 8 U.S.C. 1187; *see also* 8 CFR 212.1.

[174] *See* INA sections 221 and 222, 8 U.S.C. 1201 and 1202; 8 CFR 204; 22 CFR part 42.

[175] See INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

[176] Lawful permanent residents are regarded as applicants for admission in the following circumstances: (1) Lawful permanent residents who have abandoned or relinquished that status; (2) lawful permanent residents who have been outside the United States for a continuous period in excess of 180 days; (3) lawful permanent residents who have engaged in illegal activity after departing the United States; (4) lawful permanent residents who have departed the United States while under legal process seeking removal of the alien from the United States, including removal proceedings and extradition proceedings; (5) lawful permanent residents who have committed an offense identified in section 212(a)(2) of the INA, 8 U.S.C. 1182(a)(2), unless granted a waiver of inadmissibility for such offense or cancellation of removal; and (6) lawful permanent residents attempting to enter at a time or place other than as designated by immigration officers or who have not been admitted to the United States after inspection and authorization by an immigration officer. *See* INA section 101(a)(13)(C), 8 U.S.C. 1101(a)(13)(C).

[177] *See* INA sections 214(a)(1) and 248(a), 8 U.S.C. 1184(a)(1) and 1258(a); *see also* 8 CFR 214.1, 248.1.

[178] *See* 8 U.S.C. 1601(2)(A).

has received since obtaining the nonimmigrant status he or she seeks to extend or to which he or she seeks to change, is currently receiving, or is likely to receive public benefits as defined in the proposed rule, when adjudicating an application to extend a nonimmigrant stay or change a nonimmigrant status.

Extension of stay and change of status applicants are already required to provide evidence of maintenance of their current nonimmigrant status.[179] As part of that determination, for some applicants, DHS considers the alien's financial status [180] and believes it sound policy to extend that consideration to extensions of stay and change of status generally, rather than to just subsets of nonimmigrants. Although the INA does not indicate that aliens seeking an extension of stay or change of status must establish self-sufficiency, consideration of such alien's self-sufficiency aligns with the aforementioned policy statements set forth in PRWORA.[181]

Except where the nonimmigrant status that the alien seeks to extend or to which the alien seeks to change is exempted by law from section 212(a)(4) of the Act, in order for an alien to demonstrate that he or she has neither received since obtaining the nonimmigrant status he or she seeks to extend or from which he or she seeks to change, nor is currently receiving or likely to receive any such public benefits, DHS will require applicants to answer questions on their application form,[182] under penalty of perjury, regarding their receipt of these public benefits. The responses to these questions would be used in determining whether the applicant has met his or her burden to establish eligibility for extension of stay or change of status under the proposed regulation.

In adjudicating whether the applicant has demonstrated that he or she is not likely to receive public benefits as defined in the proposed rule, at any time in the future, DHS would consider the status to which the alien seeks to extend or to which to change, as well as the anticipated additional period of stay. DHS would also consider whether the applicant has provided evidence of maintenance of status and that he or she has sufficient financial means to maintain the status he or she seeks, or that he or she will be gainfully employed in such status, as applicable. Based on the information the alien provides in support of the application for extension of stay or change of status, USCIS would determine whether the applicant should also submit Form I–944 in order to demonstrate that he or she is unlikely to receive public benefits during the temporary stay in the United States.

For example, if the alien is a B–2 nonimmigrant who was admitted to the United States to seek medical treatment and is seeking to extend his or her visit because he or she requires additional medical treatment that was unanticipated at the time of admission, the alien would need to submit evidence that he or she has the financial means to pay for this additional medical treatment and otherwise support himself or herself during the extended duration of his or her temporary stay. An alien seeking to extend his or her stay in, or change status to, F–1 or M–1 nonimmigrant status would submit evidence of his or her financial ability to pay for his or her study and to financially support himself or herself.[183] An alien seeking to extend stay in or change to an employment-based nonimmigrant status, such as H–2B temporary non-agricultural worker status, would need to submit evidence such as tax return transcripts, W–2, or other documentation evidencing income from gainful employment appropriate to the nonimmigrant status being sought.[184]

Table 4 below provides a summary of nonimmigrant categories and the applicability of the public charge condition to such categories.

BILLING CODE 4410–10–P

[179] *See* INA 214(a)(1), 8 U.S.C. 1184; 8 CFR 214.1(c)(4); INA 248(a), 8 U.S.C. 1258; 8 CFR 248.1(a).

[180] *See* 8 CFR 214.2(f)(1)(i)(B); AFM Ch. 30.2(c)(2)(F) (''Students seeking reinstatement must submit evidence of eligibility, including financial information . . . .''); AFM Ch. 30.3(c)(2)(C) (applicants applying to change status to a nonimmigrant student must demonstrate that they have the financial resources to pay for coursework and living expenses in the United States).

[181] 8 U.S.C. 1601.

[182] Aliens in nonimmigrant classifications whose employers will be filing Form I–129 or Form I–129CW on their behalf will be required to provide this information to their employer.

[183] *See* 8 CFR 214.2(f)(1)(i)(B) (students must present ''documentary evidence of financial support in the amount indicated on the SEVIS Form I–20 (or the Form I–20A–B/I–20ID)''); AFM Ch. 30.2(b)(2)(F) (''(F) Students seeking reinstatement must submit evidence of eligibility, including financial information and a current I–20.''); AFM Ch. 30.3(c)(2)(C) (''Aliens seeking F–1 or M–1 status must submit the appropriate Form I–20 and evidence of financial ability to maintain the new status. Aliens seeking J–1 status must submit Form IAP–66.''); AFM Ch. 30.3(b)(3)(D) (''[T]he applicant [for change of status] must demonstrate he or she is able to maintain him or herself in the status sought, particularly financially. This issue needs particular examination when the applicant seeks a prolonged stay in any status where employment is not a routine part of the status, for example student status.'').

[184] *See, e.g.,* AFM Ch. 30.3(b)(3)(E) (''Because the alien applicant on Form I–129 will be gainfully employed once the new status is granted, it is generally not necessary to further explore an applicant's ability to maintain status financially (unless the rate of remuneration is so low that the principal would be unable to support him/herself and all dependents).'').

Table 4. Summary of Nonimmigrant Categories Subject to Public Benefits Condition			
Category	**Eligible to apply for Extension of Stay (i.e. May File Form I-129 or Form I-539)***	**Eligible to apply for Change of Status (i.e. May File Form I-129 or I-Form 539)***	**Subject to Public Benefit Condition under proposed 8 CFR 214.1(a)(3)(iv), 214.1(a)(4)(iv); 248.1(c)(4)**
A-1 - Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family A-2 - Other Foreign Government Official or Employee, or Immediate Family INA 101(a)(15)(A), 22 CFR 41.21	No. Not applicable as admitted for Duration of Status, 8 CFR 214.1(c)(3)(v)	Yes. Files I-539, 8 CFR 248.1(a)	No. INA 102; 22 CFR 41.21(d)
A-3 - Attendant, Servant, or Personal Employee of A-1 or A-2, or Immediate Family INA 101(a)(15)(A), 22 CFR 41.21	Yes. Files Form I-539, 8 CFR 214.1(c)(2)	Yes. Files Form I-539, 8 CFR 248.1(a)	Yes. INA 102; 22 CFR 41.21(d)(3)
B-1 -Temporary Visitor for Business B-2 - Temporary Visitor for Pleasure * not admitted under Visa Waiver Program INA 101(a)(15)(B)	Yes. Files Form I-539, 8 CFR 214.1(c)(2), 8 CFR 214.2(b)(1)	Yes. Files Form I-539, 8 CFR 248.1(a)	Yes.
C-1 - Alien in Transit C-1/D - Combined Transit and Crewmember Visa INA 101(a)(15)(C) and (D), INA 212(d)(8)	No. 8 CFR 214.1(c)(3)(ii)	No. 8 CFR 248.2(a)(2), except for change to T and U, 8 CFR 248.2(b) using Form I-914 or I-918	Not Applicable as not eligible for extension of stay or change of status
C-2 - Alien in Transit to United Nations Headquarters District Under Section 11.(3), (4), or (5) of the Headquarters Agreement INA 101(a)(15)(C) and (D), INA 212(d)(8)	No. Not applicable as admitted for Duration of Status. 8 CFR 214.1(c)(3)(ii)	No, 8 CFR 248.2(a)(2) , except for change to T and U, 8 CFR 248.2(b) using Form I-914 or I-918	No. 22 CFR 41.21(d)
C-3 - Foreign Government Official, Immediate Family, Attendant, Servant or Personal Employee, in Transit INA 101(a)(15)(C) and (D), INA 212(d)(8)	No. 8 CFR 214.1(c)(3)(ii)	No, 8 CFR 248.2(a)(2) , except for change to T and U, 8 CFR 248.2(b) using Form I-914 or I-918	No. 22 CFR 41.21(d)

Table 4. Summary of Nonimmigrant Categories Subject to Public Benefits Condition			
Category	**Eligible to apply for Extension of Stay (i.e. May File Form I-129 or Form I-539)***	**Eligible to apply for Change of Status (i.e. May File Form I-129 or I-Form 539)***	**Subject to Public Benefit Condition under proposed 8 CFR 214.1(a)(3)(iv), 214.1(a)(4)(iv); 248.1(c)(4)**
CW-1 - Commonwealth of Northern Mariana Islands Transitional Worker Section 6(d) of Public Law 94–241, as added by Section 702(a) of Public Law 110–229. 8 CFR 214.2(w)	Yes. Files Form I-129CW, 8 CFR 214.1(c)(2) and 8 CFR 214.2(w)(17)	Yes. Files Form I-129CW, 8 CFR 248.1(a); 8 CFR 214.2(w)(18)	Yes.
CW-2 - Spouse or Child of CW-1	Yes. Files Form I-539, 8 CFR 214.1(c)(2) and 8 CFR 214.2(w)(17)(v)	Yes. Files Form I-539, 8 CFR 248.1(a); 8 CFR 214.2(w)(18)	
D - Crewmember (Sea or Air) D-2 - Crewmember departing from a different vessel than one of arrival INA 101(a)(15)(D)	No. 8 CFR 214.1(c)(3)(iii)	No, 8 CFR 248.2(a)(2), except for change to T and U, 248.2(b) using Form I-914 or Form I-918	Yes.
E-1, E-2 - Treaty Trader (Principal) INA 101(a)(15)(E)	Yes. Files Form I-129, 8 CFR 214.1(c)(1); 8 CFR 214.2(e)(20)	Yes, Files Form I-129, 8 CFR 248.1(a), 8 CFR 214.2(e)(21)(i)	Yes.
E-1, E-2 - Treaty Trader, Spouse or Child INA 101(a)(15)(E)	Yes. Files Form I-539, 8 CFR 214.1(c)(2)	Yes. Files Form I-539, 8 CFR 214.2(e)(21)(ii),	Yes.
E-2-CNMI - Commonwealth of Northern Mariana Islands Investor (Principal) Section 6(c) of Public Law 94–241, as added by Section 702(a) of Public Law 110–229.8 CFR 214.2(e)(23)	Yes. Files Form I-129, 8 CFR 214.2(e)(23)(xii)	Yes. Files Form I-129,8 CFR 248.1(a), 8 CFR 214.2(e)(23)(xiii)	Yes.
E-2-CNMI - Commonwealth of Northern Mariana Islands Investor, Spouse or Child Section 6(c) of Public Law 94–241, as added by Section 702(a) of Public Law 110–229. 8 CFR 214.2(e)(23)(x)	Yes. Files Form I-539, 8 CFR 214.1(c)(2)	Yes. Files Form I-539, 8 CFR 248.1(a)	Yes.

Table 4. Summary of Nonimmigrant Categories Subject to Public Benefits Condition			
Category	**Eligible to apply for Extension of Stay (i.e. May File Form I-129 or Form I-539)***	**Eligible to apply for Change of Status (i.e. May File Form I-129 or I-Form 539)***	**Subject to Public Benefit Condition under proposed 8 CFR 214.1(a)(3)(iv), 214.1(a)(4)(iv); 248.1(c)(4)**
E-3 - Australian Treaty Alien coming to the United States Solely to Perform Services in a Specialty Occupation	Yes. Files Form I-129, 8 CFR 214.1(c)(1) and (2)	Yes. Files Form I-129, 8 CFR 248.1(a)	Yes.
E-3D - Spouse or Child of E-3 E-3R - Returning E-3 INA 101(a)(15)(E)(iii)	Yes. Files I-539, 8 CFR 214.1(c)(1) and (2)	Yes. Files I-539, 8 CFR 248.1(a)	Yes.
F-1 - Student in an academic or language training program (principal) INA 101(a)(15)(F).	Yes, only if the F-1 requesting reinstatement to F-1 status or if the F-1 received a date-specific admission to attend high school and is now seeking an extension to D/S to attend college. 8 CFR 214.1(c)(3)(v); 8 CFR 214.2(f)(7); 8 CFR 214.2(f)(16)	Yes. Files Form I-539, 8 CFR 248.1(a),	Yes.
F-2 - Spouse or Child of F-1 INA 101(a)(15)(F).	No, not applicable as admitted for Duration of Status. 8 CFR 214.1(c)(3)(v); 8 CFR 214.2(f)(3)	Yes. Files Form I-539, 8 CFR 214.2(f)(3)	Yes.
G-1 - Principal Resident Representative of Recognized Foreign Government to International Organization, Staff, or Immediate Family G-2 - Other Representative of Recognized Foreign Member Government to International Organization, or Immediate Family G-3 - Representative of	No, not applicable as admitted for Duration of Status 8 CFR 214.1(c)(3)(v)	Yes. Files Form I-539, 8 CFR 248.1(a)	No. 22 CFR 41.21(d)

Table 4. Summary of Nonimmigrant Categories Subject to Public Benefits Condition			
Category	**Eligible to apply for Extension of Stay (i.e. May File Form I-129 or Form I-539)***	**Eligible to apply for Change of Status (i.e. May File Form I-129 or I-Form 539)***	**Subject to Public Benefit Condition under proposed 8 CFR 214.1(a)(3)(iv), 214.1(a)(4)(iv); 248.1(c)(4)**
Nonrecognized or Nonmember Foreign Government to International Organization, or Immediate Family G-4 - International Organization Officer or Employee, or Immediate Family INA 101(a)(15)(G).			
G-5 - Attendant, Servant, or Personal Employee of G-1 through G- 4, or Immediate Family.	Yes. Files Form I-539, 8 CFR 214.1(c)(2)	Yes. Files Form I-539, 8 CFR 248.1(a)	Yes.
H-1B - Alien in a Specialty Occupation, Fashion Models of Distinguished Merit and Ability, and workers performing services of exceptional merit and ability relating to a Department of Defense (DOD) cooperative research and development project INA 101(a)(15)(H)(i)(b); Section 222 of Pub. L. 101-649.	Yes. Files Form I-129, 8 CFR 214.1(c)(1)	Yes. Files Form I-129.8 CFR 248.1(a)	Yes.
H-1B1 - Chilean or Singaporean National to Work in a Specialty Occupation INA 101(a)(15)(H)(i)(b1).	Yes. Files Form I-129, 8 CFR 214.1(c)(1)	Yes. Files Form I-129. 8 CFR 248.1(a)	Yes.
H-1C[185] - Nurse in health professional shortage area INA 101(a)(15)(H)(i)(c).	Yes. Filed Form I-129, 8 CFR 212.2(h)(4)(v)(E)	Yes. Filed Form I-129, 8 CFR 212.2(h)(4)(v)(E)	Yes.
H-2A- Temporary Worker Performing Agricultural Services Unavailable in the United States INA 101(a)(15)(H)(ii)(a).	Yes. Files Form I-129, 8 CFR 214.1(c)(1)	Yes. Files Form I-129	Yes.
H-2B - Temporary Worker Performing Other Services Unavailable in the United States INA 101(a)(15)(H)(ii)(b).	Yes. Files Form I-129, 8 CFR 214.1(c)(1)	Yes. Files Form I-129	Yes.
H-3 - Trainee INA 101(a)(15)(H)(iii)	Yes. Files Form I-129, 8 CFR 214.1(c)(1)	Yes. Files Form I-539	Yes.

Table 4. Summary of Nonimmigrant Categories Subject to Public Benefits Condition			
Category	**Eligible to apply for Extension of Stay (i.e. May File Form I-129 or Form I-539)***	**Eligible to apply for Change of Status (i.e. May File Form I-129 or I-Form 539)***	**Subject to Public Benefit Condition under proposed 8 CFR 214.1(a)(3)(iv), 214.1(a)(4)(iv); 248.1(c)(4)**
H-4 - Spouse or Child of Alien Classified H1B/B1/C, H2A/B, or H–3 INA 101(a)(15)(H)(iv).	Yes. Files Form I-539, 8 CFR 214.1(c)(2)	Yes. Files Form I-539. 8 CFR 248.1(a)	Yes.
I - Representative of Foreign Information Media, Spouse and Child INA 101(a)(15)(I).	No, not applicable as admitted for Duration of Status 8 CFR 214.1(c)(3)(v)	Yes. Files Form I-539	Yes.
J-1 - Exchange Visitor J-2 - Spouse or Child of J1 INA 101(a)(15)(J).	No, not applicable, as generally admitted for Duration of Status[186] 8 CFR 214.1(c)(3)(v)	Yes, subject to receiving a waiver of the foreign residence requirement, if necessary, Files I-539. 8 CFR 248.2(a)(4); may apply for change to T and U, using for Form I-914 or I-918, 8 CFR 248.2(b)	Yes.
K-1 - Fiance(e) of United States Citizen K-2 - Child of Fiance(e) of U.S. Citizen INA 101(a)(15)(K).	No. 8 CFR 214.1(c)(3)(iv)	No. 8 CFR 248.2(a)(2) except for change to T and U, 248.2(b) using Form I-914 or I-918	Not Applicable
K-3 - Spouse of U.S. Citizen awaiting availability of immigrant visa K-4 - Child of K-3 INA 101(a)(15)(K).	Yes. Files Form I-539, 8 CFR 214.1(c)(2) and 8 CFR 214.2(k)(10)	No. 8 CFR 248.2(2) except for change to T and U, 248.2(b) using Form I-914 or I-918	Yes.
L-1 - Intracompany Transferee (Executive, Managerial, and Specialized Knowledge Personnel Continuing Employment with International Firm or Corporation) INA 101(a)(15)(L).	Yes. Files Form I-129, 8 CFR 214.1(c)(1)	Yes. Files Form I-129, 8 CFR 248.1(a)	Yes.
L-2 - Spouse or Child of Intracompany Transferee	Yes. Files I-539 8 CFR 214.1(c)(1) and (2)	Yes. Files Form I-539, 8 CFR 248.1(a)	Yes.
M-1 - Vocational Student or Other Nonacademic Student INA 101(a)(15)(M).	Yes. Files Form I-539, 8 CFR 214.1(c)(2)	Yes. Files Form I-539. Not eligible if requesting F-1, 8 CFR 248.1(c)(1)	Yes.

Table 4. Summary of Nonimmigrant Categories Subject to Public Benefits Condition			
Category	**Eligible to apply for Extension of Stay (i.e. May File Form I-129 or Form I-539)***	**Eligible to apply for Change of Status (i.e. May File Form I-129 or I-Form 539)***	**Subject to Public Benefit Condition under proposed 8 CFR 214.1(a)(3)(iv), 214.1(a)(4)(iv); 248.1(c)(4)**
M-2 - Spouse or Child of M-1 INA 101(a)(15)(M).	Yes. Files Form I-539, 8 CFR 214.1(c)(2)	Yes. Files Form I-539	Yes.
N-8 - Parent of an Alien Classified SK3 (Unmarried Child Employee of International Organization) or SN-3 N-9 - Child of N-8 or of SK-1 (Retired Employee International Organization), SK-2 (Spouse), SK-4 (surviving spouse), SN-1 (certain retired NATO 6 civilian employee), SN-2 (spouse) or SN-4 (surviving spouse) INA 101(a)(15)(N).	Yes. Files Form] I-539, 8 CFR 214.1(c)(2)	Yes. Files Form I-539, 8 CFR 248.1(e)	Yes.
NATO-1 - Principal Permanent Representative of Member State to NATO (including any of its Subsidiary Bodies) Resident in the U.S. and Resident Members of Official Staff; Secretary General, Assistant Secretaries General, and Executive Secretary of NATO; Other Permanent NATO Officials of Similar Rank, or Immediate Family Art. 12, 5 UST 1094; Art. 20, 5 UST 1098.	No, not applicable as admitted for Duration of Status 8 CFR 214.1(c)(3)(v)	Yes. Files Form I-539, 8 CFR 248.1(a)	No. INA 102; 22 CFR 41.21(d)
NATO-2 - Other Representative of member state to NATO (including any of its Subsidiary Bodies) including Representatives, Advisers, and Technical Experts of Delegations, or Immediate Family; Dependents of Member of a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement or in Accordance with the provisions of the "Protocol on the Status of International Military Headquarters"; Members of Such a Force if Issued Visas Art. 13, 5 UST 1094; Art. 1, 4 UST 1794; Art. 3, 4 UST 1796.	No, not applicable as admitted for Duration of Status 8 CFR 214.1(c)(3)(v)	Yes. Files Form I-539, 8 CFR 248.1(a)	No. INA 102; 22 CFR 41.21(d)

Table 4. Summary of Nonimmigrant Categories Subject to Public Benefits Condition			
Category	**Eligible to apply for Extension of Stay (i.e. May File Form I-129 or Form I-539)***	**Eligible to apply for Change of Status (i.e. May File Form I-129 or I-Form 539)***	**Subject to Public Benefit Condition under proposed 8 CFR 214.1(a)(3)(iv), 214.1(a)(4)(iv); 248.1(c)(4)**
NATO-3 - Official Clerical Staff Accompanying Representative of Member State to NATO (including any of its Subsidiary Bodies), or Immediate Family Art. 14, 5 UST 1096.	No, not applicable as admitted for Duration of Status 8 CFR 214.1(c)(3)(v)	Yes. Files Form I-539, 8 CFR 248.1(a)	No. INA 102; 22 CFR 41.21(d)
NATO-4 - Official of NATO (Other Than Those Classifiable as NATO1), or Immediate Family Art. 18, 5 UST 1098.	No, not applicable as admitted for Duration of Status 8 CFR 214.1(c)(3)(v)	Yes. Files Form I-539, 8 CFR 248.1(a)	No. INA 102; 22 CFR 41.21(d)
NATO-5 - Experts, Other Than NATO Officials Classifiable Under NATO 4, Employed in Missions on Behalf of NATO, and their Dependents Art. 21, 5 UST 1100.	No, not applicable as admitted for Duration of Status 8 CFR 214.1(c)(3)(v)	Yes. Files Form I-539, 8 CFR 248.1(a)	No. INA 102; 22 CFR 41.21(d)
NATO-6 - Member of a Civilian Component Accompanying a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement; Member of a Civilian Component Attached to or Employed by an Allied Headquarters Under the "Protocol on the Status of International Military Headquarters" Set Up Pursuant to the North Atlantic Treaty; and their Dependents Art. 1, 4 UST 1794; Art. 3, 5 UST 877.	No, not applicable as admitted for Duration of Status 8 CFR 214.1(c)(3)(v)	Yes. Files Form I-539, 8 CFR 248.1(a)	No. INA 102; 22 CFR 41.21(d)
NATO 7 - Attendant, Servant, or Personal Employee of NATO 1, NATO 2, NATO 3, NATO 4, NATO 5, and NATO 6 Classes, or Immediate Family Arts. 12–20, 5 UST 1094–1098	Yes. Files Form I-539, 8 CFR 214.2(s)(1)(ii).	Yes. Files Form I-539, 8 CFR 248.1(a)	No. INA 102; 22 CFR 41.21(d)

Table 4. Summary of Nonimmigrant Categories Subject to Public Benefits Condition			
Category	**Eligible to apply for Extension of Stay (i.e. May File Form I-129 or Form I-539)***	**Eligible to apply for Change of Status (i.e. May File Form I-129 or I-Form 539)***	**Subject to Public Benefit Condition under proposed 8 CFR 214.1(a)(3)(iv), 214.1(a)(4)(iv); 248.1(c)(4)**
O-1 - Alien with Extraordinary Ability in Sciences, Arts, Education, Business or Athletics or Extraordinary Achievement in the Motion Picture or Television Industry O-2 - Essential Support Workers Accompanying and Assisting in the Artistic or Athletic Performance by O-1 INA 101(a)(15)(O).	Yes. Files Form I-129, 8 CFR 214.1(c)(1)	Yes. Files Form I-129, 8 CFR 248.1(a)	Yes.
O-3 - Spouse or Child of O-1 or O-2 INA 101(a)(15)(O).	Yes. Files Form I-539, 8 CFR 214.1(c)(1) and (2)	Yes. Files Form I-539, 8 CFR 248.1(a)	Yes.
P-1 - Internationally Recognized Athlete or Member of Internationally Recognized Entertainment Group P-2 - Artist or Entertainer in a Reciprocal Exchange Program P-3 - Artist or Entertainer in a Culturally Unique Program INA 101(a)(15)(P). P-1S/P-2S/P-3S – Essential Support Workers 8 CFR 214.2(p)	Yes. Files Form I-129, 8 CFR 213.1(c)(3)(i)	Yes. Files Form I-129, 8 CFR 248.1(a)	Yes.
P-4 - Spouse or Child of P-1, P-2, or P-3 INA 101(a)(15)(P).	Yes. Files Form I-539, 8 CFR 214.1(c) (1) and (2)	Yes. Files Form I-539, 8 CFR 248.1(a)	Yes.
Q-1 - Participant in an International Cultural Exchange Program INA 101(a)(15)(Q)(i).	Yes. Files Form I-129, 8 CFR 213.1(c)(3)(i)	Yes. Files Form I-129, 8 CFR 248.1(a)	Yes.
R-1 - Alien in a Religious Occupation INA 101(a)(15)(R).	Yes. Files Form I-129, 8 CFR 213.1(c)(3)(i)	Yes. Files Form I-129, 8 CFR 248.1(a)	Yes.
R-2 - Spouse or Child of R-1 INA 101(a)(15)(R).	Yes. Files Form I-539, 8 CFR 214.1(c)(1) and (2)	Yes. Files Form I-539, 8 CFR 248.1(a)	Yes.

Table 4. Summary of Nonimmigrant Categories Subject to Public Benefits Condition			
Category	**Eligible to apply for Extension of Stay (i.e. May File Form I-129 or Form I-539)***	**Eligible to apply for Change of Status (i.e. May File Form I-129 or I-Form 539)***	**Subject to Public Benefit Condition under proposed 8 CFR 214.1(a)(3)(iv), 214.1(a)(4)(iv); 248.1(c)(4)**
S-5 - Certain Aliens Supplying Critical Information Relating to a Criminal Organization or Enterprise S-6 - Certain Aliens Supplying Critical Information Relating to Terrorism S-7 - Qualified Family Member of S-5 or S-6 INA 101(a)(15)(S).	No. 8 CFR 213.1(c)(3)(vi)	No. 8 CFR 248.2(2) except for change to T and U, 248.2(b) using Form I-914 or I-918	Yes.
T-1 - Victim of a severe form of trafficking in persons INA 101(a)(15)(T).	Yes. Files Form I-539. INA § 214(o)(7)(B); 8 CFR 214.11(l)(1) and (2); 8 CFR 214.1(c)(2).	Yes. Files Form I-539, 8 CFR 248.1(a).	No.
T-2 - Spouse of T-1 T-3 - Child of T-1 T-4 - Parent of T-1 under 21 years of age T-5 - Unmarried Sibling under age 18 of T-1 T-6 - Adult or Minor Child of a Derivative Beneficiary of a T-1 INA 101(a)(15)(T).	Yes. Files Form I-539. INA 214(o)(7)(B); 8 CFR 214.1(c)(2)	Yes. Files Form Files I-539, 8 CFR 248.1(a)	No.
TN - NAFTA Professional INA 214(e)(2)	Yes. Files Form I-129, 8 CFR 214.1(c)(1)	Yes. Files Form Files I-129, 8 CFR 248.1(a)	Yes.
TD - Spouse or Child of NAFTA Professional INA 214(e)(2)	Yes. Files Form I-539, 8 CFR 214.1(c)(2)	Yes. Files Form I-539, 8 CFR 248.1(a)	Yes.
U-1 - Victim of criminal activity U-2 - Spouse of U-1 U-3 - Child of U-1 U-4 - Parent of U-1 under 21 years of age U-5 - Unmarried Sibling under age 18 of U-1 under 21 years of age INA 101(a)(15)(U).	Yes. Files Form I-539, 8 CFR 214.1(c)(2); 8 CFR 214.14(g)(2)	Yes. Files Form I-539, 8 CFR 248.1(a)	No.

Table 4. Summary of Nonimmigrant Categories Subject to Public Benefits Condition			
Category	**Eligible to apply for Extension of Stay (i.e. May File Form I-129 or Form I-539)***	**Eligible to apply for Change of Status (i.e. May File Form I-129 or I-Form 539)***	**Subject to Public Benefit Condition under proposed 8 CFR 214.1(a)(3)(iv), 214.1(a)(4)(iv); 248.1(c)(4)**
V-1 - Spouse of a Lawful Permanent Resident Alien Awaiting Availability of Immigrant Visa V-2 - Child of a Lawful Permanent Resident Alien Awaiting Availability of Immigrant Visa V-3 - Child of a V-1 or V-2 INA 101(a)(15)(V)(i) or INA 101(a)(15)(V)(ii). INA 203(d).	Yes. Files Form I-539, 8 CFR 214.1(c)(2); 8 CFR 214.15(g)(3)	Yes. Files Form I-539, 8 CFR 248.1(a); 214.15(g)(3)	Yes.
W-B - Visa Waiver for visitor for business, W-T - visitor for pleasure, Visa Waiver Program INA 217	No. 8 CFR 214.1(c)(3)(i) and 214.1(c)(3)(viii)	No, except for change to T and U, using Form I-914 or I-918; INA 248.2(b)	Not Applicable

*Includes questions on Form I-129 and Form I-539 about previous applications for or receipt of public benefits, and applicant may be required to File Form I-944 if requested by USCIS. Whether the alien must file an I-129 or an I-539 depends on the status the alien is applying to change to or extend.

BILLING CODE 4410–10–C

3. Adjustment of Status Applicants

In general, an alien who is physically present in the United States may be eligible to apply for adjustment of status before USCIS to that of a lawful permanent resident if the applicant was inspected and admitted or paroled, is eligible to receive an immigrant visa, is admissible to the United States, and has an immigrant visa immediately available at the time of filing the adjustment of status application.[187] As part of the adjustment process, USCIS is responsible for determining whether the applicant has met his or her burden of proof to establish eligibility for the benefit,[188] which includes a determination of whether the alien has demonstrated that no inadmissibility grounds in section 212(a) of the Act apply (or, if they do apply, the alien is eligible for a waiver of the inadmissibility ground). In determining whether the adjustment applicant has demonstrated that he or she is not inadmissible on the public charge ground, DHS proposes to review the mandatory statutory factors together with any required affidavit of support and any other relevant information, in the totality of the circumstances.

Tables 5 through 9 below provide a summary of immigrant categories for adjustment of status and the applicability of the public charge inadmissibility determination to such categories.

BILLING CODE 4410–10–P

[185] This classification can no longer be sought as of December 20, 2009. See the Nursing Relief for Disadvantaged Areas Reauthorization Act of 2005, Public Law 109–423.

[186] J nonimmigrant who are admitted for a specific time period are not eligible for an extension of stay.

[187] *See* INA section 245, 8 U.S.C. 1255. Aliens in removal proceedings before an immigration judge may also apply for adjustment of status pursuant to 8 CFR 1245.

[188] *See* INA section 291, 8 U.S.C. 1361.

Table 5. Applicability of INA 212(a)(4) to Family-Based Adjustment of Status Applications[189]		
Category	**Subject to INA 212(a)(4) and must file Form I-944, Declaration of Self-Sufficiency? ***	**INA 213A and Form I-864, Affidavit of Support Required or Exempt?**
Immediate Relatives of U.S. citizens including spouses, children and parents[190]	Yes. INA 212(a)(4)(A)	Required. INA 212(a)(4)(C)
Family-Based First Preference: Unmarried sons/daughters of U.S. citizens and their children[191]	Yes. INA 212(a)(4)(A)	Required. INA 212(a)(4)(C)
Family-Preference Second: Spouses, children, and unmarried sons/daughters of alien residents[192]	Yes. INA 212(a)(4)(A)	Required. INA 212(a)(4)(C)
Family Preference Third: Married sons/daughters of U.S. citizens and their spouses and children [193]	Yes. INA 212(a)(4)(A)	Required. INA 212(a)(4)(C)
Family Preference Fourth: Brothers/sisters of U.S. citizens (at least 21 years of age) and their spouses and children[194]	Yes. INA 212(a)(4)(A)	Required. INA 212(a)(4)(C)
Fiancé[195] * admitted as nonimmigrant K-1/K2	Yes. INA 212(a)(4)(A)	Required. INA 212(a)(4)(C)
Amerasians based on preference category -born between December 31, 1950 and before October 22, 1982.[196]	Yes. INA 212(a)(4)(A)	Exempt. Amerasian Act, Pub. L. 97-359 (Oct. 22, 1982).
Amerasians, born in Vietnam between 1/1/62-1/1/76 Immediate Relative : AM-6, AR-6 Children Amerasians under Amerasian Homecoming Act, ;Pub. L. 100-202 (Dec. 22, 1987)[197] - born between 1/1/1962-1/1/1976	No. (I-360 and adjustment) Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, Pub. L. 100-202	Exempt. Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, Pub. L. 100-202
IW-6 Spouses, widows or widowers	Yes. INA 212(a)(4)(A)	Exempt. 8 CFR 204.2 and 71 FR 35732.

Table 5. Applicability of INA 212(a)(4) to Family-Based Adjustment of Status Applications[189]		
Category	**Subject to INA 212(a)(4) and must file Form I-944, Declaration of Self-Sufficiency? ***	**INA 213A and Form I-864, Affidavit of Support Required or Exempt?**
Immediate Relative VAWA applicant, including spouses and children[198]	No. INA 212(a)(4)(E)	Exempt. INA 212(a)(4)(E)
First Preference VAWA B-16 Unmarried sons/daughters of U.S. citizens, self-petitioning B-17 Children of B-16	No. INA 212(a)(4)(C)(i)	Exempt. INA 212(a)(4)(C)(i)
Second Preference VAWA applicant, including spouses and children[199]	No. INA 212(a)(4)(C)(i)	Exempt. INA 212(a)(4)(C)(i)
Third Preference VAWA Married son/daughters of U.S. citizen, including spouses and children[200]	No. INA 212(a)(4)(C)(i)	Exempt. INA 212(a)(4)(C)(i)

* If found inadmissible based on the public charge ground, USCIS, at its discretion, may permit the alien to post a public charge bond (Form I-945). A public charge bond may be cancelled (Form I-356) upon the death, naturalization (or otherwise obtaining U.S. citizenship), permanent departure of the alien, or otherwise as outlined in proposed 8 CFR 213.1(g), if the alien did not receive any public benefits as defined in the proposed rule.

Table 6. Applicability of INA 212(a)(4) to Employment-Based Adjustment of Status Applications		
Category	**Subject to INA 212(a)(4) and must file Form I-944, Declaration of Self-Sufficiency?***	**INA 213A, and Form I-864, Affidavit of Support Required or Exempt?**
First Preference : Priority workers[201]	Yes. INA 212(a)(4)(D)	Exempt, unless qualifying relative or entity in which such relative has a significant ownership interest (5% or more)[202] in filed Form I-140. INA 212(a)(4)(D), 8 CFR 213a.1
Second Preference: Professionals with advanced degrees or aliens of exceptional ability[203]	Yes. INA 212(a)(4)(D)	Exempt, unless qualifying relative or entity in which such relative has a significant ownership interest (5% or more) in filed Form I-140. INA 212(a)(4)(D), 8 CFR 213a.1
Third: Skilled workers, professionals, and other workers[204]	Yes. INA 212(a)(4)(D)	Exempt, unless qualifying relative or entity in which such relative has a significant ownership interest (5% or more) in filed Form I-140. INA 212(a)(4)(D), 8 CFR 213a.1
Fifth: I-526 Immigrant Petition by Alien Entrepreneur (EB-5)[205] INA 203(b)(5), 8 CFR 204.6	Yes. INA 212(a)(4)(D)	Not Applicable[206]

* If found inadmissible based on the public charge ground, USCIS, at its discretion, may permit the alien to post a public charge bond (Form I-945). A public charge bond may be cancelled (Form I-356) upon the death, naturalization (or otherwise obtaining U.S. citizenship), r permanent departure of the alien, or upon the fifth year of the alien's anniversary of the adjustment of status, or, if the alien, following the initial grant of lawful permanent resident status, obtains a status that is exempt from the public charge ground of inadmissibility, and provided that the alien did not receive any public benefits as defined in the proposed rule.

Table 7. Applicability of INA 212(a)(4) to Special Immigrant Adjustment of Status Application		
Category	**Subject to INA 212(a)(4) and must file Form I-944, Declaration of Self-Sufficiency? ***	**INA 213A, and Form I-864, Affidavit of Support Required or Exempt?**
Special Immigrant (EB-4)- Religious Workers[207] 8 CFR 204.5(m); INA 101(a)(27)(C)	Yes. INA 212(a)(4)	Not Applicable[208]
Special Immigrant (EB-4) – International employees of US government abroad[209] INA 101(a)(27)(D), 22 CFR 42.32(d)(2)	Yes. INA 212(a)(4)	Not Applicable[210]
Special Immigrant (EB-4) Employees of Panama Canal[211] 22 CFR 42.32(d)(3); INA 101(a)(27)(E), INA 101(a)(27)(F), and INA 101(a)(27)(G)	Yes. INA 212(a)(4)	Not Applicable[212]
Special Immigrant (EB-4) - Foreign Medical School Graduates[213] INA 101(a)(27)(H), INA 203(b)(4)	Yes. INA 212(a)(4)	Not Applicable[214]
Special Immigrant (EB-4) -Retired employees of International Organizations including G-4 International Organization Officer[215] International Organizations (G-4s international organization officer/ Retired G-4 Employee)[216] INA 101(a)(27)(I) and INA 101(a)(27)(L) ; 8 CFR 101.5; 22 CFR 42.32(d)(5); 22 CFR 41.24;22 CFR 41.25	Yes. INA 212(a)(4)	Not Applicable[217]
Special Immigrant (EB-4) -SL-6 Juvenile court dependents, adjustments	No. SIJ are exempt under 245(h).	Not Applicable. INA 245(h)
Special Immigrant (EB-4)- U.S. Armed Forces Personnel[218] INA 101(a)(27)(K)	Yes. INA 212(a)(4)	Not Applicable[219]
Special Immigrant - International Broadcasters[220] INA 101(a)(27)(M) ; 8 CFR 204.13	Yes - INA 212(a)(4)	Not Applicable[221]
Special Immigrant (EB-4) - Special immigrant interpreters who are nationals of Iraq or Afghanistan[222]	No. Section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006, as amended; Public Law 109–163—Jan. 6, 2006, Section 1244(a)(3) of the National Defense	Exempt. Section 602(b)(9) of the Afghan Allies Protection Act of 2009, Title VI of Pub. L. 111-8, 123 Stat. 807, 809 (March 11, 2009) which states that INA 245(c)(2), INA

Table 7. Applicability of INA 212(a)(4) to Special Immigrant Adjustment of Status Application		
Category	**Subject to INA 212(a)(4) and must file Form I-944, Declaration of Self-Sufficiency? ***	**INA 213A, and Form I-864, Affidavit of Support Required or Exempt?**
	Authorization Act for Fiscal Year 2008, as amended ; Pub. L. 110–181 (Jan. 28, 2008) Section 602(b) of the Afghan Allies Protection Act of 2009, as amended section (a)(2)(C), Pub. L. 111-8 (Mar. 11, 2009)	245(c)(7), and INA 245(c)(8) do not apply to special immigrant Iraq and Afghan nationals who were employed by or on behalf of the U.S. government (for Section 602(b) and 1244 adjustment applicants who were either paroled into the United States or admitted as nonimmigrants). See Section 1(c) of Pub. L. 110-36, 121 Stat. 227, 227 (June 15, 2007), which amended Section 1059(d) of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109-163, 119 Stat. 3136, 3444 (January 6, 2006) to state that INA 245(c)(2), INA 245(c)(7), and INA 245(c)(8) do not apply to Iraq or Afghan translator adjustment applicants.

* If found inadmissible based on the public charge ground, USCIS, at its discretion, may permit the alien to post a public charge bond (Form I-945). A public charge bond may be cancelled (Form I-356) upon the death, naturalization (or otherwise obtaining U.S. citizenship), or permanent departure of the alien, if the alien did not receive any public benefits as defined in the proposed rule.

Table 8. Applicability of INA 212(a)(4) to Refugee, Asylee, and Parolee Adjustment of Status Applications		
Category	**Subject to INA 212(a)(4) and must file Form I-944, Declaration of Self-Sufficiency? ***	**INA 213A, and Form I-864, Affidavit of Support Required or Exempt?**
Asylees[223]	No. INA 209(c)	Exempt. INA 209(c)
Indochinese Parolees from Vietnam, Cambodia, and Laos IC-6 Indochinese refugees (Pub. L. 95-145 of 1977) IC-7 Spouses or children of Indochinese refugees not qualified as refugees on their own	No. Section 586, Pub. L. 106-429 (Nov. 6, 2000)	Exempt. Section 586, Pub. L. 106-429 (Nov. 6, 2000)
Polish and Hungarian Parolees (Poland or Hungary who were paroled into the United States from November 1, 1989 to December 31, 1991)[224]	No. Title VI, Subtitle D, Section 646(b), Pub. L. 104-208; 8 CFR 245.12	Exempt. Title VI, Subtitle D, Section 646(b), Pub. L. 104-208; 8 CFR 245.12
Refugees[225]	No. INA 207(c)(3); INA 209(c)	Exempt. INA 207; INA 209(c)
Cuban-Haitian Entrant under IRCA- CH-6, CH-7[226]	No. Section 202, Pub. L. 99-603, 100 Stat. 3359 (1986) (as amended), 8 U.S.C. 1255a.	Exempt. Section 202, Pub. L. 99-603, 100 Stat. 3359 (1986) (as amended), 8 U.S.C. 1255a.
HRIFA - Principal HRIFA Applicant who applied for asylum before December 31, 1995[227]	No. Section 902 Pub. L. 105-277, 112 Stat. 2681 (Oct. 21, 1998), 8 U.S.C. 1255.	Exempt. Section 902 Pub. L. 105-277, 112 Stat. 2681 (Oct. 21, 1998), 8 U.S.C. 1255.

* If found inadmissible based on the public charge ground, USCIS, at its discretion, may permit the alien to post a public charge bond (Form I-945). A public charge bond may be cancelled (Form I-356) upon the death, naturalization (or otherwise obtaining U.S. citizenship), or permanent departure of the alien, if the alien did not receive any public benefits as defined in the proposed rule.

Table 9. Applicability of INA 212(a)(4) to Other Applicants Who Must be Admissible		
Category	**Subject to INA 212(a)(4) and must file Form I-944, Declaration of Self-Sufficiency? ***	**INA 213A, and Form I-864, Affidavit of Support Required or Exempt?**
Diplomats Section 13	Yes. Section 13 of Public Law 85-316 (September 11, 1957), as amended by Public Law 97-116 (December 29, 1981); 8 CFR 245.3.	Exempt, by statute, as they are not listed in INA 212(a)(4) as a category that requires an Affidavit of Support.
Individuals Born in the US under Diplomatic Status (NA-3) 8 CFR 101.3	Yes. INA 212(a)(4)	Exempt. 8 CFR 101.3
Diversity, DV-1 diversity immigrant, spouse and child	Yes. INA 212(a)(4)	Exempt, by statute, as they are not listed in INA 212(a)(4) as a category that requires an Affidavit of Support. Diversity visas are issued under INA 203(c) which do not fall under INA 212(a)(4)(C) or (D).
W-16 Entered without inspection before 1/1/82 W-26 Entered as nonimmigrant and overstayed visa before 1/1/82. Certain Entrants before January 1, 1982	Yes. INA 212(a)(4) (except for certain aged, blind or disabled individuals as defined in 1614(a)(1) of the Social Security Act). INA 245A(b)(1)(C)(i) and (a)(4)(a)) – application for adjustment 42 U.S.C. 1382c(a)(1). Special Rule for determination of public charge - See INA 245A(d)(2)(B)(iii).	Exempt, by statute as they are not listed in INA 212(a)(4) as a category that requires an Affidavit of Support.
T, T-1 victim, spouse, child, parent, sibling INA 101(a)(15)(T), INA 212(d)(13)(A)	Yes. Under INA 212(d)(13)(A), INA 212(a)(4) only does not apply at the nonimmigrant status stage. However, a waiver is available for T nonimmigrant adjustment applicants. INA 245(l)(c) INA 101(a)(15)(T),	Exempt, by statute as they are not listed in INA 212(a)(4) as a category that requires an Affidavit of Support. Adjustment of status based on T nonimmigrant status is under INA 245(l) which does not fall under INA 212(a)(4)(C) or (D).
American Indians - INA 289	No. INA 289	Exempt. INA 289
Texas Band of Kickapoo Indians of the Kickapoo Tribe of Oklahoma, Pub. L. 97-429 (Jan. 8, 1983)	No. Pub. L. 97-429 (Jan. 8, 1983)	Exempt. Pub. L. 97-429 (Jan. 8, 1983)

Table 9. Applicability of INA 212(a)(4) to Other Applicants Who Must be Admissible		
Category	**Subject to INA 212(a)(4) and must file Form I-944, Declaration of Self-Sufficiency? ***	**INA 213A, and Form I-864, Affidavit of Support Required or Exempt?**
KIC - Kickapoo Indian Citizen KIP - Kickapoo Indian Pass		
S (Alien witness or informant)	Yes, but there is a waiver available - INA 245(j); INA 101(a)(15)(S); 8 CFR 214.2(t)(2); 8 CFR 1245.11 (Waiver filed on Form I-854, Inter-Agency Alien Witness and Informant Record)	Exempt. INA 245(j); INA 101(a)(15)(S); 8 CFR 214.2(t)(2); 8 CFR 1245.11 (Waiver filed on I-854, Inter-Agency Alien Witness and Informant Record)
Private Immigration Bill providing for alien's adjustment of status	Dependent on the text of the Private Bill.	Dependent on the text of the Private Bill.
NACARA (202)[228] Principal NC-6, (NC 7-9) spouse and children	No. Section 202(a), Pub. L. 105-100, 111 Stat. 2193 (1997) (as amended), 8 U.S.C. 1255.	Exempt. Section 202(a), Pub. L. 105-100, 111 Stat. 2193 (1997) (as amended), 8 U.S.C. 1255.
NACARA 203 Cancellation of removal (Z-13) Battered spouses or children (Z-14) Salvadoran, Guatemalan and former Soviet bloc country nationals (Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100 (NACARA))	No. Section 203, Pub. L. 105-100, 111 Stat. 2193 (1997) (as amended), 8 U.S.C. 1255.	Exempt. Section 203, Pub. L. 105-100, 111 Stat. 2193 (1997) (as amended), 8 U.S.C. 1255.
Lautenberg, LA-6[229]	No. Section 599E, Pub. L. 101-167, 103 Stat. 1195 (Nov. 21, 1989), 8 U.S.C.A. 1255.	Exempt. Section 599E, Pub. L. 101-167, 103 Stat. 1195 (Nov. 21, 1989), 8 U.S.C.A. 1255.
Registry, Z-66 - Aliens who entered the United States prior to January 1, 1972 and who meet the other conditions	No. INA 249 of the Act and 8 CFR part 249	Exempt. INA 249 of the Act and 8 CFR part 249
U, U-1 Crime Victim, spouse, children and parents, and siblings under INA 245(m)	No. INA 212(a)(4)(E)	Exempt. INA 212(a)(4)(E)
Temporary Protected Status (TPS)	No. 8 CFR 244.3(a)[230]	Exempt. 8 CFR 244.3(a)[231]

* If found inadmissible based on the public charge ground, USCIS, at its discretion, may permit the alien to post a public charge bond (Form I-945). A public charge bond may be cancelled (Form I-356) upon the death, naturalization (or otherwise obtaining U.S. citizenship), or permanent departure of the alien, if the alien did not receive any public benefits as defined in the proposed rule.

[189] Applicants who filed a Form I–485 prior to December 19, 1997 are exempt from the Affidavit of Support requirement. *See* Public Law 104–208, div. C., section 531(b), 110 Stat. 3009–546, 3009–675; 8 CFR 213a.2(a)(2)(i) (adjustment applicants) and 213a.2(a)(2)(ii)(B) (applicants for admission). Aliens who acquired citizenship under section 320 of the Act upon admission to the United States are exempt from submitting an affidavit of support. *See* 8 CFR 213a.2(a)(2)(ii)(E); Child Citizenship Act, Public Law 106–395, section 101, 114 Stat. 1631, 1631 (2000) (amending INA section 320). In addition, the surviving spouses, children, and parents of a deceased member of the military who obtain citizenship posthumously are exempt from a public charge determination. *See* National Defense Authorization Act For Fiscal Year 2004, Public Law 108–136, section 1703(e), 117 Stat. 1392, 1695 (2003).

[190] Including the following categories: IR–6 Spouses; IR–7 Children; CR–7 Children, conditional; IH–8 Children adopted abroad under the Hague Adoption Convention; IH–9 Children coming to the United States to be adopted under the Hague Adoption Convention; IR–8 Orphans

adopted abroad; IR–9 Orphans coming to the United States to be adopted; IR–0 Parents of adult U.S. citizens. Note children adopted abroad generally do not apply for adjustment of status.

[191] Including the following categories: A–16 Unmarried Amerasian sons/daughters of U.S. citizens F–16 Unmarried sons/daughters of U.S. citizens; A–17 Children of A–11 or A–16; F–17 Children of F–11 or F–16; B–17 Children of B–11 or B–16.

[192] Including the following categories: F–26 Spouses of alien residents, subject to country limits; C–26 Spouses of alien residents, subject to country limits, conditional; FX–6 Spouses of alien residents, exempt from country limits; CX–6 Spouses of alien residents, exempt from country limits, conditional; F–27 Children of alien residents, subject to country limits; C–28 Children of -C–26, or C–27, subject to country limits, conditional; B–28 Children of, B–26, or B–27, subject to country limits; F–28 Children of F–26, or F–27, subject to country limits; C–20 Children of C–29, subject to country limits, conditional; B–20 Children of B–29, subject to country limits; F–20 Children of F–29, subject to country limits; C–27 Children of alien residents, subject to country limits, conditional; FX–7 Children of alien residents, exempt from country limits; CX–8 Children of CX–7, exempt from country limits, conditional; FX–8 Children of FX–7, or FX–8, exempt from country limits; CX–7 Children of alien residents, exempt from country limits, conditional; F–29 Unmarried sons/daughters of alien residents, subject to country limits; C–29 Unmarried children of alien residents, subject to country limits, conditional.

[193] Including the following categories: A–36 Married Amerasian sons/daughters of U.S. citizens; F–36 Married sons/daughters of U.S. citizens; C–36 Married sons/daughters of U.S. citizens, conditional; A–37 Spouses of A–31 or A–36; F–37 Spouses of married sons/daughters of U.S. citizens; C–37 Spouses of married sons/daughters of U.S. citizens, conditional; B–37 Spouses of B–31 or B–36; A–38 Children of A–31 or A–36, subject to country limits; F–38 Children of married sons/daughters of U.S. citizens; C–38 Children of C–31 or C–36, subject to country limits, conditional; B–38 Children of B–31 or B–36, subject to country limits.

[194] Includes the following categories: F–46 Brothers/sisters of U.S. citizens, adjustments; F–47 Spouses of brothers/sisters of U.S. citizens, adjustments; F–48 Children of brothers/sisters of U.S. citizens, adjustments.

[195] Includes the following categories: CF–1 Spouses, entered as fiance(e), adjustments conditional; IF–1 Spouses, entered as fiance(e), adjustments.

[196] Includes the following categories: Immediate Relative AR–6 Children, Amerasian, First Preference: A–16 Unmarried Amerasian sons/daughters of U.S. citizens; Third Preference A–36 Married Amerasian sons/daughters of U.S. citizens; See INA 204(f). Note that this program does not have a specific sunset date and technically applicants could apply but should have already applied.

[197] Includes the following categories: AM–1 principal (born between 1/1/1962–1/1/1976); AM–2 Spouse, AM–3 child; AR–1 child of U.S. citizen born Cambodia, Korea, Laos, Thailand, Vietnam. Note that this program does not have a specific sunset date and technically applicants could apply but should have already applied.

[198] Includes the following categories: IB–6 Spouses, self-petitioning; IB–7 Children, self-petitioning; IB–8 Children of IB–1 or IB–6; IB–0 Parents battered or abused, of U.S. citizens, self-petitioning.

[199] Includes the following categories: B–26 Spouses of alien residents, subject to country limits, self-petitioning; BX–6 Spouses of alien residents, exempt from country limits, self-petitioning; B–27 Children of alien residents, subject to country limits, self-petitioning; BX–7 Children of alien residents, exempt from country limits, self-petitioning; BX–8 Children of BX–6, or BX–7, exempt from country limits; B–29 Unmarried sons/daughters of alien residents, subject to country limits, self-petitioning.

[200] Includes the following categories: B–36 Married sons/daughters of U.S. citizens, self-petitioning B–37 Spouses of B–36, adjustments; B–38 Children of B–36, subject to country limits; Third Preference VAWA; B–36 Married sons/daughters of U.S. citizens, self-petitioning; B–37 Spouses of B–36, adjustments B–38 Children of B–36, subject to country limits; Third Preference VAWA; B–37 Spouses of B–36, adjustments; B–38 Children of B–36, subject to country limits.

[201] Includes the following categories: E–16 Aliens with extraordinary ability; E–17 Outstanding professors or researchers; E–18 Certain Multinational executives or managers; E–19 Spouses of E–11, E–12, E–13, E–16, E–17, or E–18; E–10 Children of E–11, E–12, E–13, E–16, E–17, or E–18.

[202] Relative means a husband, wife, father, mother, child, adult son, adult daughter, brother, or sister. Significant ownership interest means an ownership interest of 5 percent or more in a for-profit entity that filed an immigrant visa petition to accord a prospective employee an immigrant status under section 203(b) of the Act. *See* 8 CFR.213a.1.

[203] Includes the following categories: E–26 Professionals holding advanced degrees; ES–6 Soviet scientists; E–27 Spouses of E–21 or E–26; E–28 Children of E–21 or E–26.

[204] Includes the following categories: EX–6 Schedule—A worker; EX–7 Spouses of EX–6; EX–8 Children of EX–6; E–36 Skilled workers; E–37 Professionals with baccalaureate degrees; E–39 Spouses of E–36, or E–37; E–30 Children of E–36, or E–37; EW–8 Other workers; EW–0 Children of EW–8; EW–9 Spouses of EW–8; EC–6 Chinese Student Protection Act (CSPA) principals; EC–7 Spouses of EC–6; EC–8 Children of EC–6.

[205] Includes the following categories: C–56 Employment creation, not in targeted area, adjustments, conditional E–56 Employment creation; I–56 Employment creation, targeted area, pilot program, adjustments, conditional; T–56 Employment creation, targeted area, conditional; R–56 Investor pilot program, not targeted, conditional; C–57 Spouses of C–51 or C–56, conditional; E–57 Spouses of E–51 or E–56; I–57 Spouses of I–51 or I–56, conditional; T–57 Spouses of T–51 or T–56, conditional; R–57 Spouses of R–51 or R–56, conditional; C–58 Children of C–51 or C–56, conditional; E–58 Children of E–51 or E–56; I–58 Children of I–51 or I–56, conditional; T–58 Children of T–51 or T–56, conditional; R–58 Children of R–51 or R–56, conditional.

[206] EB–5 applicants are Form I–526, Immigrant Petition by Alien Entrepreneur, self-petitioners. The regulation at 8 CFR 213a.1 relates to a person having ownership interest in an entity filing for a prospective employee and therefore the requirements for an affidavit of support under INA section 212(a)(4)(D) is inapplicable.

[207] Includes the following categories: SD–6 Ministers; SD–7 Spouses of SD–6; SD–8 Children of SD–6; SR–6 Religious workers; SR–7 Spouses of SR–6; SR–8 Children of SR–6.

[208] For this category, although the applicants are subject to public charge under INA section 212(a)(4), the employers (for example, a religious institution), would generally not be a relative of the alien or a for-profit entity and therefore the requirements for an affidavit of support under INA section 212(a)(4)(D) is inapplicable.

[209] Includes the following categories: SE–6 Employees of U.S. government abroad, adjustments; SE–7 Spouses of SE–6; SE–8 Children of SE–6. Note that this program does not have a specific sunset date and technically applicants could apply but should have already applied.

[210] For this category, although the applicants are subject to public charge under INA section 212(a)(4), the employers (for example, the U.S. armed forces), would generally not be a relative of the alien or a for-profit entity and therefore the requirements for an affidavit of support under INA section 212(a)(4)(D) is inapplicable.

[211] Includes the following categories: SF–6 Former employees of the Panama Canal Company or Canal Zone Government; SF–7 Spouses or children of SF–6; SG–6 Former U.S. government employees in the Panama Canal Zone; SG–7 Spouses or children of SG–6; SH–6 Former employees of the Panama Canal Company or Canal Zone government, employed on April 1, 1979; SH–7 Spouses or children of SH–6. Note that this program does not have a specific sunset date and technically applicants could apply but should have already applied.

[212] For this category, although the applicants are subject to public charge under INA section 212(a)(4), the employers generally would not be a relative of the alien or a for-profit entity and therefore the requirements for an affidavit of support under INA section 212(a)(4)(D) is inapplicable.

[213] Includes the following categories: SJ–6 Foreign medical school graduate who was licensed to practice in the United States on Jan. 9, 1978; SJ–7 Spouses or children of SJ–6; Note that this program does not have a specific sunset date and technically applicants could apply but should have already applied.

[214] For this category, although the applicants are subject to public charge under INA section 212(a)(4), the employers would generally not be a relative of the alien or a for-profit entity and therefore the requirements for an affidavit of support under INA section 212(a)(4)(D) is inapplicable.

[215] Includes the following categories: SK–6 Retired employees of international organizations; SK–7 Spouses of SK–1 or SK–6; SK–8 Certain unmarried children of SK–6; SK–9 Certain surviving spouses of deceased international organization employees.

[216] Includes SN–6 Retired NATO–6 civilian employees; SN–7 Spouses of SN–6; SN–9 Certain surviving spouses of deceased NATO–6 civilian employees; SN–8 Certain unmarried sons/daughters of SN–6.

[217] For this category, although the applicants are subject to public charge under INA section 212(a)(4), the employers would generally not be a relative of the alien or a for-profit entity and therefore the requirements for an affidavit of support under INA section 212(a)(4)(D) is inapplicable.

[218] Includes the following categories: SM–6 U.S. Armed Forces personnel, service (12 years) after 10/1/91 SM–9 U.S. Armed Forces personnel, service (12 years) by 10/91; SM–7 Spouses of SM–1 or SM–6; SM–0 Spouses or children of SM–4 or SM–9; SM–8 Children of SM–1 or SM–6.

[219] For this category, although the applicants are subject to public charge under INA section 212(a)(4), the employers would generally not be a relative of the alien or a for-profit entity and therefore the requirements for an affidavit of support under INA section 212(a)(4)(D) is inapplicable.

[220] Includes the following categories: BC–6 Broadcast (IBCG of BBG) employees; BC–7 Spouses of BC–1 or BC–6; BC–8 Children of BC–6.

[221] For this category, although the applicants are subject to public charge under INA section 212(a)(4), the employers would generally not be a relative of the alien or a for-profit entity and therefore the requirements for an affidavit of

Continued

BILLING CODE 4410–10–C

4. Exemptions

The public charge inadmissibility ground does not apply to all applicants who are seeking a visa, admission, or adjustment of status.[232] Congress has specifically exempted certain groups from the public charge inadmissibility ground and DHS regulations permit waivers of the ground for certain other groups, as follows:

- Refugees and asylees at the time of admission and adjustment of status to lawful permanent resident, pursuant to sections 207(c)(3) and 209(c) of the Act, 8 U.S.C. 1157(c)(3), 1159(c);
- Amerasian immigrants at admission, pursuant to in section 584(a)(2) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, Public Law 100–202, 101 Stat. 1329–183 (Dec. 22, 1987) (as amended), 8 U.S.C. 1101 note 5;
- Afghan and Iraqi Interpreter, or Afghan or Iraqi national employed by or on behalf of the U.S. Government, pursuant to section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006 Public Law 109–163 (Jan. 6, 2006), section 602(b) of the Afghan Allies Protection Act of 2009, as amended Public Law 111–8 (Mar. 11, 2009), and section 1244(g) of the National Defense Authorization Act for Fiscal Year 2008, as amended Public Law 110–181 (Jan. 28, 2008);
- Cuban and Haitian entrants at adjustment, pursuant to section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, 100 Stat. 3359 (Jan. 3, 1986) (as amended), 8 U.S.C. 1255a, note;
- Aliens applying for adjustment of status, pursuant to the Cuban Adjustment Act, Public Law 89–732 (Nov. 2, 1966) as amended; 8 U.S.C. 1255, note;
- Nicaraguans and other Central Americans who are adjusting status, pursuant to section 202(a) and section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105–100, 111 Stat. 2193 (Nov. 19, 1997) (as amended), 8 U.S.C. 1255 note;
- Haitians who are adjusting status, pursuant to section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Public Law 105–277, 112 Stat. 2681 (Oct. 21, 1998), 8 U.S.C. 1255 note;
- Lautenberg parolees, pursuant to section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Public Law 101–167, 103 Stat. 1195 (Nov. 21, 1989), 8 U.S.C.A. 1255 note;
- Special immigrant juveniles, pursuant to section 245(h) of the Act, 8 U.S.C. 1255(h);
- Aliens who entered the United States prior to January 1, 1972, and who meet the other conditions for being granted lawful permanent residence under section 249 of the Act, 8 U.S.C. 1259, and 8 CFR part 249;
- Aliens applying for Temporary Protected Status, pursuant to section 244(c)(2)(ii) of the Act, 8 U.S.C. 1254a(c)(2)(ii) and 8 CFR 244.3(a);[233]
- A nonimmigrant described in section 101(a)(15)(A)(i) and (A)(ii) of the Act, 8 U.S.C. 1101(a)(15)(A)(i) and (A)(ii) (Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family or Other Foreign Government Official or Employee, or Immediate Family), pursuant to section 102 of the Act, 8 U.S.C. 1102, 22 CFR 41.21(d);
- A nonimmigrant classifiable as C–2 (alien in transit to U.N. Headquarters) or C–3 (foreign government official), pursuant to 22 CFR 41.21(d);
- A nonimmigrant described in section 101(a)(15)(G)(i), (G)(ii), (G)(iii), and (G)(iv), of the Act (Principal Resident Representative of Recognized Foreign Government to International Organization, and related categories),[234] 8 U.S.C. 1101(a)(15)(G)(i), (G)(ii), (G)(iii), and (G)(iv), pursuant to section 102 of the Act, 8 U.S.C. 1102, 22 CFR 41.21(d);
- A nonimmigrant classifiable as a NATO representative and related categories,[235] pursuant to 22 CFR 41.21(d);

support under INA section 212(a)(4)(D) is inapplicable.

[222] Includes the following categories: SI–6 Special immigrant interpreters who are nationals of Iraq or Afghanistan; SI–6, SI–7, SI–8—spouse and child of SI–6; SQ–6 Certain Iraqis and Afghans employed by U.S. Government SQ–6, SQ–7, SQ–8 Spouses and children of SQ–6; SI–6 Special immigrant interpreters who are nationals of Iraq or Afghanistan; SI–7 Spouses of SI–1 or SI–6; SI–8 Children of SI–1 or SI–6.

[223] Including the following categories: AS–6 Asylees; AS–7 Spouses of AS–6; AS–8 Children of AS–6; SY–8 Children of SY–6; GA–6 Iraqi asylees; GA–7 Spouses of GA–6; GA–8 Children of GA–6.

[224] Note that this program does not have a specific sunset date and technically applicants could apply but should have already applied.

[225] Includes the following categories: RE–6 Other refugees (Refugee Act of 1980, Public Law 96–212, 94 Stat. 102); RE–7 Spouses of RE–6; RE–8 Children of RE–6; RE–9 Other relatives.

[226] Note that this program has a sunset date of two years after enactment, however, some cases may still be pending.

[227] Includes the following categories: 1995—HA–6 Principal HRIFA Applicant; Spouse of HA–6, HA–7 and Child of HA–6, HA–8; Unmarried Son or Daughter 21 Years of Age or Older of HA–6, HA–9 Principal HRIFA Applicant paroled into the United States before December 31, 1995- HB–6; Spouse of HB–6, HB–7; Child of HB–6, HB–8; Unmarried Son or Daughter 21 Years of Age or Older of HB–6 HB–9; Principal HRIFA Applicant who arrived as a child without parents in the United States HC–6; Spouse of HC–6, HC–7; Child of HC–6, HC–8; Unmarried Son or Daughter 21 Years of Age or Older of HC–6, HC–9; Principal HRIFA Applicant child who was orphaned subsequent to arrival in the United States HD–6, Spouse of HD–6, HD–7; Child of HD–6, HD–8; Unmarried Son or Daughter 21 Years of Age or Older of HD–6, HD–9 Principal HRIFA Applicant child who was abandoned subsequent to arrival and prior to April 1, 1998—HE–6; Spouse of HE–6, HE–7; Child of HE–6, HE–8; Unmarried Son or Daughter 21 Years of Age or Older of HE–6, HE–9. Note that this program has a sunset date of March 31, 2000; however, dependents may still file for adjustment of status.

[228] Note that this program has a sunset date of April 1, 2000; however, some cases may still be pending.

[229] Note that this program sunset date of September 30, 2014, only applies to parole. Eligible applicants may still apply for adjustment of status.

[230] INA section 244(c)(2)(ii), 8 U.S.C. 1254a(c)(2)(ii), authorizes DHS to waive any section 212(a) ground, except for those that Congress specifically noted could not be waived.

[231] *See* INA section 244(c)(2)(ii), 8 U.S.C. 1254a(c)(2)(ii).

[232] *See* proposed 8 CFR 212.23(a).

[233] INA section 244(c)(2)(ii), 8 U.S.C. 1254a(c)(2)(ii), authorizes DHS to waive any INA section 212(a), 8 U.S.C. 1182(a) ground, except for those that Congress specifically noted could not be waived.

[234] Includes the following categories: G–1—Principal Resident Representative of Recognized Foreign Government to International Organization, Staff, or Immediate Family; G–2—Other Representative of Recognized Foreign Member Government to International Organization, or Immediate Family; G–3—Representative of Non-recognized or Nonmember Foreign Government to International Organization, or Immediate Family; G–4—International Organization Officer or Employee, or Immediate Family; G–5—Attendant, Servant, or Personal Employee of G–1 through G–4, or Immediate Family.

[235] Includes the following categories: NATO 1—Principal Permanent Representative of Member State to NATO (including any of its Subsidiary Bodies) Resident in the U.S. and Resident Members of Official Staff; Secretary General, Assistant Secretaries General, and Executive Secretary of NATO; Other Permanent NATO Officials of Similar Rank, or Immediate Family; NATO 2—Other Representative of member state to NATO (including any of its Subsidiary Bodies) including Representatives, Advisers, and Technical Experts of Delegations, or Immediate Family; Dependents of Member of a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement or in Accordance with the provisions of the ''Protocol on the Status of International Military Headquarters''; Members of Such a Force if Issued Visas; NATO 3—Official Clerical Staff Accompanying Representative of Member State to NATO (including any of its Subsidiary Bodies), or Immediate Family; NATO–4—Official of NATO (Other Than Those Classifiable as NATO–1), or Immediate Family; NATO–5—Experts, Other Than NATO Officials Classifiable Under NATO–4, Employed in Missions on Behalf of NATO, and their Dependents; NATO 6—Member of a Civilian Component Accompanying a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement; Member of a Civilian Component Attached to or Employed by an Allied Headquarters Under the ''Protocol on the Status of International Military Headquarters'' Set Up Pursuant to the North Atlantic Treaty; and their

• A nonimmigrant described in section 101(a)(15)(T) of the Act (Victim of Severe Form of Trafficking), 8 U.S.C. 1101(a)(15)(T), pursuant to section 212(d)(13)(A) of the Act, 8 U.S.C. 1182(d)(13)(A), at time of admission;

• An applicant for, or who is granted, nonimmigrant status under section 101(a)(15)(U) of the Act, 8 U.S.C. 1101(a)(15)(U) (Victim of Criminal Activity), pursuant to section 212(a)(4)(E)(ii) of the Act, 8 U.S.C. 1182(a)(4)(E)(ii);

• Nonimmigrants who were admitted under section 101(a)(15)(U) (Victim of Criminal Activity) of the Act, 8 U.S.C. 1101(a)(15)(U), at the time of their adjustment of status under section 245(m) of the Act, 8 U.S.C. 1155(m), and 8 CFR 245.24;

• An alien who is a VAWA self-petitioner as defined in section 101(a)(51) of the Act, 8 U.S.C. 1101, pursuant to section 212(a)(4)(E)(i) of the Act, 8 U.S.C. 1182(a)(4)(E)(i);

• A qualified alien described in section 431(c) of the PRWORA of 1996 (8 U.S.C. 1641(c)) (certain battered aliens as qualified aliens), pursuant to section 212(a)(4)(E)(iii) of the Act, 8 U.S.C. 1182(a)(4)(E)(iii);

• Applicants adjusting status under section National Defense Authorization Act For Fiscal Year 2004, Public Law 108–136, 117 Stat. 1392 (Nov. 24, 2003) (posthumous benefits to surviving spouses, children, and parents);

• American Indians Born in Canada, pursuant to section 289 of the Act, 8 U.S.C. 1359; and

• Nationals of Vietnam, Cambodia, and Laos adjusting status, pursuant to section 586 of Public Law 106–429 (Nov. 1, 2000).

In general, the aforementioned classes of aliens are vulnerable populations of immigrants and nonimmigrants. Some have been persecuted or victimized and others have little to no private support network in the United States. These individuals tend to require government protection and support. Admission of these aliens also serves distinct public policy goals separate from the general immigration system. Other legal provisions may permit waivers of public charge provisions under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4).

5. Waivers

The proposed regulation at 8 CFR 212.23(b) lists the categories of applicants Congress has authorized to apply for waivers of the public charge inadmissibility ground, as follows:

• Nonimmigrants who were admitted under section 101(a)(15)(T) of the Act, 8 U.S.C. 1101(a)(15)(T) (Victims of Severe Form of Tracking in Persons) at the time of their adjustment of status under section 245(l)(2)(A) of the Act, 8 U.S.C. 1255(l)(2)(A);

• S (alien witness or informant) nonimmigrants described in section 101(a)(15)(S), of the Act, 8 U.S.C. 1101(a)(15)(S);

• Applicants for admission and adjustment of status under section 245(j) of the Act, 8 U.S.C. 1255(j) (alien witness or informant); and

• Other waivers of the public charge inadmissibility provisions in section 212(a)(4) of the Act permissible under the law.

B. Definitions of Public Charge and Related Terms

DHS proposes to add several definitions that apply to public charge inadmissibility determinations.

1. Public Charge

The term ''public charge,'' as used in section 212(a)(4) of the Act, is not defined.[236] DHS is proposing to define a public charge as an alien who receives one or more public benefits, as defined in 8 CFR 212.21(b).[237] DHS believes that its proposed definition of public charge is consistent with legislative history, case law, and the ordinary meaning of public charge.

Consistent with the public charge inadmissibility statute[238] and Congressional objectives announced in PRWORA, DHS proposes that aliens subject to the public charge inadmissibility ground[239] should ''not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations.''[240]

There is a scarcity of legislative guidance and case law defining public charge. Legislative history, however, suggests a link between public charge and the receipt of public benefits. According to a 1950 Senate Judiciary Committee report, which preceded the passage of the 1952 Act, a Senate subcommittee highlighted concerns raised by an immigration inspector about aliens receiving old age assistance. The Senate subcommittee recommended against establishing a strict definition of the term public charge by law. Because the elements that could constitute any given individual's likelihood of becoming a public charge vary, the subcommittee instead recommended that the determination of whether an alien is likely to become a public charge should rest within the discretion of consular officers and the Commissioner.[241]

Before Congress passed IIRIRA in 1996, debates on public charge exclusion and deportation grounds considered the significance of an alien's use of public benefits and self-sufficiency.[242] One Senator opined that immigrants, upon seeking admission, make a ''promise to the American people that they will not become a burden on the taxpayers,''[243] and expressed that it is not ''unreasonable for the taxpayers of this country to require recently arrived immigrants to depend on their sponsors for the first 5 years under all circumstances if the sponsor has the assets.''[244] Congress through PRWORA[245] further emphasized that ''the availability of public benefits not constitute an incentive for immigration to the United States.''[246]

Absent a clear statutory definition, some courts and administrative authorities have tied public charge to receipt of public benefits without quantifying the level of public support or the type of public support required. For example, in analyzing the term public charge in the context of deportability under section 19 of the

Dependents; NATO–7—Attendant, Servant, or Personal Employee of NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, and NATO–6 Classes, or Immediate Family.

[236] *See* INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

[237] *See* proposed 8 CFR 212.21(a) and (c).

[238] *See* INA section 212(a)(4), 8 U.S.C. 1182(a)(4) (emphasis added). The alien is inadmissible if he or she ''is *likely at any time to become* a public charge.''

[239] Aliens subject to the public charge ground of inadmissibility are aliens outside the United States seeking admission to the country, seeking a visa to permit them to apply for admission as a nonimmigrant or immigrant to the United States, or in the United States seeking to adjust status to that of lawful permanent residents.

[240] *See* 8 U.S.C. 1601(2)(A).

[241] *See* The 1950 Omnibus Report of the Senate Judiciary Committee, S. Rep. No. 81–1515, at 349 (1950); *see also Matter of Harutunian,* 14 I&N Dec. 583 (Reg'l Comm'r 1974).

[242] *See* 142 Cong. Rec. S4609 (May 2, 1996) (statement of Sen. Byrd) (''[S]elf-sufficiency will be the watchword for those coming to the United States. By making noncitizens ineligible for Federal means-tested programs, and by 'deeming' a sponsor's income attributable to an immigrant, the American taxpayer will no longer be financially responsible for new arrivals.''), *available at https://www.congress.gov/crec/1996/05/02/CREC-1996-05-02-pt1-PgS4592.pdf.*

[243] 142 Cong. Rec. S4495 (May 1, 1996) (statement of Sen. Simon), *available at https://www.congress.gov/crec/1996/05/01/CREC-1996-05-01-pt1-PgS4457.pdf.*

[244] 142 Cong. Rec. S4495 (May 1, 1996) (statement of Sen. Simon), *available at https://www.congress.gov/crec/1996/05/01/CREC-1996-05-01-pt1-PgS4457.pdf.*

[245] 8 U.S.C. 1601(2)(A).

[246] 8 U.S.C. 1601(2)(B).

Immigration Act of 1917,[247] the U.S. District Court for the Northern District of California in *Ex parte Kichmiriantz* explained that public charge should be interpreted as ''a money charge upon, or an expense to, the public for support and care.'' [248] The court made clear that the money charge or expense must be upon the public, rather than relatives, but did not specifically identify how much public support renders a person a public charge. Similarly, the U.S. District Court for the Northern District of New York and the U.S. District Court for the Southern District of New York, in *Ex parte Mitchell* and *In re Keshishian* respectively, indicated that a public charge is one who is supported at public expense without qualifying or quantifying the level of support at public expense necessary.[249] Furthermore, when the Fifth Circuit Court of Appeals considered criminal misconduct and imprisonment within the context of public charge in *Coykendall* v. *Skrmetta,* the court opined: ''It cannot well be supposed that the words in question were intended to refer to anything other than a condition of dependence on the public for support.'' [250] The Second Circuit Court of Appeals, in *Iorio* v. *Day,* likewise stated: ''The language (sic) itself, 'public charge,' suggests rather dependency than imprisonment.'' [251] Neither circuit court elaborated on the degree of dependence required to sustain a public charge finding.

In *Matter of Martinez-Lopez,* the Attorney General indicated that public support or the burden of supporting the alien being cast on the public was a fundamental consideration in public charge inadmissibility determinations.[252] While an alien's past receipt of welfare alone does not establish that he or she is likely to become a public charge, case law strongly suggests that an alien's ability or inability to remedy his or her past or current reliance on public welfare for financial support plays a critical role in the outcome of a public charge inadmissibility determination.[253] For example, in *Matter of Perez,* the BIA acknowledged the respondent's ability to remedy her reliance on welfare in determining that she may be able to overcome the public charge ground inadmissibility ground in a prospective application for a visa.[254] On the other hand, in *Matter of Harutunian* and *Matter of Vindman,* the respondents failed to show a capacity to overcome their dependence on public support.[255] INS expected them to continue receiving public support and determined that they were inadmissible as public charges.[256]

Bearing in mind the operative legislative history and case law examined above, DHS is proposing a new definition of public charge.[257] The definitions cited in the 1999 Interim Field Guidance and proposed rule indicates that a person becomes a public charge when he or she is committed to the care, custody, management, or support of the public, but DHS does not believe that these definitions suggest or require a primary dependence on the government in order for someone to be a public charge.[258] DHS believes that a person should be considered a public charge based on the receipt of financial support from the general public through government funding (*i.e.,* public benefits).

This is consistent with various dictionary definitions of public charge and ''charge'' also support a definition that involves the receipt of public benefits. The current edition of the Merriam-Webster Dictionary defines public charge simply as ''one that is supported at public expense.'' [259] Black's Law Dictionary (6th ed.) further defines public charge as ''an indigent; a person whom it is necessary to support at public expense by reason of poverty alone or illness and poverty.'' [260] In addition, the term ''charge'' is defined in Merriam-Webster Dictionary as ''a person or thing committed into the care of another'' [261] and Black's Law Dictionary defines charge as ''a person or thing entrusted to another's care,'' *e.g.,* ''a charge of the estate.'' [262] These definitions generally suggest that an impoverished or ill individual who receives public benefits for a substantial component of their support and care can be reasonably viewed as being a public charge. The proposed definition of public charge is also consistent with the concept of an indigent, which is defined as ''one who is needy and poor . . . and ordinarily indicates one who is destitute of means of comfortable subsistence so as to be in want.'' [263] DHS believes its proposed definition reflects Congress's intent in having aliens be self-sufficient and not reliant on the government (*i.e.,* public benefits) for assistance to meet their needs.

2. Public Benefit

DHS proposes to define public benefit [264] to include a specific list of cash aid and noncash medical care, housing, and food benefit programs where either (1) the cumulative value of one or more such benefits that can be monetized (*i.e.,* where DHS can determine the cash value of such benefit) exceeds 15 percent of the Federal Poverty Guidelines (FPG) for a household of one within a period of 12 consecutive months based on the per-month FPG for the months during which the benefits are received (hereafter referred to as the 15 percent of FPG or the proposed 15 percent standard or threshold); or (2) for benefits that cannot be monetized, the benefits are received for more than 12 months in the aggregate within a 36-month period. The proposed definition also addresses circumstances where an alien receives a combination of monetizable benefits equal to or below the 15 percent threshold together with one or more benefits that cannot be monetized. In such cases, DHS proposes that the threshold for duration of receipt of the non-monetizable benefits would be 9 months in the aggregate within a 36-month period.[265]

As proposed in this rule, DHS would consider the following public benefits:

[247] Section 19 of the Immigration Act of 1917 addresses aliens who are deportable within five years of entry.

[248] 283 F. 697, 698 (N.D. Cal. 1922).

[249] *See Ex parte Mitchell* 256 F. 230, 234 (N.D. NY 1919) and *In re Keshishian* 299 F. 804 (S.D. NY 1924).

[250] *See Coykendall* v. *Skrmetta* 22 F.2d 121 (5th Cir. 1927).

[251] *See Iorio* v. *Day* 34 F.2d 921 (2d Cir. 1929).

[252] *See Matter of Martinez-Lopez,* 10 I&N Dec. 409, 421 (Att'y Gen. 1964)

[253] *See, e.g., Matter of Vindman,* 16 I&N Dec. 131 (Reg'l Comm'r 1977); *Matter of Perez,* 15 I&N Dec. 136 (BIA 1974); *Matter of Harutunian,* 14 I&N Dec. 583 (Reg'l Comm'r 1974).

[254] *See Matter of Perez,* 15 I&N Dec. at 137.

[255] *See Matter of Harutunian,* 14 I&N Dec. at 590 and *Matter of Vindman,* 16 I&N Dec. at 132.

[256] *See id.*

[257] *See, e.g., Taniguchi* v. *Kan Pac. Saipan, Ltd.,* 566 U.S. 560, 566 (2012) (''When a term goes undefined in statute, we give the term its ordinary meaning.'').

[258] DHS acknowledges the importance of increasing access to health care and helping people to become self-sufficient in certain contexts (such as with respect to other agencies' administration of government assistance programs). The INA, however, does not dictate advancement of those goals in the context of public charge inadmissibility determinations.

[259] Merriam-Webster Online Dictionary, *Definition of Public Charge, https://www.merriam-webster.com/dictionary/public%20charge* (last visited Sept. 4, 2018).

[260] *Black's Law Dictionary* 233 (6th ed. 1990), *available at http://www.republicsg.info/dictionaries/1990_black's-law-dictionary-edition-6.pdf.*

[261] Merriam-Webster Online Dictionary, *Definition of Charge, https://www.merriam-webster.com/dictionary/charge* (last updated Sept. 5, 2018).

[262] *Black's Law Dictionary* Charge (10th ed. 2014).

[263] *Black's Law Dictionary* 773 (6th ed. 1990), *available at http://www.republicsg.info/dictionaries/1990_black's-law-dictionary-edition-6.pdf.*

[264] *See* proposed 8 CFR 212.21(b).

[265] *See* proposed 8 CFR 212.21(c).

• Monetizable benefits:

○ Any Federal, State, local, or tribal cash assistance [266] for income maintenance, including: Supplemental Security Income (SSI),[267] Temporary Assistance for Needy Families (TANF),[268] and Federal, State or local cash benefit programs for income maintenance (often called ''General Assistance'' in the State context, but which may exist under other names);

○ Benefits that can be monetized in accordance with proposed 8 CFR 212.24:

• Supplemental Nutrition Assistance Program (SNAP, or formerly called ''Food Stamps''), 7 U.S.C. 2011 to 2036c;

• Public housing defined as Section 8 Housing Choice Voucher Program; [269]

• Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation); [270] and

• Non-cash benefits that cannot be monetized:

○ Benefits paid for by Medicaid, 42 U.S.C. 1396 *et seq.,* except for emergency medical conditions as prescribed in in section 1903(v) of Title XIX of the Social Security Act, 42 U.S.C. 1396b(v), 42 CFR 440.255(c), and for services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA); and benefits provided to foreign-born children of U.S. citizen parents;

○ Premium and Cost Sharing Subsidies for Medicare Part D; [271] Benefits provided for institutionalization for long-term care at government expense;

○ Subsidized Housing under the Housing Act of 1937, 42 U.S.C. 1437 *et seq.*

(a) Types of Public Benefits

In formulating the proposed definition of public benefits, DHS contemplated pertinent case law, the definition of public benefits in PRWORA, and the treatment of certain public benefits under the current public charge policy. The cases examined draw a distinction between the types of public benefits that are appropriately considered in public charge determinations, and the types that are not. In *Matter of Harutunian,* an INS Regional Commissioner noted a fundamental difference between consideration of ''individualized public support to the needy'' and ''essentially supplementary benefits directed to the general welfare of the public as a whole.'' [272] The BIA similarly observed a distinction between individualized receipt of welfare benefits and ''the countless municipal and State services which are provided to all residents, alien and citizen alike, without specific charge of the municipality or the State, and which are paid out of the general tax fund'' in assessing the relevance of receipt of a government benefit or service to public charge determinations.[273] Specific public benefits considered relevant to public charge determinations have included old age assistance, Supplemental Security Income (SSI), and receipt of ''public funds from the New York Department of Social Services.'' [274]

PRWORA, with certain exceptions, defined Federal public benefits as ''any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and . . . any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.'' [275] DHS believes the definition of public benefits used in PRWORA is in some respects too broad for public charge inadmissibility determinations. The principal reason PRWORA's definition does not work in the public charge inadmissibility determination is that it includes grants, contracts, and licensures that are transactional in nature and may involve the exchange of government resources for value provided by the alien.[276] Because they are value-exchanged benefits and do not evidence a lack of self-sufficiency, DHS does not believe that grants, contracts, and licensures are appropriate for consideration in public charge inadmissibility determinations.

Certain cash aid and non-cash benefits directed toward food, housing, and healthcare, on the other hand, are directly relevant to public charge inadmissibility determinations. Food, shelter, and necessary medical treatment are basic necessities of life. A person who needs the public's assistance to provide for these basic necessities is not self-sufficient.

DHS proposes to consider specific public benefit programs as part of the public charge inadmissibility analysis. Consistent with the 1999 Interim Field Guidance, DHS is proposing to consider all federal, state, local, and tribal cash assistance for income maintenance as part of the public benefits definition. The receipt of these public benefits indicates that the recipient, rather than being self-sufficient, needs the government's assistance to meet basic living requirements such as housing, food, and medical care. Therefore, DHS believes that continuing to consider these benefits in the public charge inadmissibility consideration is appropriate.[277]

DHS also proposes consideration of certain non-cash benefits, because receipt of such benefits is relevant to determining whether an alien is self-sufficient. DHS recognizes that the universe of non-cash benefits is quite large, and that some benefits are more commonly used, at greater taxpayer expense, than others. In addition, incorporating specific non-cash benefit programs into the public charge inadmissibility determination entails certain indirect costs—for instance, as a result of a final rule, the benefits-granting agency may make changes to forms or to enrollment or disenrollment procedures. In light of these considerations, and to provide consistency in adjudications and appropriate certainty for aliens and benefits-granting agencies, DHS proposes to incorporate consideration of a limited list of non-cash benefits in the public charge inadmissibility determination context. Specifically, as indicated above, DHS would consider the following non-cash benefits: Nonemergency Medicaid, Premium and Cost Sharing Subsidies for Medicare Part D; the Supplemental Nutrition Assistance Program (SNAP); benefits provided for institutionalization for

[266] Cash assistance would include any government assistance in the form of cash, checks or other forms of money transfers, or instruments.

[267] *See* 42 U.S.C. 1381–1383f

[268] *See* 42 U.S.C. 601–619.

[269] *See* 24 CFR part 984; 42 U.S.C. 1437f and 1437u.

[270] See 24 CFR parts 5, 402, 880–884 and 886.

[271] *See* 42 U.S.C. 1395w–14.

[272] *See Matter of Harutunian,* 14 I&N Dec. 583, 589 (Reg'l Comm'r 1974).

[273] *See Matter of B —,* 3 I&N Dec. 323, 324–25 (BIA 1948).

[274] *See Matter of Harutunian* 14 I&N Dec. 583, 590 (Reg'l Comm'r 1974) (considering old age assistance for public charge excludability purposes); *Matter of Vindman,* 16 I&N Dec. 131, 132 (Reg'l Comm'r 1977) (receipt of public funds from the New York Department of Social Services).

[275] *See* 8 U.S.C. 1611(c)(1) and (2).

[276] *See* 8 U.S.C. 1611(c).

[277] Not all cash assistance would qualify as cash assistance for income maintenance under the proposed rule. For instance, DHS would not consider Stafford Act disaster assistance, including financial assistance provided to individuals and households under Individual Assistance under the Federal Emergency Management Agency's Individuals and Households Program (42 U.S.C. 5174) as cash assistance for income maintenance. The same would hold true for comparable disaster assistance provided by State, local, or tribal governments. Other categories of cash assistance that are not intended to maintain a person at a minimum level of income would similarly not fall within the definition.

long-term care at government expense; and housing programs, including Section 8 Housing Assistance under the Housing Choice Voucher Program, Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation), and Subsidized Public Housing.

Cash aid and non-cash benefits directed toward food, housing, and healthcare account for significant federal expenditure on low-income individuals and bear directly on self-sufficiency. Table 10 illustrates the estimated average annual public benefits payments and average annual benefit for each assistance program under consideration in this rule.

Table 10. Public Benefit Programs under Consideration for Public Charge Purposes[278]

Program	Average Annual Public Benefits Payments[279]	Average Annual Benefit[280]	Included in Proposal?
Medicaid[281]	$477,395,691,240	$7,426.59 per person	Yes
Supplemental Nutrition Assistance Program (SNAP)	$69,192,042,274	$1,527.59 per person	Yes
Supplemental Security Income (SSI)	$54,743,370,400	$6,593.72 per person	Yes
Federal Rental Assistance[282]	$41,020,000,000	$8,121.16 per household	Yes
Low Income Subsidy (LIS) for Medicare Part D Prescription Drug Coverage[283]	$25,400,000,000	$2,099.17 per person	Yes
Children's Health Insurance Program (CHIP)	$15,026,000,000[284]	$2,324.52 per person[285]	Being Considered, Requesting Comments
Temporary Assistance for Needy Families (TANF) (cash aid only)	$4,389,219,525	$1,272.56	Yes

In addition to federal expenditure impact, participation rates in these cash and non-cash benefits programs are significant. In fact, participation rates in some non-cash programs are far higher than participation rates in some cash programs, regardless of a person's immigration status or citizenship. Using the 2014 Panel of the Survey of Income and Program Participation (SIPP), DHS analyzed data detailing the participation rates for various cash and non-cash federal public benefits programs.[286] The results suggest that receipt of non-cash public benefits is more prevalent than receipt of cash benefits.[287] When analyzed by nativity and citizenship status, the results also suggest comparable levels of program participation by native-born individuals, foreign-born individuals, and noncitizens.[288] DHS recognizes that the SIPP Panel includes respondent-provided data on nativity, citizenship status, and initial immigration status, but does not provide data on current immigration classification. Additionally, the categories represented in the SIPP immigration status item do not align precisely with the populations covered by this rule—for instance, the results include refugees, asylees, and other populations that may access public benefits but are not subject to the public charge ground of inadmissibility. The SIPP data and DHS's analysis of this data do not examine whether the receipt of public benefits was authorized, and DHS did not examine program payment rate error information

[278] For a list of federal expenditures by program, see fiscal year 2016 data from table 2 of Gene Falk et al., Cong. Research Serv., R45097, *Federal Spending on Benefits and Services for People with Low Income: In Brief* (2018), *available at https://fas.org/sgp/crs/misc/R45097.pdf.*

[279] *See* Table 50: *Estimated Average Annual Benefit per Person, by Public Benefit Program,* unless otherwise noted.

[280] *Ibid.*

[281] Note that per enrollee Medicaid costs will vary by eligibility group and State.

[282] Note that ''Federal Rental Assistance'' includes HUD Section 8 Project-based Rental Assistance, HUD Section 8 Housing Choice Vouchers, HUD Public Housing, HUD Section 202/811, and USDA Section 521.

[283] Note that spending on LIS beneficiaries varies by individual.

[284] *See* U.S. Dep't of Health and Human Servs. (HHS), Centers for Medicare & Medicaid (CMS), *Expenditure Reports from MBES/CBES. Available at https://www.medicaid.gov/medicaid/finance/state-expenditure-reporting/expenditure-reports/index.html.* (Accessed Aug. 2, 2018).

[285] The estimated CHIP enrollment is 6,464,117, which is shown in the *Medicaid & CHIP Enrollment Data Highlights, available at https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html* (last visited Aug. 23, 2018).

[286] The 2014 Panel represents the most recent full year of data, and may not represent current participation rates.

[287] The SIPP is a longitudinal survey providing detailed information about public benefit receipt and the economic status of the U.S. civilian non-institutionalized population residing in households or group quarters. *See* U.S. Census Bureau, *Survey of Income and Program Participation: 2014 Panel Users' Guide* (2016), *available at https://www.census.gov/content/dam/Census/programs-surveys/sipp//-SIPP-Panel-Users-Guide.pdf.* In this proposed rule, estimates of income, poverty, and program participation by immigration status are produced from the September 27, 2017 re-release of Wave 1 of the SIPP. *See* U.S. Census Bureau, *Release Notes: 2014 SIPP Wave 1, available at https://www2.census.gov/programs-surveys/sipp/tech-documentation/2014/2014-wave1-releasenotes.pdf.* The 2014 Panel may be used for estimates representative of any month in calendar year 2013. In the tables presenting SIPP data throughout this preamble, annual averages are presented, which are averages across the 12 monthly estimates for the calendar year. Estimates represent persons residing in the household at the time of the interview, and exclude those who lived in the household during the month but not at the time of interview (referred to as ''Type 2'' people in SIPP documentation). *See id.; see also Memorandum from James B. Treat, Chief, Demographic Statistical Methods Div., to Jason Fields, Survey Director, Source and Accuracy Statement for Wave 1 Public Use Files (S&A–20)* (Apr. 7, 2017), *available at https://www2.census.gov/programs-surveys/sipp/tech-documentation/source-accuracy-statements/2014/sipp-2014-source-and-accuracy-statement.pdf* [hereinafter Source and Accuracy Statement].

[288] For this study, the foreign-born include those who were not born in the U.S. and were either noncitizens or became citizens through naturalization, military service, or adoption. Noncitizens are identified by self-responses to the question of whether they are citizens of the United States.

for this purpose. Notwithstanding these limitations, DHS believes the SIPP data on noncitizen participation is instructive with respect to the receipt of non-cash benefits by the noncitizen population on the whole. DHS welcomes comments on its use of this data, and whether alternative reliable data sources are available.

Table 11 shows public benefit participation, by nativity and citizenship status, in 2013. The total population studied was 310,867,000. The data shows that the rate of receipt for either cash or non-cash public benefits was approximately 20 percent among the native-born and foreign-born, including noncitizens. The rate of receipt of cash benefits was only 2 to 4 percent for these populations, with receipt of non-cash benefits dominating the overall rate.[289]

Table 11 also shows Medicaid participation rates were 16.1 percent (43,301,000) among native-born individuals and 15.1 percent (6,272,000) among foreign-born persons, while rates among noncitizens were 15.5 percent (3,130,000). Participation rates in SNAP among native-born, foreign-born, and noncitizen populations are 11.6 percent (31,308,000), 8.7 percent (3,605,000), and 9.1 percent (1,828,000), respectively. The rate of receipt of cash benefits was 3.5 percent among the native-born and foreign-born, and about 2 percent among noncitizens. Although these results do not precisely align with the categories of aliens subject to this rule, they support the general proposition that non-cash public benefits play a significant role in the Nation's social safety net, including with respect to noncitizens generally.

[289] In the discussion of SIPP data in this proposed rule, the estimates provided are based on a sample, which may not be identical to the totals and rates if all households and group quarters in the population were interviewed. The standard errors provided in the tables give an indication of the accuracy of the estimates. Any estimate for which the estimate divided by its standard error (the relative standard error) is greater than 30 percent is considered unreliable. The standard errors themselves are estimates, and were calculated using design effects described in the Source and Accuracy Statement. Participation in Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and General Assistance (GA) for a given month is identified by the monthly coverage variables for those benefits. These variables identify household members who were eligible for the benefit and were reported as being covered in the given month. Supplemental Security Income (SSI) and Medicaid receipt are defined by the coverage spell; if a given month is contained in the range of months of coverage, then the individual is identified as a recipient of the benefit for that month. The rent subsidy benefit for a given month indicates the respondent reported that their rent was lower because of a federal, state, or local government housing program, and the housing voucher benefit furthermore indicates that the renter was able to choose where to live. Finally, the 2014 Panel of SIPP does not distinguish between Medicaid, CHIP, and other types of comprehensive medical assistance for low-income people. For a number of reasons, DHS anticipates that CHIP enrollees represent a relatively small portion of the ''Medicaid/CHIP'' population. Typically, only persons below age 20 are eligible for CHIP, which reduces its impact on the overall estimates of Medicaid/CHIP. Furthermore, using data from the 2008 Panel of SIPP (Wave 13, reference month 1, representing September through December, 2012), it was found that 0.7 percent of noncitizen respondents reported receiving CHIP, and 23% of noncitizen Medicaid/CHIP recipients below age 20 overall reported receiving CHIP. For general reference, see the following publications, in addition to the cited sources in the preceding footnotes: Carmen DeNavas-Walt & Bernadette D. Proctor, U.S. Census Bureau, *Current Population Reports: Income and Poverty in the United States: 2013* (Sept. 2014), *available at https://www2.census.gov/library/publications/2014/demographics/p60-249.pdf;* Kayla Fontenot et al., U.S. Census Bureau, *Monthly and Average Monthly Poverty Rates by Selected Demographic Characteristics: 2013* (Mar. 2017), *available at https://www.census.gov/content/dam/Census/library/publications/2017/demo/p70br-145.pdf.*

Table 11: Public Benefit Participation by Nativity and Citizenship, 2013 (in thousands)

	Total population			Native-born		
	Population			Population	% of Total Population	
	310,867			269,413	86.7%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	65,038	20.9%	0.2%	56,385	20.9%	0.2%
Cash benefits	10,799	3.5%	0.1%	9,285	3.4%	0.1%
SSI	7,906	2.5%	0.1%	6,590	2.4%	0.1%
TANF	2,254	0.7%	0.0%	2,124	0.8%	0.0%
GA	947	0.3%	0.0%	844	0.3%	0.0%
Non-cash benefits	63,527	20.4%	0.2%	55,082	20.4%	0.2%
Medicaid	49,573	15.9%	0.2%	43,301	16.1%	0.2%
SNAP	34,913	11.2%	0.2%	31,308	11.6%	0.2%
Housing vouchers	4,932	1.6%	0.1%	4,215	1.6%	0.1%
Rent subsidy	12,431	4.0%	0.1%	10,455	3.9%	0.1%
	Foreign-born citizens and non-citizens			**Foreign-born noncitizens**		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	41,454	13.3%		20,163	6.5%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	8,653	20.9%	0.6%	4,558	22.6%	0.9%
Cash benefits	1,514	3.7%	0.3%	370	1.8%	0.3%
SSI	1,316	3.2%	0.3%	254	1.3%	0.2%
TANF	130	0.3%	0.1%	*73	*0.4%	0.1%
GA	*103	*0.2%	0.1%	*47	*0.2%	0.1%
Non-cash benefits	8,445	20.4%	0.6%	4,498	22.3%	0.9%
Medicaid	6,272	15.1%	0.6%	3,130	15.5%	0.8%
SNAP	3,605	8.7%	0.4%	1,828	9.1%	0.6%
Housing vouchers	718	1.7%	0.2%	287	1.4%	0.3%
Rent subsidy	1,976	4.8%	0.3%	869	4.3%	0.4%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).
* Estimate is considered unreliable due to a high relative standard error.
- Estimate of zero.

Table 12 reflects that noncitizens showed comparable rates of program participation regardless of whether their status at admission to the U.S. was as a lawful permanent resident or not. For example, approximately 20 percent of noncitizens who were lawful permanent residents at admission to the U.S., as well as noncitizens who were not lawful permanent residents at admission, received non-cash benefits, and approximately 2 percent of these populations receive cash benefits. Among the cash benefits considered, about 1 percent of noncitizens who were lawful permanent residents at admission, as well as those who were not, received SSI while less than 1 percent received either TANF or General Assistance.

Table 12: Public Benefit Participation of Noncitizens, by Class of Admission to the U.S. (Lawful Permanent Resident or Other), 2013 (in thousands)

	Noncitizen and LPR at admission			Noncitizen and not LPR at admission		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	11,268	3.6%		8,895	2.9%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	2,658	23.6%	1.2%	1,900	21.4%	1.3%
Cash benefits	219	1.9%	0.4%	151	1.7%	0.4%
SSI	131	1.2%	0.3%	123	1.4%	0.4%
TANF	*65	*0.6%	0.2%	*8	*0.1%	0.1%
GA	*22	*0.2%	0.1%	*25	*0.3%	0.2%
Non-cash benefits	2,630	23.3%	1.2%	1,868	21.0%	1.3%
Medicaid	1,926	17.1%	1.1%	1,205	13.5%	1.1%
SNAP	1,069	9.5%	0.8%	760	8.5%	0.9%
Housing vouchers	163	1.4%	0.3%	124	1.4%	0.4%
Rent subsidy	490	4.4%	0.6%	379	4.3%	0.6%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).
* Estimate is considered unreliable due to a high relative standard error.
- Estimate of zero.

In sum, the data from Tables 11 and 12 show that for native-born and foreign-born populations alike, non-cash public benefits play a significant role in many peoples' lives. DHS does not believe it is appropriate to ignore the receipt of non-cash benefits in its public charge inadmissibility analysis. Further, we note that certain non-cash benefits, just like cash benefits, provide assistance to those who are not self-sufficient. DHS, therefore, proposes to consider cash benefits and non-cash public benefits. DHS believes that consideration of cash and non-cash benefit receipt represents an appropriately comprehensive and also readily administrable application of the public charge ground of inadmissibility.

(b) Consideration of Monetizable and Non-Monetizable Public Benefits

While an alien's receipt of one or more of these benefits alone would not establish that he or she is likely at any time in the future to become a public charge, as explained above, case law strongly suggests that an alien's self-sufficiency, *i.e.,* the alien's ability to meet his or her needs without depending on public resources, plays a critical role in the outcome of a public charge inadmissibility determination.[290] DHS recognizes the challenges of quantifying or qualifying reliance or dependence on public benefits. Indeed, in the course of evaluating welfare dependence or dependence on public benefits, HHS acknowledges that ''welfare dependence, like poverty, is a continuum, with variations in degree and in duration.''[291] As discussed below, DHS believes that its proposed monetizable, non-monetizable, and combined standards appropriately capture sufficient levels of dependence on public benefits in degree and duration to sustain a finding of public charge or likelihood of becoming a public charge. In arriving at these thresholds, DHS considered the current policy's ''primarily dependent'' standard, other agencies' definitions of dependence, and the Federal Poverty Guidelines. DHS notes, as discussed elsewhere in the rule, that for admissibility and adjustment of status purposes, the receipt of such benefits would be determined on a prospective basis, *i.e.,* likely at any time to receive benefits above the proposed threshold(s). For extension of stay and change of status applicants, the determination regarding the receipt of such benefits above the proposed threshold is not exclusively prospective and is instead based on whether an alien has received since obtaining the nonimmigrant status that the alien seeks to end or from which the alien seeks to change, is receiving, or is likely at any time to receive benefits above the proposed threshold(s).

i. ''Primarily Dependent'' Standard and Its Limitations

The proposed 15 percent of FPG threshold would represent a change from the standard set forth in the 1999 INS proposed rule and Interim Field Guidance, which generally define a public charge as a person who is ''primarily dependent'' on public benefits, *i.e.,* a person for whom public benefits represent more than half of their income and support. INS stated that the primary dependence model of public assistance provided context to the development of public charge exclusion in immigration in the late 19th century, because individuals who became dependent on the Government were institutionalized in asylums or placed in ''almshouses'' for the poor. At the time, the wide array of limited-purpose public benefits now available did not yet exist. After consulting with SSA, HHS, and USDA, INS suggested that the best evidence of primary dependence on the government was the receipt of cash assistance for income maintenance or institutionalization for

[290] *See, e.g., Matter of Vindman,* 16 I&N Dec. 131 (Reg'l Comm'r 1977); *Matter of Perez,* 15 I&N Dec. 137 (BIA 1974); *Matter of Harutunian* 14 I&N Dec. 583 (Reg'l Comm'r 1974).

[291] *See* U.S. Dep't of Health & Human Servs., Welfare Indicators and Risk Factors, at I–2 (2015), *available at https://aspe.hhs.gov/report/welfare-indicators-and-risk-factors-fourteenth-report-congress.*

long-term care at government expense. INS further argued that non-cash public benefits generally provide only ''supplementary'' support in the form of vouchers or direct services to support nutrition, health, and living condition needs.

The current policy's definition is consistent, in some respects, with how other agencies have defined dependence in certain contexts. For example, in certain congressional reports, HHS has defined welfare dependence as ''the proportion of individuals who receive more than half of their total family income in one year from the Temporary Assistance for Needy Families (TANF) program, the Supplemental Nutrition Assistance Program (SNAP) and/or the Supplemental Security Income (SSI) program.'' [292] The IRS has also defined a qualifying dependent child as one who cannot have provided more than half of his or her own support for the year and a qualifying dependent relative as generally someone who depends on another for more than half of his or her total support during the calendar year.[293] Within the context of preparing reports to Congress on welfare dependence or constructing certain tax rules, a ''primary dependence'' approach may be appropriate. As HHS has noted, ''using a single point—in this case 50 percent—yields a relatively straightforward measure that can be tracked easily over time, and is likely to be associated with any large changes in total dependence.'' [294]

DHS agrees with HHS that although a 50 percent threshold creates a bright line that may be useful for certain purposes, it is possible and likely probable that individuals below such threshold will lack self-sufficiency and be dependent on the public for support. Because of the nature of the public benefits that would be considered under this rule—which are generally means-tested and provide cash for income maintenance and for basic living needs such as food, medical care, and housing—DHS believes that receipt of such benefits even in a relatively small amount or for a relatively short duration would in many cases be sufficient to render a person a public charge. This is because a person with limited means to satisfy basic living needs who uses government assistance to fulfill such needs frequently will be dependent on such assistance to such an extent that the person is not self-sufficient.

In addition, as noted above, DHS considers the current policy's focus on cash benefits to be insufficiently protective of the public budget, particularly in light of significant public expenditures on non-cash benefits. Therefore, the DHS proposal takes into account a finite list of non-cash benefits, including some that can be monetized and some that cannot. DHS proposes to apply the aforementioned 15 percent threshold for the cumulative value of benefits only to the former, and to apply a standard tied to the duration of receipt of public benefits to the latter, as discussed in more detail below.

In sum, DHS does not believe that the plain text of section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), requires an alien to be ''primarily'' (50 percent or more) dependent on the government or rely on only cash assistance to be considered a public charge. Nor does DHS believe that such limitations are mandated by the principles of PRWORA or the century-plus of case law regarding the public charge ground of inadmissibility. As discussed above, the term public charge is ambiguous as to how much government assistance an individual must receive or the type of assistance an individual must receive to be considered a public charge. The statute and case law do not prescribe the degree to which an alien must be receiving public benefits to be considered a public charge. Given that neither the statute nor the case law prescribe the degree to which an alien must be dependent on public benefits to be considered a public charge, DHS has determined that it is permissible and reasonable to propose a different approach.

ii. Fifteen Percent of Federal Poverty Guidelines (FPG) Standard for Monetizable Benefits

DHS proposes to consider receipt of monetizable public benefits as listed in 8 CFR 212.21(b)(1), where the cumulative value of one or more of the listed benefits exceeds 15 percent of the Federal Poverty Guidelines (FPG) for a household of one within any period of 12 consecutive months, based on the per-month average FPG for the months during which the benefits are received. This proposed threshold is most straightforward to calculate within the context of a 12-month period that spans a single calendar year (January through December). For example, this 15 percent of FPG threshold would exclude up to $1,821 worth of monetizable public benefits for a household of one if the monetizable public benefits are received from January 2018 through December 2018.[295] On the other hand, the threshold requires a slightly more complex calculation when evaluating 12 consecutive months spanning two calendar years. To illustrate, an alien receives monetizable public benefits between April 2017 and March 2018. DHS would compare the amount received for the 12 consecutive month period against 15 percent of FPG applicable to each month in question. Fifteen percent of FPG is $150.75 per month for April through December 2017 and $151.75 per month for January through March 2018 based on the respective poverty guidelines in effect for calendar years 2017 and 2018, which would equal $1,812 for this 12 month consecutive period. In evaluating likely receipt of future monetizable public benefits, DHS would use the FPG in effect on the date of adjudication.

In formulating this 15 percent of FPG threshold, DHS proposes to use FPG as the baseline for the percentage of monetizable public benefits receipt being considered in the totality of the circumstances because the poverty guidelines are authoritative and transparent. The poverty guidelines are a simplified version of the Census Bureau's poverty thresholds, which Census uses to prepare its estimates of the number of individuals and families in poverty.[296] HHS updates and adjusts the FPG annually based on the Consumer Price Index for All Urban Consumers (CPI–U).[297] As HHS notes, a number of federal programs use the poverty guidelines as an eligibility criterion.[298] ''Some federal programs use a percentage multiple of the guidelines (for example, 125 percent or 185 percent of the guidelines)'' to determine public benefit eligibility.[299] In the immigration context, DHS uses the FPG as a standard for purposes of the affidavit of support requirement under section 213A of the Act, 8 U.S.C.

[292] The Welfare Indicators Act of 1994 requires HHS to submit annual welfare dependence indicators reports to Congress. *See* U.S. Dep't of Health & Human Servs., *Welfare Indicators and Risk Factors* 1 (2018), *available at https://aspe.hhs.gov/pdf-report/welfare-indicators-and-risk-factors-seventeenth-report-congress.*

[293] *See* IRS Publication 501 (Jan. 2, 2018), *available at https://www.irs.gov/pub/irs-pdf/p501.pdf.*

[294] *See* U.S. Dep't of Health & Human Servs., Welfare Indicators and Risk Factors, at I–2 (2015), *available at https://aspe.hhs.gov/report/welfare-indicators-and-risk-factors-fourteenth-report-congress.*

[295] The calculation is an FPG of $12,140 for a household of one, multiplied by 0.15. *See* U.S. Dep't of Health & Human Servs., *HHS Poverty Guidelines for 2018, available at https://aspe.hhs.gov/poverty-guidelines* (last visited Feb. 11, 2018).

[296] *See Annual Update of the HHS Poverty Guidelines,* 83 FR 2642 (Jan. 18, 2018).

[297] *See Annual Update of the HHS Poverty Guidelines,* 83 FR 2642 (Jan. 18, 2018).

[298] *See Annual Update of the HHS Poverty Guidelines,* 83 FR 2642 (Jan. 18, 2018).

[299] *See Annual Update of the HHS Poverty Guidelines,* 83 FR 2642 (Jan. 18, 2018).

1183a.[300] DOS also uses FPG to evaluate immigrant visa applicants who are not subject to the requirements of 213A of the Act, 8 U.S.C. 1183a, and who are relying solely on personal income to establish eligibility under section 212(a)(4) of the Act, 8 U.S.C. 1183a.[301] The poverty guidelines thus provides a proven, useful, and easily administrable measure of the level of income and resources below which a person becomes increasingly likely to need public benefits to satisfy basic living (and other) needs.

DHS believes that the 15 percent threshold is a reasonable approach. The threshold would not lead to unintended consequences, as could be the case if there was no threshold or the threshold was much smaller. Indeed, DHS recognizes that individuals may receive public benefits for in relatively small amounts to supplement their ability to meet their needs and the needs of their household without seriously calling into question their self-sufficiency.

At the same time, DHS believes that an individual who receives monetizable public benefits in excess of 15 percent of FPG is neither self-sufficient nor on the road to achieving self-sufficiency. Receipt of monetizable public benefits above the 15 percent threshold exceeds what could reasonably be defined as a nominal level of support that merely supplements an alien's independent ability to meet his or her basic living needs; individuals who receive the designated benefits in such an amount are not self-sufficient and so would be considered public charges under this rule.

DHS believes the proposed 15 percent threshold is consistent with DHS's interpretation of the term public charge and would achieve the policy aims of this proposed rulemaking. The proposed threshold is consistent with the self-sufficiency policy objective set forth in PRWORA that aliens should be able to financially support themselves with their own resources or by relying on the aid of family members, without depending on government's assistance.[302] Though not defined in PRWORA, self-sufficiency, as used in PRWORA, is tied to an alien's ability to support him or herself without depending on public benefits.[303] DHS seeks public comments on whether the proposed 15 percent threshold applicable to monetizable public benefits is an appropriate threshold in light of the stated goals of the rule. For instance, DHS welcomes the submission of views and data regarding whether the proposed standard is appropriate, too low, or too high for assessing reliance on public benefits (and why), and whether there is a more appropriate basis for a monetizable threshold, other than value as a percentage of the FPG or duration of receipt, that indicates whether an alien is a public charge.

DHS also seeks public comments on whether DHS should consider the receipt of designated monetizable public benefits at or below the 15 percent threshold as evidence in the totality of the circumstances. For instance, DHS could revise the rule to allow adjudicators to assign some weight to past or current receipt of designated monetized public benefits in an amount equal to 10 percent of FPG, and less weight to past or current receipt of such benefits in an amount equal to 5 percent of FPG. The ultimate inquiry would remain whether the alien is likely in the totality of the circumstances to become a public charge, *i.e.,* to receive the designated public benefits above the applicable threshold(s), either in terms of dollar value or duration of receipt.

iii. Twelve Month Standard for Non-Monetizable Benefits

In addition to proposing a 15 percent threshold for assessing the alien's likelihood to remain or become self-sufficient in the context of receipt of monetizable public benefits (*e.g.,* cash assistance and SNAP), DHS is proposing to consider the receipt of certain non-monetizable public benefits (*e.g.,* Medicaid) if received for more than 12 cumulative months during a 36-month period. As indicated above, DHS believes that it is appropriate to expand the list of previously included public benefits (under the 1999 INS Interim Field Guidance) to include certain non-cash benefits based on the Federal government's expenditures and non-citizen participation rates in those programs. However, following consultation with interagency partners such as HHS and HUD, DHS lacks an easily administrable standard for assessing the monetary value of an alien's receipt of some non-cash benefits. DHS believes that, like the 15 percent of FPG threshold described above, the duration of the alien's receipt of these benefits over a period of time is also reasonable proxy for assessing an alien's reliance on public benefits.

The duration of receipt is a relevant factor under the existing guidance with respect to covered benefits and is specifically accounted for in the guidance's inclusion of long-term institutionalization at government's expense.[304] Additionally, in the context of both state welfare reform efforts and the 1990s Federal welfare reform, Federal government and state governments imposed various limits on the duration of benefit receipt as an effort to foster self-sufficiency among recipients and prevent long-term or indefinite dependence. States have developed widely varying approaches to time limits. Currently, 40 states have time limits that can result in the termination of families' welfare benefits; 17 of those states have limits of fewer than 60 months.[305] Similarly, on the Federal level, PRWORA established a 60-month time limit on the receipt of TANF.[306]

As with the proposed 15 percent of FPG standard, DHS believes that an individual who receives monetizable public benefits for more than 12 cumulative months during a 36-month period is neither self-sufficient nor on the road to achieving self-sufficiency. Receipt of public benefits for such a duration exceeds what could reasonably be defined as a nominal level of support that merely supplements an alien's independent ability to meet his or basic living needs. In DHS's view, individuals who receive the non-monetizable public benefits covered by this rule for more than 12 months are unable to meet their basic needs without government help; they therefore are not self-sufficient and so would be considered public charges under this rule.

By way of illustration, under the proposed policy, an alien's receipt of Medicaid for 9 months and receipt of public housing for 6 months, if both occurred within the same 36-month period, would amount to 15 months of receipt of non-monetizable benefits, regardless of whether these periods of time overlapped, were consecutive, or occurred at different points in time during the 36-month period. As such, the receipt of those benefits would be considered for purposes of this rule.

[300] *See* INA section 213A(f)(1)(E), 8 U.S.C. 1183a(f)(1)(E).

[301] See 22 CFR 40.41(f).

[302] *See* 8 U.S.C. 1601(a)(2).

[303] *See* 8 U.S.C. 1601(a)(2).

[304] In assessing the probative value of past receipt of public benefits, ''the length of time . . . is a significant factor.'' 64 FR 28689, 28690 (May 26, 1999) (internal quotation marks and citation omitted).

[305] *See, e.g.,* MDRC, formerly Manpower Demonstration Research Corporation, Welfare Time Limits State Policies, Implementation, and Effects on Families. *https://www.mdrc.org/sites/default/files/full_607.pdf* (last visited Sep. 12, 2018).

[306] *See* Temporary Assistance for Needy Families Program (TANF), Final Rule; 64 FR 17720, 17723 (Apr. 12, 1999) (''The [Welfare to Work (WtW)] provisions in this rule include the amendments to the TANF provisions at sections 5001(d) and 5001(g)(1) of Pub. L. 105–33. Section 5001(d) allows a State to provide WtW assistance to a family that has received 60 months of federally funded TANF assistance . . .'').

DHS seeks public comments on this proposed approach, including any alternatives for assessing self-sufficiency based on the receipt of non-monetizable benefits. DHS seeks public comments on whether the proposed 12-month threshold applicable to non-monetizable public benefits is an appropriate threshold in light of the stated goals of the rule. For instance, DHS welcomes the submission of views and data regarding whether the proposed standard is appropriate, too low, or too high for assessing reliance on public benefits (and why), and whether there is a more appropriate basis for a non-monetizable threshold, other than duration of receipt, that indicates whether an alien is a public charge.

DHS also seeks public comments on whether DHS should consider the receipt of one or more designated non-monetizable public benefits for any period less of than 12 months in the aggregate as part of the public charge inadmissibility determination. For instance, similar to the potential alternative described in the call for comment in the preceding section, DHS could revise the rule to allow adjudicators to assign some weight to past or current receipt of 2 designated non-monetized benefits for a total of 8 months, and less weight to past or current receipt of such benefits for a total of 4 months. The ultimate inquiry would remain whether the alien is likely in the totality of the circumstances to become a public charge, *i.e.,* to receive the designated public benefits above the applicable threshold(s), either in terms of dollar value or duration of receipt.

DHS is also considering whether there are other potential approaches to monetizing these benefits, and seeks comments on any such alternatives. In addition, DHS seeks comments on the proposed timeframes, including, if applicable, any studies or data that would provide a basis for an alternative duration.

iv. Combination of Monetizable Benefits Under 15 Percent of FPG and One or More Non-Monetizable Benefits

DHS is proposing a separate approach when an alien receives a combination of monetizable benefits in an amount that is equal to or less than the proposed 15 percent threshold while also receiving one or more non-monetizable public benefits. This approach is intended to address circumstances where an alien's self-sufficiency is in question by virtue of a combination of receipt of both monetizable and non-monetizable benefits, even if his or her receipt of monetizable designated public benefits does not reach the 15 percent threshold and his or her receipt of non-monetizable benefits does not surpass the 12-month duration threshold. Under this proposal, if an alien receives a combination of monetizable benefits equal to or below the 15 percent threshold together with one or more benefits that cannot be monetized, the threshold for duration of receipt of the non-monetizable benefits would be 9 months in the aggregate (rather than 12 months) within a 36-month period (*e.g,* receipt of two different non-monetizable benefits in one month counts as two months, as would receipt of one non-monetizable benefit for one month in January 2018 and another such benefit for one month in June 2018).

DHS believes that reducing the 12-month timeframe by 3 months to account for use of monetizable benefits is a reasonable and easily administrable guideline for determining whether an individual who receives both monetizable and non-monetizable public benefits is self-sufficient or on the road to achieving self-sufficiency. In line with the other thresholds described above, receipt of a designated non-monetizable public benefits for three-quarters of a year, compounded by receipt of a designated monetizable public benefit, exceeds what could reasonably be defined as a nominal level of support that merely supplements an alien's independent ability to meet his or basic living needs. In DHS's view, individuals who receive public benefits in these combinations are unable to meet their basic needs without government help, consequently are not self-sufficient, and therefore would be considered public charges under this rule.

DHS seeks public comments on this approach, including any alternatives for addressing receipt of a combination of public benefits, some of which can be monetized and others which cannot to ensure a consistent methodology for treating recipients of these two types of benefits.

(c) Monetizable Public Benefits

i. Supplemental Security Income (SSI)

SSI, which is monetizable public benefit, provides monthly income payments intended to help ensure that a disabled, blind, or aged person with limited income and resources has a minimum level of income.[307] Unlike Social Security retirement benefits, which are financed through payroll taxes, SSI is financed by general revenues.[308] According to one analysis, SSI expenditures totaled approximately $54.7 billion in fiscal year 2017, and represented one of the largest Federal expenditures for low-income people.[309]

ii. Temporary Assistance for Needy Families (TANF) [310]

TANF, which is a monetizable public benefit, provides monthly income assistance payments to low-income families and is intended to foster self-sufficiency, economic security, and stability for families with children.[311] According to one analysis, TANF cash assistance expenditures totaled approximately $4.4 billion in fiscal year 2016, and represented one of the largest Federal expenditures out of all Federal programs for low-income people.[312]

iii. General Assistance Cash Benefits

Federal, State, local, and tribal cash benefit programs for income maintenance (often called ''General Assistance'' in the State context, but sometimes given other names), is a term used to describe ''aid provided by State and local governments to needy individuals or families who do not qualify for major assistance programs and to those whose benefits from other

[307] *See* U.S. Soc. Sec. Admin., *Social Security Handbook,* Ch. 21, section 2102.1, *available at https://www.ssa.gov/OP_Home%2Fhandbook/handbook.21/handbook-2102.html* (last updated Feb. 24, 2009); U.S. Soc. Sec. Admin., *Social Security, Understanding Supplemental Security Income (SSI) Overview—2018 Edition, available at https://www.ssa.gov/ssi/text-over-ussi.htm* (last visited July 27, 2018).

[308] *See* U.S. Soc. Sec. Admin., Office of Research, Statistics, & Policy Analysis, *Annual Report of the Supplemental Security Income Program* 46 tbl.IV.B9, 47 tbl.IV.C1 (2017), *available at https://www.ssa.gov/oact/ssir/SSI17/ssi2017.pdf* (last visited July 31, 2018); *see also* U.S. Soc. Sec. Admin., Office of Research, Statistics, & Policy Analysis, *SSI Monthly Statistics, January 2018, available at https://www.ssa.gov/policy/docs/statcomps/ssi_monthly/2018-01/table01.html* (last visited July 31, 2018).

[309] *See* Gene Falk et al., Cong. Research Serv., R45097, *Federal Spending on Benefits and Services for People with Low Income: In Brief* (2018), *available at https://fas.org/sgp/crs/misc/R45097.pdf.*

[310] *See* 42 U.S.C. 601.

[311] *See* U.S. Dep't of Health & Human Servs., Admin. for Children & Families, Office of Family Assistance, *About TANF, available at https://www.acf.hhs.gov/ofa/programs/tanf/about* (last visited February 23, 2018); U.S. Dep't of Health and Human Servs., Admin. for Children and Families, Office of Family Assistance, *TANF 12th Report to Congress.*

[312] *See* Gene Falk et al., Cong. Research Serv., R45097, *Federal Spending on Benefits and Services for People with Low Income: In Brief* (2018), *available at https://fas.org/sgp/crs/misc/R45097.pdf*; U.S. Dep't of Health & Human Servs., Office of Family Assistance. *TANF Financial Data—FY 2016, available at https://www.acf.hhs.gov/ofa/resource/tanf-financial-data-fy-2016* (last visited June 11, 2018). Note that the latter link shows fiscal year 2016 TANF financial data, but links to financial data for other fiscal years can also be accessed.

assistance programs are insufficient to meet basic needs. General assistance is often the only resource for individuals who cannot qualify for unemployment insurance, or whose benefits are inadequate or exhausted. Help may either be in cash or in kind, including such assistance as groceries and rent.'' [313] To the extent that such aid is in the form of cash, check, or money instrument (as compared to in-kind goods or services through vouchers and similar means) and intended for income maintenance, it would qualify as a cash public benefit under this rule. For example, in Minnesota, the ''General Assistance (GA) program helps people without children pay for basic needs. It provides money to people who can[no]t work enough to support themselves, and whose income and resources are very low.'' [314]

iv. Supplemental Nutrition Assistance Program (SNAP)

DHS proposes to consider SNAP [315] benefits, because the program is among the largest Federal expenditures for low-income people, and because receipt of SNAP benefits indicates a lack of self-sufficiency in satisfying a basic living need, *i.e.,* food and nutrition. SNAP, which is a non-cash, monetizable public benefit, provides nutrition assistance to low-income individuals and households [316] who must meet certain income and resource limitations to be eligible. An eligible person or household receives SNAP benefits on an Electronic Benefit Transfer (EBT) card on which the dollar amount of benefits are automatically available each month. The household can then purchase eligible food at authorized retail food stores.[317]

v. Housing Programs

DHS is also proposing to include certain high-expenditure housing-related benefits. As noted in Table 10 above, the Federal government expends significant resources on Section 8 Housing Choice Vouchers, Section 8 Project-Based Rental Assistance, and Public Housing. These programs impose a significant expense upon multiple levels of government, and because these benefits relate to a basic living need (*i.e.,* shelter), receipt of these benefits suggests a lack of self-sufficiency. At the same time, DHS recognizes that these programs do not involve the same level of expenditure as the other programs listed in this proposed rule, and that noncitizen participation in these programs is currently relatively low.[318] DHS nonetheless proposes to consider these programs as part of public charge determinations, for the above-stated reasons and because the total Federal expenditure for the programs overall remains significant.

There are also numerous programs that provide incentives for private-sector affordable housing preservation and development.[319] The Housing Act of 1961 [320] provides housing to low- and moderate-income households through the private sector.[321] U.S. Department of Housing and Urban Development (HUD) oversees and administers the various programs. There are various programs within the public housing program which provide payment for rent or housing either to the person or the housing unit or owner on behalf of the person (privately owned subsidized housing).

These programs provide low-income individuals and families with housing at below-market rent or rent subsidies for market-rate housing. While there are important variations between these programs, they all use the same or similar standard when establishing income eligibility and contribution towards rent. Specific to aliens, DHS notes that Section 214 of the HCD Act of 1980 requires that HUD may not make financial assistance available for the benefit of any alien, notwithstanding any other provision of law, unless that alien is a resident of the United States and fits into one of the clearly enumerated 7 categories.[322]

a. Section 8 Housing Choice Voucher Program

The Section 8 Housing Choice Voucher Program,[323] which is a non-cash public benefit that can be monetized, provides assistance to very low-income families to afford decent, safe, and sanitary housing.[324] The Housing Choice Vouchers are administered locally by Public Housing Agencies. The participant is responsible for finding their own suitable housing unit, where the owner agrees to rent under the program. Once an owner has been identified, the public housing agency enters into a housing assistance payment contract with the landlord. The PHA pays the landlord housing subsidies based on a payment standard established by HUD and the participant is responsible for paying the difference between the actual rent charged and the amount subsidized by the program.[325] Under certain circumstances, housing vouchers may also be used to purchase homes.[326]

b. Section 8 Project-Based Rental Assistance

The Section 8 Project-Based Rental Assistance Program (including Moderate Rehabilitation), which is a non-cash but monetizable public benefit, provides rental assistance for extremely low- to low-income households in obtaining decent, safe, and sanitary housing in private accommodations.[327] This program refers to a category of federally assisted housing produced through a public-private partnership to build and maintain affordable rental housing for low-income households. HUD provides subsidies to private owners of multifamily housing to lower rental costs for low-income families and help offset construction, rehabilitation, and

[313] *See* U.S. Soc. Sec. Admin., *Social Security Programs in the United States—General Assistance, available at https://www.ssa.gov/policy/docs/progdesc/sspus/genasist.pdf* (last visited June 24, 2018).

[314] *See* Minn. Dep't of Human Servs., *General Assistance (GA), available at https://mn.gov/dhs/people-we-serve/adults/economic-assistance/income/programs-and-services/ga.jsp* (last visited June 24, 2018).

[315] Formerly called ''Food Stamps.'' *See* 7 U.S.C. 2011–2036c.

[316] *See* USDA, Food and Nutrition Service, *Supplemental Nutrition Assistance Program (SNAP), available at https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap* (last visited Feb. 24, 2018).

[317] The listing of SNAP would not include Disaster SNAP, which is provided under a separate legal authority, under different circumstances. *See* 42 U.S.C. 5179.

[318] An analysis of Wave 13 of the 2008 Panel of the Survey of Income and Program Participation (SIPP) suggests that 0.2% of noncitizens lived in Section 8 housing, while 0.4% lived in housing subsidized through some other government program. Similarly, 0.7 percent of noncitizens reported receiving CHIP benefits.

[319] *See* Public Law 86–372, 73 Stat. 654. *See* also Maggie McCarty et al., Cong. Research Serv., RL34591, *Overview of Federal Housing Assistance Programs and Policy* 3 (2014), *available at https://www.hsdl.org/?view&did=752738.*

[320] *See* Public Law 87–70, 75 Stat. 149.

[321] *See* Maggie McCarty et al., Cong. Research Serv., RL34591, *Overview of Federal Housing Assistance Programs and Policy* 4 (2014), *available at https://www.hsdl.org/?view&did=752738.*

[322] *See* section 214 of the Housing and Community Development Act of 1980, 42 U.S.C. 1436a.

[323] *See* 24 CFR part 982; 42 U.S.C. 1437f, 1437u.

[324] *See* U.S. Dep't of Housing & Urban Dev., *Housing Choice Vouchers Fact Sheet, available at https://www.hud.gov/topics/housing_choice_voucher_program_section_8* (last visited Feb. 24, 2018).

[325] *See* U.S. Dep't of Housing & Urban Dev., *Housing Choice Vouchers Fact Sheet, available at https://www.hud.gov/topics/housing_choice_voucher_program_section_8* (last visited Feb. 24, 2018).

[326] *See* U.S. Dep't of Housing & Urban Dev., *Housing Choice Vouchers Fact Sheet, available at https://www.hud.gov/topics/housing_choice_voucher_program_section_8* (last visited July 11, 2018).

[327] U.S. Dep't of Housing & Urban Dev., *Moderate Rehabilitation, available at https://www.hud.gov/program_offices/public_indian_housing/programs/ph/modrehab* (last visited July 3, 2018).

preservation costs. The rental assistance is the difference between what the household can afford and the approved rent for the housing unit in the multifamily project. Authority to use project-based rental assistance for new construction or substantial rehabilitation was repealed in 1983. Therefore, HUD renews Section 8 project-based housing assistance payments (''HAP'') contracts for units already assisted with project-based Section 8 renewal assistance. [328] The contracts are with private owners of multifamily rental housing including both profit-motivated and nonprofit or cooperative organizations.

(d) Non-Monetizable Public Benefits

i. Medicaid

a. Description of Program

Medicaid, which is a non-cash, non-monetizable public benefit, is a joint Federal and state program that provides health coverage to individuals in the United States.[329] Medicaid is generally available to needy persons who meet specific income and resource requirements. Certain individuals are generally covered under Medicaid, including low-income families, qualified pregnant women and children, and people already receiving SSI.[330] In addition, a State may opt to cover other groups.[331] Medicaid provides continuous coverage, services, and funding for medical treatment and can impose substantial costs on multiple levels of government, and a person's participation generally indicates a lack of ability to be self-sufficient in satisfying a basic living need, *i.e.,* medical care. As indicated in Table 10 above, the total Federal expenditure for the Medicaid program overall is larger by far than any other programmatic Federal expenditure for low-income people.[332] Table 13 below highlights average costs per enrollee by eligibility group as a percentage of FPG.

Table 13: Estimated Medicaid Expenditures Per Enrollee by Enrollment Group and as Percentage of the Federal Poverty Guidelines

Eligibility Group	2011	*% of 2011 FPG*	2012	*% of 2012 FPG*	2013	*% of 2013 FPG*	2014	*% of 2014 FPG*	2015	*% of 2015 FPG*
Children	$2,851	*26%*	$2,700	*24%*	$2,807	*24%*	$3,141	*27%*	$3,389	*29%*
Adults	$4,362	*40%*	4,101	*37%*	$4,391	*38%*	$4,914	*42%*	$4,986	*42%*
Persons with Disabilities	$17,958	*165%*	17,255	*154%*	$17,352	*151%*	$18,789	*161%*	$19,478	*165%*
Aged	$15,931	*146%*	$15,688	*140%*	$15,483	*135%*	$15,113	*130%*	$14,323	*122%*

Sources: See United States Department of Health & Human Services, Centers for Medicare & Medicaid Services, Office of the Actuary, 2012-2016 Actuarial Reports on the Financial Outlook for Medicaid at https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/MedicaidReport.html. (Site last checked 9/10/2018) and Prior HHS Poverty Guidelines and Federal Register References at https://aspe.hhs.gov/prior-hhs-poverty-guidelines-and-federal-register-references (Site last checked 9/13/2018), which shows the following FPG figures for a household size of 1:

2011 – $10,890
2012 – $11,170
2013 – $11,490
2014 – $11,670
2015 – $11,770

DHS divided expenditures per enrollee by enrollment group for each year by FPG for each corresponding year (e.g. $2,851 for children in 2011 divided by $10,890 for 2011) to calculate expenditures per enrollee by enrollment group for each year as a percentage of FPG for each corresponding year (e.g. 26 percent).

Child Medicaid enrollees include non-disabled children, children of unemployed parents, and foster care children. Adult Medicaid enrollees include non-disabled non-aged adults, unemployed adults, and women covered under the Breast and Cervical Cancer Act expansion. Disabled Medicaid enrollees include blind or disabled persons.

On the whole, Medicaid expenditures per enrollee by enrollment group are significant and are particularly pronounced among persons with disabilities and the aged. In its 2016 report, HHS observes that these average costs reflect the relatively healthier status of children and adults enrolled in the program as compared to aged

[328] U.S. Dep't of Housing & Urban Dev., *Moderate Rehabilitation, available at https://www.hud.gov/program_offices/public_indian_housing/programs/ph/modrehab* (last visited July 3, 2018).

[329] *See* Ctrs. for Medicare & Medicaid Services, Eligibility, *available at https://www.medicaid.gov/medicaid/eligibility/index.html* (last visited Feb. 23, 2018).

[330] *See* Ctrs. for Medicare & Medicaid Services, Eligibility, *available at https://www.medicaid.gov/medicaid/eligibility/index.html* (last visited Feb. 23, 2018).

[331] *See* Ctrs. for Medicare & Medicaid Services, Eligibility, *available at https://www.medicaid.gov/medicaid/eligibility/index.html* (last visited Feb. 23, 2018).

[332] *See* Table 26–1 Policy, Net Budget Authority by Function, Category, and Program, *available at https://www.whitehouse.gov/wp-content/uploads/2018/02/26-1-fy2019.pdf* (last visited Aug. 8, 2018). Expenditure amounts are net outlays unless otherwise noted. *See also* Gene Falk et al., Cong. Research Serv., R45097, Federal Spending on Benefits and Services for People with Low Income: In Brief (2018), *available at https://fas.org/sgp/crs/misc/R45097.pdf.* Note however that neither HHS nor DHS are able to disaggregate emergency and non-emergency Medicaid expenditures. Therefore, this rule considers overall Medicaid expenditures.

enrollees and persons with disabilities, who represent the smallest enrollment groups in Medicaid but account for the majority of expenditures.[333] Despite the high level of Medicaid expenditure in aggregate and per enrollee by enrollment group, Medicaid is one of the most daunting public benefits to monetize on an individual basis. Medicaid eligibility, enrollment, and receipt vary state-by-state and receipt of goods and services vary enrollee-to-enrollee. Therefore, DHS does not propose a methodology to monetize Medicaid benefits for purposes of the 15 percent of FPG standard. Rather, DHS Medicaid would be categorized as a non-monetizable benefit under the proposed rule.

b. Exceptions for Certain Medicaid Services

Notwithstanding DHS's proposal to consider benefits under Medicaid, DHS proposes to exclude two main types of Medicaid services from consideration. First, DHS proposes to except consideration of assistance for an ''emergency medical condition'' as provided under section 1903(v) of Title XIX of the Social Security Act, 42 U.S.C. 1396b(v) and in implementing regulations at 42 CFR 440.255(c). These provisions specifically indicate that payment may be made to a State for medical assistance furnished to an alien under certain specific emergency circumstances.[334] Under 42 CFR 440.255(c), '' 'emergency medical condition' means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.'' States determine whether an illness or injury is an ''emergency medical condition'' and provide payment to the healthcare provider as appropriate. Under this proposed rule, DHS would exclude receipt of Medicaid if the State determines that the relevant treatment falls under 42 U.S.C. 1396b(v) and 42 CFR 440.255(c).

In 8 U.S.C. 1611(b), Congress specifically excluded emergency medical conditions from the definition of Federal public benefits, and States are required to provide Medicaid payments for ''emergency medical conditions'' regardless of the alien's status. PRWORA sets apart treatment for emergency medical conditions and makes funds available for the reimbursement of states regardless of an alien's immigration status, and regardless of whether or not an alien would be subject to INA section 212(a)(4) or other grounds of inadmissibility.[335] Congress intended that PRWORA exceptions generally, and treatment of emergency medical conditions in particular, be narrowly construed. To qualify for emergency medical condition exclusion, medical conditions must be of an emergency nature, such as medical treatment administered in an emergency room, critical care unit, or intensive care unit. The same principle applies to pre-natal or delivery care assistance; it was intended to be of emergency nature. Similarly, treatment for mental health disorders was intended to be limited to circumstances in which the alien's condition is such that he is a danger to himself or to others and has therefore been judged incompetent by a court of appropriate jurisdiction.[336] Over the years since the enactment of PRWORA, courts have refined the definition of emergency medical condition. Depending on the state, and the medical condition, categorization as an ''emergency medical condition'' for purposes of Medicaid reimbursement may not be limited to hospital emergency room visits. For example, in *Szewczyk* v. *Department of Social Services,*[337] the Supreme Court of Connecticut indicated that coverage for an ''emergency medical condition'' did not limit an alien patient to treatment rendered in the emergency room, but applied to treatment for leukemia that had ''reached a crisis stage'' and required ''immediate medical treatment, without which the patient's physical well-being would likely be put in jeopardy or serious physical impairment or dysfunction would result.'' However, in *Diaz* v. *Division of Social Services and Div. of Medical Assistance, North Carolina Dept. of Health and Human Services,*[338] the Supreme Court of North Carolina indicated that an alien's acute lymphocytic leukemia was not an ''emergency medical condition'' where there was is nothing to indicate that the prolonged chemotherapy treatments must have been ''immediate'' to prevent placing the alien's health in serious jeopardy, or causing serious impairment or dysfunction.[339]

In addition, DHS believes that preservation of life from an immediate threat is an important policy consideration. ''Emergency medical services'' are often involuntary and must be provided by doctors and hospitals regardless of the ability to pay,[340] such as medical services at a hospital after a car accident. Further, Congress did not authorize any consideration of an alien's immigration status for purposes of eligibility for these benefits or to allow for continuous services/treatment relating to them. Therefore, DHS will not consider treatment for emergency medical

[333] *See* United States Department of Health & Human Services, Centers for Medicare & Medicaid Services, Office of the Actuary, 2016 Actuarial Reports on the Financial Outlook for Medicaid, pp. 7–8, at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/Downloads/MedicaidReport2016.pdf.* (Site last checked 9–11–2018).

[334] *See* 42 U.S.C. 1396b(v); 42 CFR 440.255(c).

[335] H.R. Rep. No. 104–469 (VI), at 263–64 (1996) (''This section provides that sections 601 and 602 shall not apply to the provision of emergency medical services, public health immunizations, short-term emergency relief, school lunch programs, child nutrition programs, and family violence services. Section 601 restricted unauthorized aliens from receiving public assistance, contracts, and licenses, and section 602 made unauthorized aliens ineligible for employment benefits.'')

[336] H.R. Rept. 104–469 (VI), at 264–65 (1996). This report also discusses treatment of communicable diseases and indicates that such treatment is intended ''to only apply where absolutely necessary to prevent the spread of such diseases. This is only a short term measure until the deportation of an alien who is unlawfully present in the U.S. It is not intended to provide authority for continued long-term treatment of such diseases as a means for illegal aliens to delay their removal from the country.''

[337] *See* 881 A.2d 259, 273 (Conn. 2005) (quoting *Greenery Rehab. Grp., Inc.* v. *Hammon,* 150 F.3d 226, 233 (2d Cir.1998)).

[338] *See* 628 S.E.2d 1, 5 (N.C. 2006).

[339] *See also Greenery Rehab. Grp., Inc.* v. *Hammon,* 150 F.3d 226, 233 (2d Cir. 1998) (aliens who suffered serious traumatic head injuries initially satisfied the plain meaning of Sec. 1902(v)(3), but the continuous and regimented care subsequently provided to them did not constitute emergency medical treatment pursuant to the statute); *Luna ex rel. Johnson* v. *Div. of Soc. Servs.,* 589 S.E.2d 917, 920 (N.C. 2004) (the absence of the continued medical services could be expected to result in one of the three consequences outlined in the Medicaid statute for cancer patient that underwent surgery after presenting at hospital's emergency room with weakness and numbness in the lower extremities); *Scottsdale Healthcare, Inc.* v. *Ariz. Health Care Cost Containment Sys. Admin.,* 75 P.3d 91, 98 (Ariz. 2003) (medical conditions had not ceased when patients' conditions had been stabilized and they had been transferred from an acute ward to a rehabilitative type ward after initial injury); *Spring Creek Mgmt., L.P.* v. *Dep't of Pub. Welfare,* 45 A.3d 474, 483–84 (Pa. Commw. Ct. 2012) (alien's condition as result of stroke, which had sent her to emergency room, was not ''emergency medical condition'' when alien received medical services from rehabilitation and health care center even though alien could eventually, suffer another stroke or other medical problem; coverage was not being sought for an acute condition, but for long term or open-ended nursing care); *Quiceno* v. *Dep't of Soc. Servs.,* 728 A.2d 553, 554 (Conn. Super. Ct. 1999) (permanent dialysis treatment was not for ''emergency medical condition'').

[340] *See* Emergency Medical Treatment & Labor Act (EMTALA), 42 U.S. Code 1395dd.

conditions funded by Medicaid in the context of a public charge determination.

The second proposed exclusion is for services or benefits under the Individuals with Disabilities Education Act (IDEA) [341] and school-based benefits provided to children who are at or below the oldest age of children eligible for secondary education as determined under State law. The IDEA protects educational opportunities for all students with disabilities and requires schools to provide certain services to all children with disabilities. States and school districts may bill and receive reimbursement for the cost of providing special education and health care related services from a State's public insurance program (*e.g.,* Medicaid). Benefits or services under these laws generally are not based on income eligibility, and where a reimbursement is available, it is provided to the school or eligible entity. For example, under the statutory framework created by Congress for Part B of IDEA, school districts, in meeting their obligation to make a free appropriate public education available to all children with disabilities, may receive reimbursement for the cost of providing special education and related services if parents provide consent for the school districts to release their personally identifiable information to a State public insurance program (*e.g.,* Medicaid) for billing purposes. Subject to parental consent, schools, and not individual parents or students, may obtain reimbursement for the cost of providing certain health-related services included in a child's individualized education program (IEP) that are considered covered services under such subsidized health insurance programs. The IDEA provides in 20 U.S.C. 1412(a)(12)(B) that, when a non-educational public agency, such as a State Medicaid agency, is assigned responsibility under State or Federal law to provide or pay for any services that are also considered special education and related services, the financial responsibility of the State Medicaid agency or other public insurer of children with disabilities must precede that of the LEA or State agency responsible for developing a child's IEP. Also, 20 U.S.C. 1412(e) reinforces that Part B of the IDEA may not be construed to permit a State to reduce medical or other assistance available, or to alter eligibility, under the Social Security Act. There are no restrictions on how school districts and schools are permitted to spend any funds that Medicaid or other public insurance program reimburses for the provision of IDEA services. By excluding services provided under IDEA that may be funded in whole or in part by Medicaid, DHS would better ensure that schools continue to receive financial resources to cover the cost of special education and related services, which they would be legally required to provide at no cost to the parents regardless of the outcome of this rulemaking.

c. Exception for Receipt of Medicaid by Foreign-Born Children of U.S. Citizens

DHS proposes to exclude consideration of the receipt of all Medicaid benefits by foreign-born children as defined in section 101(c) of the Act who either have U.S. citizen parents, who have been adopted by U.S. citizens, or who are coming to the United States to be adopted by U.S. citizens, where such children will automatically acquire U.S. citizenship under section 320 of the Act or be eligible to naturalize under section 322 of the Act upon or after being admitted to the United States. In some cases, these children will acquire citizenship upon finalization of their adoption in the United States, under section 320 of the Act, or the children will naturalize upon taking the Oath of Allegiance (or having it waived) under section 322 of the Act. In other cases, the children will acquire citizenship upon taking up residence in United States in the legal and physical custody of their U.S. citizen parent as a lawful permanent resident.

Alien children of U.S. citizens, who must first establish eligibility for admission, are subject to section 212(a)(4) even though they may automatically acquire U.S. citizenship upon taking up residence in the United States after admission as lawful permanent residents.[342] Children of U.S. citizens eligible for acquisition of citizenship under section 320 of the Act, however, are exempt from the affidavit of support requirement.[343]

Children of U.S. citizens, including those adopted abroad, typically receive one of several types of immigrant visas as listed below and are admitted to the United States as lawful permanent residents. Such children may become U.S. citizens (1) automatically, (2) following their admission to the United States and upon the finalization of their adoption, or (3) upon meeting other eligibility criteria.[344]

The following categories of children acquire citizenship upon admission as lawful permanent residents and beginning to reside in the legal and physical custody of their U.S. citizen parent(s):

- IR–2/IR–7 (Child of a U.S. citizen)—requires an approval of a Form I–130 (Petition for Alien Relative). These children are generally admitted as lawful permanent residents or their status is adjusted to that of lawful permanent resident. The child must then file a Form N–600 (Application for Certificate of Citizenship) to receive the Certificate of Citizenship. The certificate generally would be dated as of the date the child was admitted as a lawful permanent resident.
- IR–3/IR–8 (Orphan adopted abroad by a U.S. citizen)—requires an approval of the Form I–600 (Petition to Classify Orphan as an Immediate Relative). These children are generally admitted as lawful permanent residents, and USCIS will send a Certificate of Citizenship to the child without a Form N–600 being filed or adjudicated.
- IH–3 (Hague Convention orphan adopted abroad by a U.S. citizen)—requires an approval of the Form I–800 (Petition to Classify Convention Adoptee as an Immediate Relative). These children are generally admitted as lawful permanent residents and USCIS will send a Certificate of Citizenship to

[341] *See* 20 U.S.C. 1400–1482.

[342] Note that children born abroad to U.S. citizen parents may also acquire U.S. citizenship at birth under certain circumstances, such as where both parents are U.S. citizens and one parent had resided in the United States prior to the child's birth, or where one parent is a U.S. citizen who was physically present in the United States for at least five years, two of which were after age 14. Such children would enter the United States as U.S. citizens and would not be subject to an admissibility determination. *See* INA sections 301 and 309, 8 U.S.C. 1401 and 1409. DOS would issue a Consular Report of Birth Abroad upon request. *See* Dep't of State, *Birth of U.S. Citizens Abroad, available at https://travel.state.gov/content/travel/en/international-travel/while-abroad/birth-abroad.html* (last visited Aug. 28, 2018).

[343] *See* Child Citizenship Act, Public Law 106–395, 114 Stat. 1631 (Oct. 30, 2000); 8 CFR 213a.2(a)(2)(ii)(E). Stepchildren of U.S. citizens are not eligible for acquisition of citizenship under section 320 of the Act or naturalization under section 322 of the Act unless the child is adopted by the U.S. citizen step-parent. *See* INA section 101(c)(1), 8 U.S.C. 1101(c)(1).

[344] International adoptions vary depending on the laws of the country of origin, the laws of the U.S. state of residence, and multiple other factors. In the majority of cases, adoptions are finalized in the country of origin before the child enters the United States and the child automatically acquires U.S. citizenship. A minority of children whose adoptions are not finalized until after their admission do not automatically acquire citizenship after admission, but may acquire it upon being readopted, and are eligible to naturalize after they have been finally adopted in the United States or had the foreign adoption recognized by the state where they are permanently residing. *See* U.S. Dep't of State, *2017 Annual Report on Intercountry Adoptions, available at https://travel.state.gov/content/dam/NEWadoptionassets/pdfs/Annual%20Report%20on%20Intercountry%20Adoptions%20FY2017%20(release%20date%20March%2023%2020..._.pdf.*

the child without a Form N–600 being filed or adjudicated.

The following categories of children are admitted as lawful permanent residents for finalization of adoption:

• IR–4/IR–9 (Orphan to be adopted by a U.S. citizen). Generally, the parent(s) must complete the adoption in the United States. However, the child will also be admitted as an IR–4 if the foreign adoption was obtained without either parent having seen the child, or when the parent(s) must establish that they have either ''readopted'' the child or obtained recognition of the foreign adoption in the State of residence (this requirement can be waived if there is a statute or precedent decision that clearly shows that the foreign adoption is recognized in the State of residence).[345]

• IH–4 (Hague Convention Adoptee to be adopted by a U.S. citizen). These children are admitted as lawful permanent residents and the parent(s) must complete the adoption in the United States.[346]

Furthermore, children of U.S. citizens, who are residing outside of the United States and are eligible to naturalize under section 322 of the Act,[347] must apply for an immigrant or nonimmigrant visa to enter the U.S. before they naturalize. These children are generally issued a B–2 nonimmigrant visa in order to complete the process for naturalization through an interview and taking the Oath of Allegiance under section 322 of the Act.

Congress has enacted numerous laws over the last two decades to ensure that foreign-born children of U.S. citizens are not subject to adverse immigration consequences in the United States on account of their foreign birth. Most notably, the Child Citizenship Act of 2000[348] provides that children, including adopted children, of U.S. citizen parents automatically acquire U.S. citizenship if certain conditions are met.[349] The same year, Congress passed the Intercountry Adoption Act of 2000 (IAA)[350] to implement the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption,[351] which established international standards of practices for intercountry adoptions. The IAA protects the rights of children, birth families, and adoptive parents, and improves the Government's ability to assist U.S. citizens seeking to adopt children from abroad.[352]

DOS has advised DHS that many U.S. citizens seek to adopt children with disabilities or serious medical conditions, and that a significant proportion of children adopted abroad have special medical needs. U.S. citizens seeking to adopt foreign-born children abroad generally must undergo a rigorous home study that includes a detailed assessment of finances, emotional, mental, and physical health, and other factors to determine their eligibility and suitability as prospective adoptive parents.[353] Accordingly, such parents generally will have sufficient financial resources to provide for the child.[354]

Nevertheless, many U.S. citizens who have foreign-born children with special medical needs may seek Medicaid for their children.[355] Medicaid programs vary by state, and may be based on the child's disability alone rather than financial means of the parents. Excluding consideration of the receipt of public benefits by such children would be consistent with Congress' strong interest in supporting U.S. citizens seeking to welcome foreign-born children into their families.

Additionally, because the children are being brought to the United States by their U.S. citizen parents (including adoptive parents) and will generally become U.S. citizens upon or after admission, and because their families have been found to have the resources to care for them, such a reading is not at odds with Congress' concerns in enacting PRWORA, or as reflected in its concurrent enactment of the public charge grounds of inadmissibility, that aliens should rely on their own capabilities and the resources of their families, their sponsors, and private organizations; and that the availability of public benefits should not constitute an incentive for immigration to the United States.[356]

Accordingly, DHS proposes to exclude from consideration for purposes of the public charge inadmissibility determination receipt of Medicaid benefits by children of U.S. citizen parents:

• Whose lawful admission for permanent residence and subsequent residence in the legal and physical custody of the U.S. citizen parent will result automatically in the child's acquisition of citizenship or whose lawful admission for permanent residence will result automatically in the child's acquisition of citizenship upon finalization of the adoption in the United States by the U.S. citizen parent(s) or upon meeting other eligibility criteria pursuant to the Child Citizenship Act of 2000, Public Law 106–395 (section 320(a)–(b) of the Act, 8 U.S.C. 1431(a)–(b)), in accordance with 8 CFR part 320; or

• Who are entering the United States for the primary purpose of attending an interview under the Child Citizenship Act of 2000, Public Law 106–395 (section 322 of the Act, 8 U.S.C. 1433)), in accordance with 8 CFR part 322.

ii. Institutionalization for Long-Term Care

Consistent with the 1999 Interim Field Guidance, DHS proposes to consider institutionalization for long-term care at government expense—at any level of government—as a form of government assistance included in the definition of public benefit.

[345] *See* 8 CFR 320.1.

[346] *See* INA section 101(b)(1), 8 U.S.C. 1101(b).

[347] These children would file the N–600K, Application for Citizenship and Issuance of Certificate Under Section 322 and then receive an interview notice to in come into the United States.

[348] Public Law 106–395, section 101(a), 114 Stat. 1631, 1631 (codified at INA section 320(a)–(b), 8 U.S.C. 1431(a)–(b)); *see also Children Born Outside the United States; Applications for Certificate of Citizenship,* 66 FR 32138 (June 13, 2001). The CCA applies to children who were under 18 as of February 27, 2001. The law was passed after several high-profile cases in which children who were adopted abroad were subject to deportation despite having grown up in the United States and having believed that they were United States citizens.

[349] *See* 8 CFR part 320; *see also* Dep't of State, *FAQ: Child Citizenship Act of 2000, available at https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/adoption-FAQs/child-citizenship-act-of-2000.html* (last visited Aug. 16, 2018).

[350] Public Law 106–279, 114 Stat. 1631 (codified at 42 U.S.C. 14901–14954); *see also Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons,* 71 FR 8064 (Feb. 15, 2006).

[351] The United States signed the Convention in 1994, and the Convention entered into force for the United States on April 1, 2008. *Deposit of Instrument of Ratification by the United States of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption,* 72 FR 71730 (Dec. 18, 2007). The full text of the Convention is *available at https://www.hcch.net/en/instruments/conventions/full-text/?cid=69* (last visited Aug. 16, 2018).

[352] IAA § 2, 42 U.S.C. 14901(a); *see also* 146 Cong. Rec. S8938–01, S8938 (daily ed. Sept. 21, 2000) (statement by Sen. Landrieu) (''I have said it before and I believe it rings true here, adoption brings people, whether they are Republican, Democrat, conservative, liberal, American, Russian or Chinese, together. United by the belief that all children deserve to grow in the love of a permanent family. Adoption breaks down barriers and helps build families.''). A year earlier, Congress passed Public Law 106–139, 113 Stat. 1696 (1999), to amend the definition of ''child'' in section 101(b)(1)(E) of the INA, 8 U.S.C. 1101(b)(1)(E), a change that allowed children adopted abroad to maintain their familial relationship with their natural siblings, making it easier for siblings to be adopted together.

[353] *See* 8 CFR 204.3(e), 204.311(g)(3).

[354] *See* 8 CFR 204.311(h) (financial considerations); *see also* USCIS, *Home Study Information, available at https://www.uscis.gov/adoption/home-study-information* (last visited Aug. 16, 2018).

[355] *See* Public Law 97–248, 96 Stat. 324.

[356] *See* Public Law 104–193, section 400, 110 Stat. 2105, 2260 (codified at 8 U.S.C. 1601).

Institutionalization for long-term care at government expense is a non-cash, non-monetizable public benefit. The U.S. government subsidizes health insurance, which pays for expenses associated with institutionalization of individuals in the United States for both long-term care; therefore, the receipt of benefits to provide for the costs of institutionalization indicates a lack of self-sufficiency in satisfying a basic living need, *i.e.,* cost of medical care, housing, and food. There are certain inpatient, comprehensive services provided by institutions which may be covered under Medicaid or the Social Security Act, including hospital services, Intermediate Care Facilities for People with Intellectual disability (ICF/ID), Nursing Facility (NF), Preadmission Screening & Resident Review (PASRR), Inpatient Psychiatric Services for Individuals Under Age 21, and Services for Individuals Age 65 or Older in an Institution for Mental Diseases.[357]

Institutions are residential facilities, and assume total care of the basic living requirements of individuals who are admitted, including room and board.[358] Benefits provided by Medicaid for institutions may depend on the person's need and institutional level of care.[359] In general, DHS would not assume that a child or a person who is severely disabled or has severe medical conditions that may need institutionalization would be inadmissible under the public charge ground. Instead, DHS would, in the totality of the circumstances, take into account the assets, resources, and financial status of the alien's parents or legal guardians to determine whether there is sufficient income and resources to provide for his or her care. Parents and legal guardians at the time of adjudication of a petition may have sufficient sources to provide for the alien in the future and may also have the ability to gather assets and resources for the alien's future care (*i.e.* long-term care insurance).

iii. Premium and Cost Sharing Subsidies Under Medicare Part D

Like Medicaid, Medicare helps an individual satisfy a basic living need, *i.e.,* medical care. Medicare provides health insurance for people 65 or older, certain people under 65 with disabilities, and people of any age with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a kidney transplant).[360] Medicare has four parts. Medicare Part A is for hospital coverage and is mandatory for eligible participants; Part B provides optional medical coverage; Part C provides a managed care option through contracts with commercial insurers; and Part D is the optional Prescription Drug Plan.[361] In general, people over age 65 or young people with disabilities are eligible for Medicare [362] if the person or his or her spouse worked and paid Medicare taxes for at least 10 years.[363] People who did not pay Medicare taxes, are age 65 or older, and are U.S. citizens or lawful permanent residents may also be able to buy Medicare.[364] Generally, DHS does not propose to consider all of Medicare as part of the definition of public benefits. DHS is only proposing to consider Premium and Cost Sharing Subsidies (*i.e.,* low-income subsidies) for Medicare Part D as part of the definition of public benefits, for the reasons stated below.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), provides subsidies for prescription drugs for eligible individuals whose income and resources are limited.[365] Beneficiaries may apply for the Low-Income Subsidy with the Social Security Administration (SSA) or with their State Medicaid agency.[366] The provision of a Part D low-income subsidy to an individual can impose substantial costs on multiple levels of government and generally indicates a lack of ability to be self-sufficient in satisfying a basic living need, *i.e.,* medical care. As noted above, by at least one measure, this program entails one of the most largest Federal expenditures for low-income people.[367]

iv. Subsidized Public Housing

The considerations leading to inclusion of high-expenditure housing-related benefits, generally, including subsidized public housing, are outlined above. Subsidized public housing is available to low-income individuals in certain areas. Public housing was ''established to provide decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities by entering into Annual Contributions Contracts (ACC) with Public Housing Agencies, which are state-created agencies with jurisdiction to operate within a clearly delineated area.'' [368] Public housing may include single-family houses or high-rise apartments.[369] HUD administers ''[f]ederal aid to local housing agencies (HAs) that manage the housing for low-income residents at rents they can afford.'' [370] HUD uses the median income of the county or metropolitan area of where the person chooses to live to determine the income eligibility standards.[371] Specially, HUD sets the ''lower income limits at 80% and very low income limits at 50% of the median income.'' [372]

[357] *See* Ctrs. for Medicare & Medicaid Servs., *Institutional Long Term Care, available at https://www.medicaid.gov/medicaid/ltss/institutional/index.html* (last visited Feb. 26, 2018).

[358] *See* Ctrs. for Medicare & Medicaid Servs., *Institutional Long Term Care, available at https://www.medicaid.gov/medicaid/ltss/institutional/index.html* (last visited Feb. 26, 2018).

[359] *See* Ctrs. for Medicare & Medicaid Servs., *Institutional Long Term Care, available at https://www.medicaid.gov/medicaid/ltss/institutional/index.html* (last visited Feb. 26, 2018).

[360] *See* Ctrs. for Medicare and Medicaid Servs., *A Quick Look at Medicare* (October 2017), *available at https://www.medicare.gov/Pubs/pdf/11514-A-Quick-Look-at-Medicare.pdf.* Medicare may also be subsidized if he or she qualifies for both Medicare and Medicaid. *Medicare.gov, Are Medicare Advantage Plans Subsidized?, available at https://medicare.com/medicare-advantage/are-medicare-advantage-plans-subsidized* (last visited Feb. 27, 2018).

[361] *See id.*

[362] *See* HHS, *Who is Eligible for Medicare?, available at https://www.hhs.gov/answers/medicare-and-medicaid/who-is-elibible-for-medicare/index.html* (last visited Feb. 24, 2018).

[363] *See* HHS, *Who is Eligible for Medicare?, available at https://www.hhs.gov/answers/medicare-and-medicaid/who-is-elibible-for-medicare/index.html* (last visited Feb. 24, 2018).

[364] *See* HHS, *Who is Eligible for Medicare?, available at https://www.hhs.gov/answers/medicare-and-medicaid/who-is-elibible-for-medicare/index.html* (last visited Feb. 24, 2018).

[365] *See* Ctrs. for Medicare & Medicaid Servs., *Guidance to States on the Low Income Subsidy Guidance* 5 (Feb. 2009), *available at https://www.cms.gov/Medicare/Eligibility-and-Enrollment/LowIncSubMedicarePresCov/Downloads/StateLISGuidance021009.pdf.*

[366] *See* Ctrs. for Medicare & Medicaid Servs., *Guidance to States on the Low Income Subsidy Guidance* 5 (Feb. 2009), *available at https://www.cms.gov/Medicare/Eligibility-and-Enrollment/LowIncSubMedicarePresCov/Downloads/StateLISGuidance021009.pdf.*

[367] *See* Table 26–1 Policy, Net Budget Authority by Function, Category, and Program, *available at https://www.whitehouse.gov/wp-content/uploads/2018/02/26-1-fy2019.pdf* (last visited Aug. 8, 2018). Expenditure amounts are net outlays unless otherwise noted. *See also* Gene Falk et al., Cong. Research Serv., R45097, *Federal Spending on Benefits and Services for People with Low Income: In Brief* (Feb. 6, 2018), *available at https://fas.org/sgp/crs/misc/R45097.pdf.*

[368] *See* U.S. Dep't of Housing & Urban Dev., *HUD's Public Housing Program, available at https://www.hud.gov/topics/rental_assistance/phprog* (last visited July 3, 2018).

[369] *See* U.S. Dep't of Housing & Urban Dev., *HUD's Public Housing Program, available at https://www.hud.gov/topics/rental_assistance/phprog* (last visited July 3, 2018).

[370] *See* U.S. Dep't of Housing & Urban Dev., *HUD's Public Housing Program, available at https://www.hud.gov/topics/rental_assistance/phprog* (last visited July 3, 2018).

[371] *See* U.S. Dep't of Housing & Urban Dev., *HUD's Public Housing Program, available at https://www.hud.gov/topics/rental_assistance/phprog* (last visited July 3, 2018).

[372] *See* U.S. Dep't of Housing & Urban Dev., *HUD's Public Housing Program, available at https://www.hud.gov/topics/rental_assistance/phprog* (last visited July 3, 2018).

(e) Receipt of Public Benefits by Active Duty and Reserve Servicemembers and Their Families

DHS proposes to exclude consideration of the receipt of any public benefits by active duty servicemembers, including those in the Ready Reserve of the U.S. Armed Forces, and their families. The United States Government is profoundly grateful for the unparalleled sacrifices of the members of our armed services and their families. Servicemembers who, during their service, receive public benefits, in no way burden the public; indeed, their sacrifices are vital to the public's safety and security. The Department of Defense (DOD) has advised DHS that many of the aliens who enlist in the military are early in their careers, and therefore, consistent with statutory pay authorities, earn relatively low salaries that are supplemented by certain allowances and tax advantages.[373] Although data limitations exist, evidence suggests that as a consequence of the unique compensation and tax structure afforded by Congress to aliens enlisting for military service, some active duty alien servicemembers, as well as their spouses and children, as defined in section 101(b) of the Act, may rely on SNAP [374] and other listed public benefits. As a result, the general standard proposed in this rule could result in a finding of inadmissibility under section 212(a)(4) when such aliens apply for adjustment of status.

Following consultation with DOD, DHS has concluded that such an outcome may give rise to concerns about servicemembers' immigration status or the immigration status of servicemembers' spouses and children as defined in section 101(b) of the Act, which would reduce troop readiness and interfere significantly with U.S. armed forces recruitment efforts. This exclusion is consistent with DHS's longstanding policy of ensuring support for our military personnel who serve and sacrifice for our nation, and their families, as well as supporting military readiness and recruitment.

Accordingly, DHS proposes to exclude the consideration of the receipt of all benefits listed in 8 CFR 212.21(b) from the public charge inadmissibility determination, when received by active duty servicemembers, including those in the Ready Reserve and their spouses and children. Applicants that fall under this exclusion would be required to submit proof that the servicemember is serving in active duty or the Ready Reserve.

(f) Unenumerated Benefits

The definition of the term ''public charge'' would not include receipt of any non-cash public benefit not listed under the proposed 8 CFR 212.21(b). Benefits such as Social Security retirement benefits, general Medicare, and a wide range of Veteran's benefits would not be included in the definition. Similarly, the proposed definition would not include social insurance programs such as worker's compensation and non-cash benefits that provide education, child development, and employment and job training. Furthermore, DHS believes that exclusion of education-related benefits is justifiable in the interest of administrability (*e.g.,* many such benefits are received indirectly through schools). In sum, under this proposal, any exclusively state, local or tribal public benefit that is not cash assistance for income maintenance, institutionalization for long-term care at government expense, or another public benefit program not specifically listed in the regulation, would not be included in the definition of the term ''public charge.''

As noted above, the definition of public charge is based on DHS's preference to prioritize those programs that impose the greatest cost on the Federal government as well as those programs that assist an individual with satisfying basic living needs. DHS welcomes comment regarding whether it should expand the list of designated public benefits in a final rule, to include specific public benefits that recipients are generally aware they receive and must opt into receipt and otherwise similar in nature to the benefits currently designated under the proposed rule, *i.e.,* other benefits intended to help low-income people meet basic living needs. Consistent with the proposal described in the section of this preamble entitled ''Previously Excluded Benefits'', any such expansion would be prospective in nature (*i.e.,* not effective until following publication of a final rule).

In addition, DHS seeks public comments on whether an alien's receipt of benefits other than those proposed to be included in this rule as public benefits should nonetheless be considered in the totality of circumstances, either above the thresholds set forth in the proposed rule for public monetizable and non-monetizable public benefits, or at some other threshold. DHS could construct a process under which it provides appropriate notice for consideration of such benefits to the extent that they have a bearing on the public charge inquiry, *i.e.,* whether the alien is likely in the totality of the circumstances to receive the designated public benefits above the applicable threshold(s), either in terms of dollar value or duration of receipt. DHS welcomes comments and data on this potential alternative.

(g) Request for Comment Regarding the Children's Health Insurance Program (CHIP)

In addition to the public benefits listed in proposed 8 CFR 212.21(b), DHS is considering adding to the list of included benefits. The Children's Health Insurance Program (CHIP),[375] formerly known as the State Children's Health Insurance Program (SCHIP),[376] provides low-cost health coverage to children in families that earn too much money to qualify for Medicaid but still need assistance to pay for healthcare.[377] CHIP is administered by states in accordance with federal requirements. Eligibility for CHIP is based on income

[373] *See, e.g.,* 37 U.S.C. 201–212, 401–439 (Basic Pay and Allowances Other than Travel and Transportation Allowances, respectively); Lawrence Kapp, Cong. Research Serv., *Defense Primer: Regular Military Compensation* 2 tbl.1 (Jan. 2, 2018), *available at https://fas.org/sgp/crs/natsec/IF10532.pdf* (reporting average regular military compensation of $41,384 at the E–1 level in 2017, comprised of $19,199 in average annual basic pay, plus allowances and tax advantage); Lawrence Kapp et al., Cong. Research Serv., RL33446, *Military Pay: Key Questions and Answers* 6–9 (2018), *available at https://fas.org/sgp/crs/natsec/RL33446.pdf* (describing types of military compensation and federal tax advantages).

[374] *See* U.S. Gov't Accountability Office, GAO–16–561, *Military Personnel: DOD Needs More Complete Data on Active-Duty Servicemembers' Use of Food Assistance Programs* (July 2016), *available at https://www.gao.gov/assets/680/678474.pdf* (reporting estimates ranging from 2,000 active duty servicemembers receiving SNAP to 22,000 such servicemembers receiving SNAP). Effective FY16, Congress implemented a recommendation by the Military Compensation and Retirement Modernization Commission to sunset DOD's Family Subsistence Supplemental Allowance Program within the United States, Puerto Rico, the U.S. Virgin Islands, and Guam; SNAP reliance may have increased somewhat following termination of the program. *See* Public Law 114–92, div. A, § 602, 129 Stat. 726, 836 (2015); Military Comp. & Ret. Modernization Comm'n, *Final Report* 187 (Jan. 2015) (''The [Family Subsistence Supplemental Allowance Program] should be sunset in the United States, Puerto Rico, Guam, and other U.S. territories where SNAP or similar programs exist, thereby reducing the administrative costs of a duplicative program.'').

[375] *See* 42 U.S.C. 1397aa to 1397mm.

[376] Beginning with the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), SCHIP was referred to simply as CHIP. Older references to SCHIP were not changed, and any statutory or regulatory reference to one applies interchangeably to the other. *See* Public Law 111–3, 123 Stat. 8.

[377] *See HealthCare.gov, The Children's Health Insurance Program (CHIP), available at https://www.healthcare.gov/medicaid-chip/childrens-health-insurance-program* (last visited Feb. 23, 2018).

levels and the upper income level varies by state. According to the Centers for Medicare & Medicaid Services, 46 States and the District of Columbia cover children up to or above 200 percent the Federal Poverty Level (FPL), and 24 of these states offer coverage to children in families with income at 250 percent of the FPL or higher. States may get the CHIP enhanced match for coverage up to 300 percent of the FPL.[378] While coverage differs from state to state, all states provide comprehensive coverage, like routine check-ups, immunizations, doctor visits, and prescriptions. The program is funded jointly by states and the federal government.[379]

As noted in Table 10, the Federal government expends significant resources on CHIP.[380] CHIP imposes a significant expense upon multiple levels of government, and because these benefits relate to a basic living need (*i.e.,* medical care), receipt of these benefits suggests a lack of self-sufficiency. At the same time, DHS recognizes that this program does not involve the same level of expenditure as most of the other programs listed in this proposed rule, and that noncitizen participation in these programs is currently relatively low.[381]

DHS is nonetheless considering including this program in a final rule, because the total Federal expenditure for the program remains significant, and because it does provide for basic living needs (*i.e.,* medical care), similar to Medicaid (elements of which are included on the proposed list of public benefits). DHS specifically requests public comments on whether to include CHIP in the final rule.

(h) Request for Comment Regarding Public Benefit Receipt by Certain Alien Children

The language of the public charge statute under section 212(a)(4)(B)(i) of the Act states that an alien's ''age'' shall be one of several minimum enumerated considerations in a public charge determination, alongside ''health,'' ''family status,'' ''assets, resources, and financial status,'' and ''education and skills.'' Each of these factors must be taken into account in determining whether an alien will be a charge on the federal taxpayer. The United States has separate immigration programs, such as refugee admissions and asylum, where aliens regardless of age and financial circumstance are exempted from public charge inadmissibility. Alien children who are not asylees, refugees, or otherwise exempt from the public charge ground of inadmissibility are subject to it, just as adult aliens are. However, because the public charge inadmissibility determination is a prospective determination in the totality of the circumstances, the circumstances surrounding an alien's receipt of public benefits as a child, including the age at which such benefits were received, are a relevant consideration. For instance, as alien children approach or reach adulthood, they may age out of eligibility for certain benefits, choose to disenroll from such benefits (for which their parents may have enrolled them), or modify their chances of becoming self-sufficient depending upon whether they acquire education and skills, secure employment, and accumulate assets and resources. Therefore, DHS seeks public comment on the best mechanism to administer public charge inadmissibility determinations for those aliens who receive benefits while under the age of majority (frequently 18) or while still children under section 101(b) of the INA, 8 U.S.C. 1101(b). DHS is particularly interested in views and data that would inform whether and to what extent DHS should weigh past or current receipt of benefits by such an alien in the totality of the circumstances as a potential indicator of likely future receipt of public benefits.

(i) Request for Comment Regarding Potential Modifications by Public Benefit Granting Agencies

DHS recognizes that as a result of a future final rule, some benefit-granting agencies may decide to modify enrollment processes and program documentation for designated benefits programs. For instance, agencies may choose to advise potential beneficiaries of the potential immigration consequences of receiving certain public benefits. DHS requests public comments regarding such potential modifications, including information regarding how long it would take to make such modifications, and the resources required to make such modifications. DHS may use this information to determine the appropriate effective date for a final rule, among other purposes. DHS seeks comments and recommendations from potentially affected state, local and tribal governments and from the public generally.

3. Likely at Any Time To Become a Public Charge

DHS proposes to define ''likely at any time to become a public charge'' to mean likely at any time in the future to receive one or more public benefits, as defined in 8 CFR 212.21(b), based on the totality of the alien's circumstances. Under this proposed definition, DHS would find an alien inadmissible as a public charge if DHS finds the alien is likely *at any time in the future* to receive one or more public benefits, as defined in 8 CFR 212.21(b), in an amount or for a duration exceeding the thresholds described above.

DHS proposes to distinguish between an alien who is a public charge based on current receipt of public benefits and an alien who is likely to become a public charge at any time in the future. This distinction is consistent with the prospective nature of the statute. DHS understands that its proposed definition of public charge may suggest that DHS would automatically find an alien who is *currently* receiving public benefits, as defined in this proposed rule, to be inadmissible as likely to become a public charge. But DHS does not propose to establish a *per se* policy whereby an alien is likely at any time to become a public charge if the alien is receiving public benefits at the time of the application for a visa, admission, or adjustment of status. Under the ''likely at any time to become a public charge'' definition, an alien who is currently receiving public benefits is not necessarily inadmissible, because current receipt of public benefits does not automatically mean that the alien is likely to receive public benefits at any time in the future.

As discussed above and explained further below, receiving public benefits by itself does not establish that an alien is likely to become a public charge; rather, as set forth in the statute, a public charge inadmissibility determination requires a determination predicated on an opinion as to the likelihood of future events.[382] Accordingly, as set forth in proposed 8 CFR 212.21, DHS proposes that an alien who is currently receiving public benefits is not necessarily inadmissible, because such current receipt of public benefits does not necessarily mean that

[378] *See Medicaid.gov, Eligibility, available at https://www.medicaid.gov/chip/eligibility-standards/index.html* (last visited Feb. 23, 2018).

[379] *See* Benefits.gov, *State Children's Health Insurance Program, available at https://www.benefits.gov/benefits/benefit-details/607* (last visited July 11, 2018).

[380] DHS would not consider services or benefits funded by CHIP but provided under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400–1482, nor would DHS consider school-based services provided to children who are at or below the oldest age of children eligible for secondary education as determined under State law.

[381] An analysis of Wave 13 of the 2008 Panel of the Survey of Income and Program Participation (SIPP) suggests that 0.7 percent of noncitizens reported receiving CHIP benefits.

[382] *See* INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

the alien will continue to receive public benefits at any time in the future.

4. Household

For purposes of public charge inadmissibility determinations under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), DHS proposes to consider the alien's household size as part of the family status factor, as well as the assets, resources, and financial status factor. The number of people in the alien's household has an effect on the alien's assets and resources, and in many cases may influence the likelihood that an alien will become a public charge. Household size would be used to determine whether the alien's household income is at least 125 percent of the FPG in the public charge inadmissibility determination, because the alien is either a head of household who has responsibilities to the household or is a member of a household who is supported by other members of the household beyond the sponsor. DHS notes that while the number of children, including U.S. citizen children, may count towards an alien's household size for purposes of determining inadmissibility on the public charge ground, the direct receipt of public benefits by those children would not factor into the public charge inadmissibility determination.

As discussed in greater detail below, in developing the proposed definition of an alien's household, DHS reviewed the individuals that public benefit granting agencies include as part of a household and/or as dependents in determining eligibility for a public benefit, as well as how USCIS determines household size and income in the affidavit of support context. The individuals identified as part of the alien's household are intended to include individuals who are financially interdependent with the alien, either legally or otherwise.

(a) Definition of Household in Public Charge Inadmissibility Context

DHS proposes to define an alien's household for the purposes of making a public charge inadmissibility determination as follows. First, if the alien is 21 years of age or older, or under the age of 21 and married, and therefore not a child as defined in section 101(b)(1) of the Act, 8 U.S.C. 1101(b)(1), the alien's household would include:

- The alien;
- The alien's spouse, if physically residing with the alien;
- The alien's children, as defined in section 101(b)(1) of the Act, 8 U.S.C. 1101(b)(1), physically residing with the alien;
- The alien's other children, as defined in section 101(b)(1) of the Act, 8 U.S.C. 1101(b)(1), not physically residing with the alien for whom the alien provides or is required to provide at least 50 percent of financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided to the alien;
- Any other individuals (including a spouse not physically residing with the alien) to whom the alien provides, or is required to provide, at least 50 percent of the individual's financial support, or who are listed as a dependent on the alien's federal income tax return; and
- Any individual who provides to the alien at least 50 percent of the alien's financial support, or who lists the alien as a dependent on his or her federal income tax return.

Thus, for example, the applicant's household size would include the applicant, her children, and her parents, if:

- The applicant is an unmarried 23 year-old applicant for adjustment of status;
- The applicant lives with two children and her parents, who provide 53 percent of financial support to the applicant; and
- The applicant has no other individuals for whom she provides or is required to provide (or from whom she receives) financial support or who list her on their tax return.

DHS would consider the income, assets, and resources of all of these household members (total of 5) in determining whether the applicant has income at or above 125 percent of the FPG.

Second, if the alien is a child as defined in section 101(b)(1) of the Act, 8 U.S.C. 1101(b)(1), the alien's household would include:

- The alien;
- The alien's children, as defined in section 101(b)(1) of the Act, 8 U.S.C. 1101(b)(1), physically residing with the alien;
- The alien's other children, as defined in section 101(b)(1) of the Act, 8 U.S.C. 1101(b)(1), not physically residing with the alien, for whom the alien provides or is required to provide at least 50 percent of the children's financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the alien;
- The alien's parents, legal guardians, or any other individuals providing or required to provide at least 50 percent of financial support to the alien as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the alien;
- The parents' or legal guardians' other children, as defined in section 101(b)(1) of the Act, 8 U.S.C. 1101(b)(1), physically residing with the alien;
- The parents' or legal guardians' other children, as defined in section 101(b)(1) of the Act, 8 U.S.C. 1101(b)(1), not physically residing with the alien for whom the parent or legal guardian provides or is required to provide at least 50 percent of the other children's financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the parents or legal guardians; and
- Any other individuals to whom the alien's parents or legal guardians provide or are required to provide at least at least 50 percent of the individuals' financial support, or who are listed as a dependent on the parents' or legal guardians' federal income tax return.

For example, if a five year old is applying for adjustment of status, the applicant's household would include the applicant, the applicant's mother and father, the applicant's two siblings, and the applicant's maternal grandparents, if:

- The applicant lives with his mother, father, and two siblings and has no other siblings;
- The mother and father provide 52 percent of the financial support to the mother's parents (*i.e.,* the alien's maternal grandparents) and do not and are not required to provide financial support to anyone else;
- Nobody else provides financial support to the applicant;
- Neither the mother or the father have any other children and have no other dependents listed on their tax return; and
- The mother and father do not receive financial support from anyone else.

DHS would consider the income of all of the above individuals in determining whether the alien can meet 125 percent of the FPG.

As another example, if an 18 year old is applying for adjustment of status, the alien's household would only include the alien and the alien's daughter, if:

- The 18 year old lives in her own apartment with only her 1 year old daughter;
- The applicant has no other children or siblings;
- The applicant does not receive any financial support from his or her parents or any other individual and has no legal guardian;
- No individuals are required to provide the applicant with any financial support; and
- The applicant's parents and the applicant do not provide and are not required to provide any support to anyone else and list no one else as a dependent on their federal income tax returns.

The proposed household definition would not include any person employed by the household who is living in the home, such as a nanny, or an individual who is renting a part of the home from one of the household members, or a landlord, unless such individual otherwise meets one of the enumerated criteria.

(b) Definitions of ''Household'' and Similar Concepts in Other Public Benefits Contexts

The poverty guidelines do not define who should be considered part of the household, and different agencies and programs have different requirements.[383] Public benefit granting agencies generally consider an applicant's income for purposes of public benefit eligibility and either use the household size or family size to determine the income threshold needed to qualify for a public benefit. Each federal program or State determines the general eligibility requirements needed to qualify for the public benefits and how to define whose income is included for purposes of determining income based eligibility thresholds. For example, SNAP uses the term ''household'' and includes everyone who lives together and purchases and prepares meals together. DHS is not proposing to incorporate the SNAP definition because an alien or an individual who is financially responsible for the alien's support may not have the legal responsibility to support each person living in the home. Instead, the proposed DHS definition would take into account individuals for whom the alien or the alien's parent(s) or legal guardian(s) or other individual is providing at least 50 percent of financial support because such expenditure would have significant bearing on whether the alien has sufficient assets and resources in the context of a public charge determination.

The U.S. Department of Housing and Urban Development (HUD), per the 1937 Act, uses the term ''families'' [384] which includes: (i) Single persons in the case of an elderly person, a disabled person, a displaced person, the remaining member of a tenant family, and any other single persons; or (ii) families with children and in the cases of elderly families, near-elderly families, and disabled families respectively.[385] The U.S. Housing Act of 1937 (The 1937 Act) [386] requires that dwelling units assisted under it must be rented only to families who are low-income [387] at the time of their initial occupancy. Section 3 of the 1937 Act also defines income as income from all sources of each member of the household, excluding earned income of minors, as determined by the Secretary. Beyond the statutory framework defining families, and as provided by the 1937 Act, HUD allows public housing agencies the discretion to determine particularities related to family composition, as determined under each public housing agency's plan.

While DHS's proposed definition does not precisely track HUD's definition, it would encompass many of the individuals identified in the HUD definition including spouses and children as defined under the Act.[388] In addition, the DHS definition focuses on both individuals living in the alien's home, as well as individuals not living in the alien's home but for whom the alien and/or the alien's parent(s)/legal guardian(s) is providing or is required to provide at least 50 percent of financial support.

The IRS defines ''dependent'' to include a qualifying child (which has a 5-part test), or a qualifying relative (which has a 4-part test).[389] These tests generally include some type of relationship to the person filing (including step and foster children and their children) whether or not the dependent is living with the person filing and the amount of support being provided by the person filing (over 50 percent).[390] In general, the dependent must also be a U.S. citizen or lawful permanent resident in order to qualify as a dependent for tax purposes.[391]

Because the IRS definition of ''dependent'' would generally exclude alien dependents and the DHS definition would not, DHS's proposed definition of household results in a larger number of people being captured than if DHS simply tracked the IRS's definition of ''dependent.'' DHS also proposes to consider those individuals who are supported by the alien and are themselves aliens, or those who may be contributing to the alien's income, in order to determine whether the alien's financial resources are sufficient to support the alien and other members of the alien's household. For example, if an alien is living with a younger sibling who is attending school and providing 51 percent or more financial support for the younger sibling, that sibling is a part of the alien's household, even though the younger sibling may be earning some wages from a part-time job. Similarly, if the alien has an older sibling who is providing 51 percent of support to the alien, that older sibling would also be included in the alien's household and his/her income counted toward the requisite income threshold along with any income earned by the alien. DHS's definition would adopt the IRS consideration of the amount of support being provided to the individuals (50 percent) as the threshold for considering as an individual as part

[383] *See Annual Update of the HHS Poverty Guidelines,* 83 FR 2642 (Jan. 18, 2018).

[384] *See* U.S. Dep't of Hous. & Urban Dev., *Occupancy Handbook* ch. 3 (June 2007), *available at https://www.hud.gov/sites/documents/DOC_35645.PDF.*

[385] The term includes in cases of elderly, near-elderly, and disabled families, 2 or more elderly persons, near-elderly persons, or persons with disabilities living together, and 2 or more such persons living with 1 or more persons determined under the public housing agency plan to be essential to their care of well-being. *See* U.S. Dep't of Hous. & Urban Dev., Occupancy Handbook ch. 3 (June 2007), *available at https://www.hud.gov/sites/documents/DOC_35645.PDF.* HUD also makes their income determination based on Median Family Income estimates and Fair Market Rent area definitions for each metropolitan area, parts of some metropolitan areas, and each non-metropolitan county. *See* U.S. Dep't of Hous. & Urban Dev., Office of Policy Dev. & Research, *Income Limits, available at https://www.huduser.gov/portal/datasets/il.html* (last visited June 14, 2018). The 1937 Act also provides that the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size.

[386] *See* ch. 896, 50 Stat. 888 (codified as amended at 42 U.S.C. 1437 to 1437zz–10).

[387] Section 3 of the 1937 Act defines ''low-income families'' as those families whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary.

[388] The definition of child in INA section 101(b), 8 U.S.C. 1101(b), generally includes unmarried persons under 21 years of age who are born in or out of wedlock, stepchildren, legitimated children, adopted children if adopted under the age of 16 or the age of 18 if natural siblings of another adopted child.

[389] *See* 26 U.S.C. 152; *see* also IRS Publication 501 (Jan 2, 2018), *available at https://www.irs.gov/pub/irs-pdf/p501.pdf.*

[390] *See* IRS Publication 501 (Jan 2, 2018), *available at https://www.irs.gov/pub/irs-pdf/p501.pdf.*

[391] *See* IRS Publication 501 (Jan 2, 2018), *available at https://www.irs.gov/pub/irs-pdf/p501.pdf.*

of the household in the public charge determination, rather than consider any support being provided.[392]

DHS believes that the ''at least 50 percent of financial support'' threshold as used by the IRS is reasonable to apply to the determination of who belongs in an alien's household, without regard to whether these individuals physically reside in the alien's home. This would include those individuals the alien may not have a legal responsibility to support but may nonetheless be supporting. For example, this may include a parent, legal guardian, sibling, or a grandparent living with the alien, or an adult child, sibling, or any other adult who the alien may be supporting or required to support or who contributes to the alien's financial support.

(c) Definitions of Household and Similar Concepts in Other Immigration Contexts

DHS also considered how household size is determined in the affidavit of support context. There, USCIS defines the terms ''household income'' and ''household size.'' [393] ''Household income'' is used to determine whether a sponsor meets the minimum income requirements based on the FPG.[394] The affidavit of support household income generally includes the income of:

- The sponsor;
- The sponsor's spouse;
- Any other person included in determining the sponsor's household size who must also be over the age of 18 and must have signed the additional household member contract through the Form I–864A; and
- The intending immigrant only if he or she either is the sponsor's spouse or has the same principal residence as the sponsor and certain additional criteria.[395]

Also, in the affidavit of support context, the ''household size'' is generally defined as the total number of people including:

- The sponsor;
- The intending immigrant(s) being sponsored on the Form I–864; [396]
- The sponsor's spouse;
- All of the sponsor's children as defined in 101(b)(1) of the Act, 8 U.S.C. 1101(b)(1), (including a stepchild who meets the requirements of 101(b)(1)(b) of the Act, 8 U.S.C. 1101(b)(1), unless the stepchild does not reside with the sponsor, is not claimed by the sponsor as a dependent for tax purposes, and is not seeking to immigrate based on the stepparent/stepchild relationship), except those children that have reached the age of majority or are emancipated under the law of the person's domicile and are not claimed as dependents on the sponsor's most recent tax return;
- Any other persons (whether related to the sponsor or not) whom the sponsor has claimed as dependents on the sponsor's federal income tax return for the most recent tax year, even if such persons do not have the same principal residence as the sponsor;
- Any aliens the sponsor has sponsored under any other affidavit of support for whom the sponsor's support obligation has not terminated; and
- If the sponsor elects, any siblings, parents, and/or adult children who have the same principal residence as the sponsor, and have combined their income with the sponsor's income by submitting Form I–864A.[397]

The affidavit of support is part of the public charge determination in that an alien who is required to submit an affidavit of support pursuant to sections 212(a)(4)(C) and (D) of the Actbut does not submit a sufficient affidavit of support is de facto deemed to be inadmissible as likely to become a public charge. In addition, because the affidavit of support serves as an agreement that the sponsor will use his or her resources to support the alien if necessary, DHS is proposing to consider the affidavit of support in the totality of the circumstances when determining whether the alien is likely at any time to become a public charge. However, the proposed definition of household in this rule does not specifically include or exclude the sponsor and the sponsor's household. Rather, DHS is only including those persons who rely upon or contribute to the alien's asserts and resources. Therefore, if the sponsor is already providing 50 percent or more of financial support to the alien, the sponsor would be included in the proposed definition of household. For example, when a child, as defined in section 101(b) of the Act, 8 U.S.C. 1101(b)(1), is filing for adjustment of status as the child of a U.S. citizen or lawful permanent resident, the affidavit of support sponsor would also be the parent. Because the parent is part of the household, the parent's income would be included as part of the household income.[398] The parent's income would be reviewed as part of the assets, resources, and financial status factor based on the total household size. However, for example, if there is a co-sponsor, who is the alien's cousin and who is not physically residing with the alien, then the cousin would not be counted as part of the household and his or her income would not be included as part of the assets, resources or financial status unless the sponsor is already contributing 50 percent or more of the alien's financial support.

In addition, if the sponsor is a member of the alien's household and included in the calculation of the 125 percent of the FPG, DHS would only count the sponsor's income once for purposes of determining the alien's total household assets and resources. A sponsor's income as reported on the affidavit of support would be added to the income of the other members of the alien's household. The sponsor's income that is added to the alien's total household assets and resources would not be increased because the sponsor also submitted an affidavit of support promising to support the alien at least 125 percent of the FPG for the sponsor's household size. For example, assuming the alien and sponsor's household sizes are the same, if the sponsor's total income reported on the affidavit of support is 250 percent of the FPG for the household size, that income would be added to the alien's assets and resources; the alien's total household income would then be at least 250 percent of the FPG, which constitutes a heavily weighed positive factor.

As discussed above, in proposing this definition of household, DHS aims to account for both (1) the persons whom the alien is supporting and (2) those persons who are contributing to the household, and thus the alien's assets and resources. DHS believes that an alien's ability to support a household is relevant to DHS's consideration of the alien's assets, resources, financial status, and family status. DHS recognizes that household circumstances can vary and expects the proposed definition could in certain circumstances be over- or under-inclusive. DHS welcomes public comments on who should be counted as members of a household, and whose

[392] *See* Internal Revenue Serv., *Dependency Exemptions, available at https://apps.irs.gov/app/vita/content/globalmedia/4491_dependency_exemptions.pdf* (last visited Aug. 10, 2018); *see also* Internal Revenue Serv., *Table 2: Dependency Exemption for Qualifying Relative, available at https://apps.irs.gov/app/vita/content/globalmedia/table_2_dependency_exemption_relative_4012.pdf* (last visited Aug. 10, 2018).

[393] *See* 8 CFR 213a.1.

[394] *See* INA section 213A, 8 U.S.C. 1183a.

[395] *See* 8 CFR 213a.1.

[396] If a child, as defined in INA section 101(b)(1), 8 U.S.C. 1101(b)(1), or spouse of the principal intending immigrant is an alien who does not currently reside in the United States and who either is not seeking to immigrate at the same time as, or will not seek to immigrate within six months of the principal intending immigrant's immigration, the sponsor may exclude that child or spouse in calculating the sponsor's household size.

[397] *See* 8 CFR 213a.1, 213a.2(c)(2)(i)(C)(1).

[398] *See* INA section 213A(3)(f), 8 U.S.C. 1183a(3)(f).

income, assets and resources should be reviewed in the totality of the circumstances when USCIS makes a public charge inadmissibility determination.

C. Public Charge Inadmissibility Determination

DHS proposes codifying the public charge inadmissibility determination as a prospective determination based on the totality of an alien's circumstances at the time of adjudication. As provided by statute, if an alien is required to provide an affidavit of support and the affidavit is insufficient, the alien will be found inadmissible based on public charge regardless of any other evidence the alien may submit.[399]

1. Absence of a Required Affidavit of Support

Section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), permits DHS to consider any submitted affidavit of support under 213A of the Act, 8 U.S.C. 1183a, in public charge inadmissibility determinations. The absence of a statutorily required affidavit of support under section 213A of the Act, 8 U.S.C. 1183a, conclusively establishes an alien's inadmissibility on public charge grounds.[400] Family-sponsored immigrants and employment-based immigrants petitioned by a relative (or by an entity in which a relative has a significant ownership interest) are subject to such a requirement.[401] Other than failure to submit an affidavit of support when required under section 213A of the Act, 8 U.S.C. 1183a, DHS would not make a public charge determination based on any single factor.[402]

2. Prospective Determination Based on Totality of Circumstances

As noted above, section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), uses the words ''likely at any time.'' [403] DHS's review is predictive: An assessment of an alien's likelihood at any time in the future to become a public charge.[404] DHS would, as required by the statute, assess whether the alien is likely to become a public charge and not whether the alien is currently a public charge. While past or current receipt of public benefits may make an alien, at present, a public charge, the past or current receipt of public benefits, alone, is insufficient to sustain a finding that an alien is likely to become a public charge at any point in the future.[405] Other than an absent or insufficient required affidavit of support,[406] no single factor or circumstance that Congress mandated DHS to consider, or which DHS may otherwise determine to consider, would determine the outcome of a public charge inadmissibility determination.

Consistent with the statute, DHS proposes to codify the totality of the circumstances standard,[407] as follows: An alien's age; health; family status; assets, resources, and financial status; and education and skills. In the Government's discretion, the determination can also account for an affidavit of support filed under section 213A of the Act, 8 U.S.C. 1183a. Courts previously considered similar factors when evaluating the likelihood of an alien to become a public charge.[408] INS, the Board, and DHS have consistently reviewed the totality of the circumstances in determining whether an alien is likely to become a public charge.[409]

DHS's proposed totality of the circumstances standard would involve weighing all the positive and negative considerations related to an alien's age; health; family status; assets, resources, and financial status; education and skills; required affidavit of support; and any other factor or circumstance that may warrant consideration in the public charge inadmissibility determination.[410] If the negative factors outweigh the positive factors, then the alien would be found to be inadmissible as likely to become a public charge; if the positive factors outweigh the negative factors, then the alien would not be found inadmissible as likely to become a public charge.

The proposed totality of the circumstances approach is also consistent with the body of administrative case law that has developed over the past 50 years, which generally directs the agency to ''consider[ ] all the factors bearing on the alien's ability or potential ability to be self-supporting . . . .'' [411] On the whole, this case law strongly supports the forward-looking totality of the circumstances approach, considering the following factors, where no one factor is outcome-determinative:

- The ability of the alien to earn a living, as evidenced or impacted by the alien's age, health, work history, current employment status, future employment prospects, and skills;
- The sufficiency of the alien's funds for self-support;
- The obligation and sufficiency of sponsorship to assure that the alien will not need public support; and
- The ability of the alien to remedy any current dependence on public benefits in the United States, as evidenced or impacted by the alien's age, health, ability to earn a living, funds, and sponsorship.[412]

To illustrate, in *Matter of Martinez-Lopez,*[413] rather than concluding that the respondent was likely to become a public charge based solely on the fact that the respondent had no job offer in

[399] See INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

[400] *See* INA section 212(a)(4)(C), 8 U.S.C. 1182(a)(4)(C); 8 CFR 213a.2.

[401] *See* INA sections 212(a)(4) and 213A, 8 U.S.C. 1182(a)(4), 1183a.

[402] *See generally Matter of Martinez-Lopez,* 10 I&N Dec. 409, 421–22 (Att'y Gen. 1964).

[403] The ''likely'' language in the public charge inadmissibility provision also appeared in the initial codification in the INA of 1952. *See* ch. 477, 66 Stat. 163, 183.

[404] *See Matter of Perez,* 15 I&N Dec. 136, 137 (BIA 1974) (concluding that the determination of whether an alien is likely to become a public charge requires consideration of the totality of circumstances, including specific circumstances such as mental or physical disability, health, age, current reliance on welfare benefits, capacity to find employment, and friends or relatives in the United States willing and able to provide assistance); *see also Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,* 64 FR 28689, 28689–93 (May, 26 1999) (in addition to the statutory factors, the public charge inadmissibility analysis also includes consideration of the alien's current and past receipt of cash public assistance for income maintenance, repayment of cash public assistance, current or past institutionalization for long-term care at government expense, specific circumstances ''reasonably tending to show that the burden of supporting the alien is likely to be cast on the public,'' and whether the alien has a sponsor who is willing and able to assist).

[405] *See Matter of Perez,* 15 I&N Dec. 136, 137 (BIA 1974) (''The fact that an alien has been on welfare does not, by itself, establish that he or she is likely to become a public charge.'').

[406] *See* INA section 213A, 8 U.S.C. 1183a.

[407] *See* proposed 8 CFR 212.22.

[408] *See, e.g., Matter of Perez,* 15 I&N Dec. 136, 137 (BIA 1974); *see also Zambrano* v. *INS,* 972 F.2d 1122 (9th Cir. 1992), *vacated on other grounds,* 509 U.S. 918 (1993); *Matter of Martinez-Lopez,* 10 I&N Dec. 409, 421–22 (Att'y Gen. 1964) (in determining whether a person is likely to become a public charge, factors to consider include age, health and physical condition, physical or mental defects which might affect earning capacity, vocation, past record of employment, current employment, offer of employment, number of dependents, existing conditions in the United States, sufficient funds or assurances of support by relatives or friends in the United States, bond or undertaking, or any ''specific circumstance . . . reasonably tending to show that the burden of supporting the alien is likely to be cast on the public''); *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,* 64 FR 28689 (May 26, 1999).

[409] *See Matter of A—,*19 I&N Dec. 867, 869 (Comm'r 1988) (*citing Matter of Perez,* 15 I&N Dec. 136, 137 (BIA 1974)).

[410] *See* proposed 8 CFR 212.22.

[411] *See Matter of Vindman* 16 I&N Dec. 131, 132 (Reg'l Comm'r 1977).

[412] DHS derived this framework from its analysis of the statements and findings in *Matter of Martinez-Lopez,* 10 I&N Dec. 409 (Att'y Gen. 1964), *Matter of Harutunian* 14 I&N Dec. 583 (Reg'l Comm'r 1974), *Matter of Perez* 15 I&N Dec. 136 (BIA 1974), *Matter of Vindman* 16 I&N Dec. 131 (Reg'l Comm'r 1977), and *Matter of A—,* 19 I&N Dec. 867 (Comm'r 1988).

[413] *See* 10 I&N Dec. 409 (Att'y Gen. 1964).

the United States, the Attorney General considered the respondent's future ability to earn a living based on his 10-year work history in the United States, his age, and his health.[414] The Attorney General also considered the fact that the respondent had a brother and other close family members who could provide financial support.[415] In *Matter of Perez,*[416] the Board made clear that the respondent's past and current receipt of welfare was not determinative as to whether she was likely to become a public charge in the future, instead looking to the totality of her circumstances, including her age, health, ability to find employment in the future, and the availability of family support.[417] In *Matter of A—,*[418] although the respondent and her husband had been unemployed for the 4 years prior to the filing of her application for temporary resident status, the INS Commissioner held that the respondent was not likely to become a public charge ''due to her age and ability to earn a living,'' as shown by her recent employment among other factors.[419]

An INS Regional Commissioner took a similar totality of the circumstances approach in *Matter of Harutunian*[420] and determined that the respondent in that case was inadmissible as likely to become a public charge because the respondent lacked the means to support herself, the ability to earn a living, and the presence of a sponsor to assure that she would not need public support.[421] Furthermore, the alien was increasingly likely to become dependent, disabled, and sick because of her older age, and accordingly was expected to become dependent on old-age assistance for support.[422] Similarly, an INS Regional Commissioner, in *Matter of Vindman,* held that a husband and wife were inadmissible as likely to become public charges, because they had been receiving public benefits for approximately three years, they were unemployed in the United States, and they presented no prospect of future employment.[423]

DHS proposes that certain factors and circumstances would generally carry heavy weight, as discussed below. The weight given to an individual factor not designated as carrying heavy weight would depend on the particular facts and circumstances of each case and the relationship of the factor to other factors in the analysis. Some facts and circumstances may be positive while other facts and circumstances may be negative. Any factor or circumstance that decreases the likelihood of an applicant becoming a public charge is positive; any factor or circumstance that increases the likelihood of an applicant becoming a public charge is negative. Multiple factors operating together may be weighed more heavily since those factors in tandem may show that the alien is already a public charge or is or is not likely to become one.

For example, an alien's assets, resources, and financial status together would frequently carry considerable positive weight, because they are the most tangible factors to consider in public charge determinations. An alien's assets, resources, and financial status examined together may show that the alien is not likely to be a public charge despite concerns about the alien's age, education, skills, and health. At the same time, an alien's assets, resources, and financial status examined together may be so limited that a finding that the alien is not likely to become a public charge would have to be based on positive attributes associated with the alien's education, skills, health, family status, age, or sponsorship.

Ultimately, DHS recognizes that, as the Attorney General has noted, ''the statute requires more than a showing of a possibility that the alien will require public support. Some specific circumstance, such as mental or physical disability, advanced age, or other fact reasonably tending to show that the burden of supporting the alien is likely to be cast on the public, must be present.''[424] Indeed, if DHS finds that the specific positive factors and circumstances outweigh the specific negative factors and circumstances in an alien's case, indicating that the alien is less likely than not to receive one or more public benefits at any time in the future as described in 8 CFR 212.21(b), then DHS would conclude that the alien is not likely to become a public charge. If DHS finds that the specific negative factors and circumstances outweigh the specific positive factors and circumstances in an alien's case indicating that the alien is more likely than not to receive public benefits as described in 8 CFR 212.21(b), at any time in the future, then DHS would conclude that the applicant is likely to become a public charge.[425]

D. Age

An alien's age is a mandatory factor that must be considered when determining whether an alien is likely to become a public charge in the future.[426] As discussed below, a person's age may impact his or her ability to legally or physically work and is therefore relevant to being self-sufficient, and the likelihood of becoming a public charge. Accordingly, DHS proposes to consider the alien's age primarily in relation to employment or employability, and secondarily to other

[414] *See* 10 I&N Dec. 409, 422–23 (Att'y Gen. 1964).

[415] *See* 10 I&N Dec. 409, 423 (Att'y Gen. 1964).

[416] 15 I&N Dec. 136 (BIA 1974).

[417] 15 I&N Dec. 136, 137 (BIA 1974).

[418] 19 I&N Dec. 867 (Comm'r 1988). DHS notes, however, that this case involves the special public charge rule applicable only to applications under INA section 245A, 8 U.S.C. 1255a.

[419] *See* 19 I&N Dec. 867, 870 (Comm'r 1988).

[420] *Matter of Harutunian* 14 I&N Dec. 583 (Reg'l Comm'r 1974).

[421] *See* 14 I&N Dec. 583, 589–90 (Reg'l Comm'r 1974).

[422] *See* 14 I&N Dec. 583, 589–90 (Reg'l Comm'r 1974).

[423] *See Matter of Vindman,* 16 I&N Dec. 131, 132 (Reg'l Comm'r 1977).

[424] *Matter of Martinez-Lopez,* 10 I&N Dec. 409, 421 (Att'y Gen. 1964).

[425] As explained, the proposed public charge policy is consistent with the totality of the circumstances approach undertaken by the former INS Commissioner in *Matter of A—.* We recognize the Commissioner, in that decision, cited an earlier decision of the Attorney General for the proposition that ''[a] healthy person in the prime of life cannot ordinarily be considered likely to become a public charge, especially where he has friends or relatives in the United States who have indicated their ability and willingness to come to his assistance in case of emergency.'' 19 I&N Dec. 867, 869 (Comm'r 1988) (quoting *Matter of Martinez-Lopez,* 10 I&N Dec. 409, 421–22 (Att'y Gen. 1964)). In *Matter of A—* and *Matter of Martinez-Lopez,* the INS Commissioner and the Attorney General, respectively, implicitly acknowledge that, although individuals in the prime of life will not *ordinarily* become public charges, they certainly may; otherwise, it would have been pointless to assert that what ordinarily is the case is especially true in certain instances. *See Matter of A—,* 19 I&N Dec. 867, 869 (Comm'r 1988) (acknowledging that ''all factors should be considered in their totality'' in determining whether an individual is likely to become a public charge). Accordingly, adverse factors particular to a given circumstance may counterbalance what otherwise is ordinarily true in a vacuum, such that aliens may still be found inadmissible under INA section 212(a)(4), 8 U.S.C. 1182(a)(4) notwithstanding their being ''in the prime of life.'' Also consistent with those decisions, which instruct that additional positive weight should be afforded where friends or relatives in the United States are willing and able to assist in emergencies, DHS would give positive weight to a Form I–864, Affidavit of Support, that satisfies statutory and regulatory requirements and to income and resources of certain household members, although the filing of the Form I–864 and shared resources likewise would not be determinative. To the extent this proposed rule may be viewed as inconsistent with *Matter of A—,* however, including because the scope of the public benefits covered by this proposed rule is broader than under the longstanding administration of the public charge ground, and the threshold for being considered a public charge under the definition of that term in this proposed rule is lower than it has been for at least the past two decades, that decision would be superseded if this rule is finalized as drafted.

[426] *See* INA section 212(a)(4)(B), 8 U.S.C. 1182(a)(4)(B).

factors as relevant to determining whether someone is likely to become a public charge.

Specifically, DHS proposes to assess whether the alien is between 18 and the minimum ''early retirement age'' for social security purposes (*see* 42 U.S.C. 416(*l*)(2)) (61 as of 2017), and whether the alien's age otherwise makes the alien more or less likely to become a public charge, such as by impacting the alien's ability to work. DHS would consider a person's age between 18 and 61 as a positive factor in the totality of the circumstances, and consider a person's age under 18 or over 61 to be a negative factor in the totality of the circumstances when determining the likelihood of becoming a public charge. However, DHS acknowledges that people under the age of 18 and over the age of 61 may be working or have adequate means of support, and would recognize such means as positive factors.

The 18 through 61 age range is based on the age at which people are generally able to work full-time and the age at which people are generally able to retire with some social security retirement benefits under Federal law.[427] At one end of the spectrum, children under the age of 18 generally face difficulties working full-time.[428] In general, the Fair Labor Standards Act sets 14 years of age as the minimum age for employment, and limits the number of hours worked by children until the age of 16.[429] States have varying laws addressing at what age and for how many hours children may work up to the age of 18.[430] Further, most States require children to attend school until a certain age, generally until the ages of 16 or 18.[431] DHS notes that the Fair Labor Standards Act provides for certain exemptions for children under 16 to work,[432] and children may be otherwise able to work.

At the other end of the age range, retirement is the age at which a person may begin receiving retirement benefits from Social Security.[433] The minimum age for retirement for purposes of Social Security is generally 62.[434] People who are at the minimum retirement age may stop working and start receiving retirement benefits such as Social Security. If a person does have access to Social Security benefits or a retirement pension, he or she may not need public benefits for income maintenance or other benefits to be self-sufficient as the income from Social Security or the pension may suffice.

Other age-related considerations may also be relevant to public charge inadmissibility determinations, in individual circumstances. Individuals under the age of 18 may be more likely to qualify for and receive public benefits. The U.S. Census Bureau reported that 18 percent of persons under the age of 18 (13,253,000) and 11.1 percent of persons aged 18 and over (27,363,000) lived below the poverty level in 2016.[435] The U.S. Census Bureau also reported that persons under the age of 18 were more likely to receive means-tested benefits than all other age groups.[436]

Similarly, studies show a relationship between advanced age and receipt of public benefits. DHS's analysis of SIPP data in Tables 14 and 15 shows noncitizens age 62 and older were more likely to receive cash and non-cash benefits than U.S. citizens in the same age group. Of noncitizens age 62 and older, 11.8 percent received SSI, TANF, or GA in 2013 compared to 4.5 percent of U.S. citizens age 62 and older. The rate of receipt of either cash or non-cash benefits was about 40 percent among U.S. citizens and noncitizens age 0 to 17. Among noncitizens, the receipt of non-cash benefits was much lower among individuals between age 18 and 61 (19.3 percent) than individuals under age 18 (40.2 percent), or individuals over age 61 (36.3 percent). Among U.S. citizens, the receipt of non-cash benefits was lower among individuals between age 18 and 61 (15.3 percent) than individuals under age 18 (39.7 percent), and higher among individuals over age 61 (11.4 percent).

BILLING CODE 4410–10–P

[427] *See* 29 U.S.C. 213(c), 42 U.S.C. 416(*l*)(2).

[428] *See* 29 U.S.C. 213(c); 29 CFR part 570; *see also* Dep't of Labor, *Table of Employment/Age Certification Issuance Practice Under State Child Labor Laws, available at https://www.dol.gov/whd/state/certification.htm* (last updated Jan. 1, 2018).

[429] *See* 29 U.S.C. 213(c); 29 CFR part 570; *see also* Dep't of Labor, *Table of Employment/Age Certification Issuance Practice Under State Child Labor Laws, available at https://www.dol.gov/whd/state/certification.htm* (last updated Jan. 1, 2018).

[430] *See* 29 U.S.C. 213(c); 29 CFR part 570; *see also* Dep't of Labor, *Table of Employment/Age Certification Issuance Practice Under State Child Labor Laws, available at https://www.dol.gov/whd/state/certification.htm* (last updated Jan. 1, 2018).

[431] *See* Nat'l Ctr. for Educ. Statistics, *Table 5.1: Compulsory School Attendance Laws, Minimum and Maximum Age Limits for Required Free Education, by State: 2015, available at https://nces.ed.gov/programs/statereform/tab5_1.asp* (last visited Sept. 10, 2018).

[432] *See* 29 CFR 570.122.

[433] *See* 42 U.S.C. 416(l); *see also* U.S. Soc. Sec. Admin., *Retirement Planner: Benefits by Year of Birth, available at https://www.ssa.gov/planners/retire/agereduction.html* (last visited Sept. 10, 2018).

[434] *See* 42 U.S.C. 416(l); *see also* U.S. Soc. Sec. Admin., *Retirement Planner: Benefits by Year of Birth, available at https://www.ssa.gov/planners/retire/agereduction.html* (last visited Sept. 10, 2018).

[435] *See* Jessica L. Semega et al., U.S. Census Bureau, *Income and Poverty in the United States: 2016,* at 13 tbl.3 (Sept. 2017), *available at https://www.census.gov/content/dam/Census/library/publications/2017/demo/P60-259.pdf.* Statistics provided for those aged 18 and over were inferred.

[436] In an average month during 2012, 39.2 percent of children received some type of means-tested benefit. *See* Shelley K. Irving & Tracy A. Loveless, U.S. Census Bureau, *Household Economic Studies, Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?* 6 (May 2015), *available at https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf*; *see also* U.S. Census Bureau, News Release, *21.3 Percent of U.S. Population Participates in Government Assistance Programs Each Month* (May 28, 2015), *available at https://www.census.gov/newsroom/press-releases/2015/cb15-97.html.*

Table 14. Public Benefit Participation Among U.S. Citizens by Age, 2013 (in thousands)

	0-17			18-61			62+		
Total Population 310,867	**Population** 68,689	**% of Total Population** 22.1%		**Population** 167,058	**% of Total Population** 53.7%		**Population** 54,957	**% of Total Population** 17.7%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	27,406	39.9%	0.5%	26,251	15.7%	0.3%	6,824	12.4%	0.4%
Cash benefits	2,715	4.0%	0.2%	5,268	3.2%	0.1%	2,446	4.5%	0.3%
SSI	1,005	1.5%	0.1%	4,295	2.6%	0.1%	2,352	4.3%	0.2%
TANF	1,564	2.3%	0.2%	606	0.4%	0.0%	*11	*0.0%	0.0%
GA	240	0.3%	0.1%	502	0.3%	0.0%	158	0.3%	0.1%
Non-cash benefits	27,246	39.7%	0.5%	25,529	15.3%	0.3%	6,254	11.4%	0.4%
Medicaid	25,225	36.7%	0.5%	17,084	10.2%	0.2%	4,133	7.5%	0.3%
SNAP	14,158	20.6%	0.4%	15,738	9.4%	0.2%	3,188	5.8%	0.3%
Housing vouchers	1,801	2.6%	0.2%	2,296	1.4%	0.1%	549	1.0%	0.1%
Rent subsidy	3,915	5.7%	0.3%	5,676	3.4%	0.1%	1,970	3.6%	0.2%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).
* Estimate is considered unreliable due to a high relative standard error.
- Estimate of zero.

Table 15. Public Benefit Participation Among Noncitizens by Age, 2013 (in thousands)

	0-17			18-61			62+		
Total Population 310,867	**Population** 1,705	**% of Total Population** 0.5%		**Population** 17,006	**% of Total Population** 5.5%		**Population** 1,452	**% of Total Population** 0.5%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	685	40.2%	3.5%	3,326	19.6%	0.9%	547	37.6%	3.8%
Cash benefits	*29	*1.7%	0.9%	169	1.0%	0.2%	172	11.8%	2.5%
SSI	-	-	-	*91	*0.5%	0.2%	163	11.2%	2.5%
TANF	*29	*1.7%	0.9%	*44	*0.3%	0.1%	-	-	-
GA	-	-	-	*38	*0.2%	0.1%	*9	*0.6%	0.6%
Non-cash benefits	685	40.2%	3.5%	3,286	19.3%	0.9%	527	36.3%	3.8%
Medicaid	592	34.8%	3.4%	2,123	12.5%	0.8%	415	28.6%	3.5%
SNAP	258	15.1%	2.5%	1,339	7.9%	0.6%	232	16.0%	2.9%
Housing vouchers	*51	*3.0%	1.2%	209	1.2%	0.3%	*27	*1.9%	1.1%
Rent subsidy	104	6.1%	1.7%	625	3.7%	0.4%	140	9.6%	2.3%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).
* Estimate is considered unreliable due to a high relative standard error.
- Estimate of zero.

BILLING CODE 4410–10–C

Regardless of age, DHS recognizes that an alien may have financial assets, resources, benefits through employment, education or skills, family, or other means of support that decrease his or her likelihood of becoming a public charge. For example, the alien or the alien's spouse or parent may have sufficient income, or savings, investments, or other resources—including Social Security benefits and Medicare—to support him or herself and the household. In addition, as people age, they may become eligible for certain earned benefits including Social Security benefits, health insurance from Medicare, and benefits from an employer pension or retirement benefit.

E. Health

An alien's health is a factor that must be considered when determining whether an alien is likely to become public charge in the future.[437] Prior to Congress establishing health as a factor for the public charge determination, the

[437] *See* INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

courts, the BIA and INS had also held that a person's physical and mental condition was of major significance to the public charge determination, generally in relation to the ability to earn a living.[438] Accordingly, DHS proposes that when considering an alien's health, DHS will consider whether the alien has any physical or mental condition that, although not considered a condition or disorder that would render the alien inadmissible under the health-related ground of inadmissibility,[439] is significant enough to interfere with the person's ability to care for him- or herself or to attend school or work, or that is likely to require extensive medical treatment or institutionalization in the future.

The mere presence of a medical condition would not render an alien inadmissible. Instead, DHS would consider the existence of a medical condition in light of the effect that such medical condition is likely to have on the alien's ability to attend school or work, and weigh such evidence in the totality of the circumstances. As part of the assets, resources and financial status factor, DHS would consider whether the alien has private health insurance, or the financial resources to pay for associated medical costs.

Research and data establish that healthcare is costly, particularly for the government. In 2016, the National Health Expenditure (NHE) grew to $3.3 trillion, or $10,348 per person, which represents an increase of 4.3 percent from 2015.[440] Medicaid spending, which is 17 percent of the total NHE, grew by 3.9 percent to $565.5 billion.[441] The Federal Government (28.3 percent) and households (28.1 percent) paid the largest shares of total health spending.[442]

An alien's medical conditions may impose costs that a person is unable to afford, and may also reduce that person's ability to attend school, work, or financially support him or herself. Such medical conditions may also increase the likelihood that the alien could resort to Medicaid, or Premium and Cost Sharing Subsidies for Medicare Part D.[443] However, DHS recognizes that regardless of the alien's health status, the alien may have financial assets, resources, or support, including private health insurance or the means to purchase it, that allows him or her to be self-sufficient.[444]

Nevertheless, an alien's inability to work due to a medical condition, and failure to maintain health insurance or the financial resources to pay for the medical costs, could make it likely that such alien would become a public charge. In addition, long-term health care expenses to treat such a medical condition could decrease an individual's available financial resources.

1. USCIS Evidentiary Requirements

DHS proposes that USCIS' review of the health factor would include, but not be limited to, the consideration of the following types of evidence: (1) Any required Report of Medical Examination and Vaccination Record (Form I–693) or applicable DOS medical examination form[445] submitted in support of the application for the diagnosis of any medical conditions;[446] or (2) evidence of a medical condition that is likely to require extensive medical treatment or institutionalization after arrival, or that will interfere with the alien's ability to care for him- or herself, to attend school, or to work.

The specific reference to the Form I–693 or similar form is intended to help standardize USCIS' assessment of health as a factor for public charge consideration and avoid multiple medical examinations for the alien. Most immigrant visa applicants applying with the DOS and those aliens applying for adjustment of status with USCIS are required to submit a medical examination.[447] Nonimmigrants applying with DOS and nonimmigrants seeking a change of status or extension of stay with USCIS are generally not required to submit a medical examination with their applications. However, nonimmigrants seeking a change of status to that of a spouse of a legal permanent resident (V–1) or child (V–2) status must submit a medical examination.[448] In addition, a consular officer may request a medical examination if the officer has concerns that the applicant may be inadmissible on health-related grounds.[449] Likewise, a CBP officer at a port of entry may require a nonimmigrant to submit to a medical examination to determine medical inadmissibility.[450]

Civil surgeons and panel physicians test for Class A[451] and Class B[452] medical conditions, and report the findings on the appropriate medical examination form. An alien is inadmissible on a health-related ground for being diagnosed with a Class A medical condition unless a waiver is available and authorized.[453] Class A medical conditions, as defined in HHS regulations, include the following:[454]

- Communicable disease of public health significance, including gonorrhea, Hansen's Disease (infectious), syphilis (infectious stage), and active tuberculosis;[455]
- Failure to meet vaccination requirements;[456]
- Present or past physical or mental disorders with associated harmful behavior or harmful behavior that is likely to recur;[457] and
- Drug abuse or addiction.[458]

In identifying a Class A medical condition, the HHS regulations direct physicians conducting the immigration medical examinations to explain on the medical report ''the nature and extent of the abnormality; the degree to which the alien is incapable of normal physical activity; and the extent to which the condition is remediable . . . [as well as] the likelihood, that because of the condition, the applicant will require

[438] *See, e.g., Matter of Martinez-Lopez,* 10 I&N Dec. 409, 421–23 (Att'y Gen. 1964); *see also Matter of A-,* 19 I&N Dec. 867, 869 (Comm'r 1988) (citing *Matter of Harutunian,* 14 I&N Dec. 583 (Reg'l Comm'r 1974); *Matter of Vindman,* 16 I&N Dec. 131 (Reg'l Comm'r 1977)).

[439] *See* INA section 212(a)(1), 8 U.S.C. 1182(a)(1).

[440] *See* Ctrs. for Medicare & Medicaid Servs., *NHE Fact Sheet, available at https://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/nationalhealthexpenddata/nhe-fact-sheet.html* (last visited Feb. 3, 2018).

[441] *See* Ctrs. for Medicare & Medicaid Servs., *NHE Fact Sheet, available at https://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/nationalhealthexpenddata/nhe-fact-sheet.html* (last visited Feb. 3, 2018).

[442] *See* Ctrs. for Medicare & Medicaid Servs., *NHE Fact Sheet, available at https://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/nationalhealthexpenddata/nhe-fact-sheet.html* (last visited Feb. 3, 2018).

[443] *See* 42 U.S.C. 1395w–114.

[444] For example, a person may have savings, investments or trust funds.

[445] This is currently the Immigrant or Refugee Applicant (Form DS–2054).

[446] The medical examination documentation indicates whether the applicant has either a Class A or Class B medical condition. In addition, the alien must provide a vaccination record. Class A and Class B medical conditions are defined in the HHS regulations. *See* 42 CFR 34.2.

[447] *See* INA section 212(a)(1), 8 U.S.C. 1182(a)(1).

[448] *See* INA section 101(a)(15)(v), 8 U.S.C. 1101(a)(15)(v); *see also* 8 CFR 214.15.

[449] *See* INA section 221(d), 8 U.S.C. 1201(d).

[450] *See* INA section 232, 8 U.S.C. 1222.

[451] The alien would be inadmissible for health-related grounds under INA section 212(a)(1), 8 U.S.C. 1182(a)(1).

[452] Class B medical conditions do not make an alien inadmissible on health-related grounds under INA section 212(a)(1), 8 U.S.C. 1182(a)(1), but are relevant to the public charge determination.

[453] *See* INA section 212(a)(1), 8 U.S.C. 1182(a)(1).

[454] *See* 42 CFR 34.2(d). The alien with a Class A medical condition would be inadmissible based on health-related grounds under INA section 212(a)(1), 8 U.S.C. 1182(a)(1). However, these medical conditions may also be considered as part of the public charge inadmissibility determination.

[455] *See* 42 CFR 34.2(b) and (d)(1); *see also* INA section 212(a)(1)(i), 8 U.S.C. 1182(a)(1)(i).

[456] *See* 42 CFR 34.2(d); *see also* INA section 212(a)(1)(ii), 8 U.S.C. 1182(a)(1)(ii).

[457] *See* 42 CFR 34.2(d); *see also* INA section 212(a)(1)(iii), 8 U.S.C. 1182(a)(1)(iii).

[458] *See* 42 CFR 34.2(d), (h), (i); *see also* INA section 212(a)(1)(iv), 8 U.S.C. 1182(a)(1)(iv).

extensive medical care or institutionalization.'' [459] A waiver of the health-related ground of inadmissibility is available for communicable diseases of public health significance, physical or mental disorder accompanied by harmful behavior, and lack of vaccinations.[460]

A Class B medical condition is defined as a physical or mental condition, disease, or disability serious in degree or permanent in nature.[461] Currently, the CDC Technical Instructions for Medical Examinations of Aliens, which direct physicians to provide information about Class B conditions, describe a Class B condition as one that, although it does not ''constitute a specific excludable condition, represents a departure from normal health or well-being that is significant enough to possibly interfere with the person's ability to care for him- or herself, to attend school or work, or that may require extensive medical treatment or institutionalization in the future.'' [462]

If the physician conducting the immigration medical examination identifies a Class B medical condition that is ''a substantial departure from normal well-being,'' [463] the HHS regulations direct the physician to explain in the medical notification [464] ''the degree to which the alien is incapable of normal physical activity, and the extent to which the condition is remediable . . . [and] the likelihood, that because of the condition, the applicant will require extensive medical care or institutionalization.'' [465]

DHS would consider any of the above-described conditions in the totality of the circumstances. Any such condition would not serve as the sole factor considered in whether an alien is likely to become a public charge. Absence of a diagnosis of such a condition would be a positive factor. DHS recognizes that some conditions that are Class A and Class B are treatable and the person may in the future be able to work or attend school. These circumstances, as identified by a civil surgeon or panel physician, would also be taken into consideration in the totality of the circumstances.

In addition to the types of evidence described above, DHS would also take into consideration any additional medical records or related information provided by the alien to clarify any medical condition included on the medical form or other information that may outweigh any negative factors. Such documentation may include, for instance, a licensed doctor's attestation of prognosis and treatment of a medical condition.

The presence or absence of a medical condition would only be considered a positive or negative factor as it pertains to the alien's likelihood of becoming a public charge; frequently, this would entail consideration of whether, in light of the alien's health, the alien will be able to adequately care for him- or herself, to attend school, or to work.[466]

2. Potential Effects for Aliens With a Disability, Depending on Individual Circumstances

As noted above, DHS would consider any immigration medical examination submitted with the alien's application, as well as any other evidence demonstrating that the individual has a medical condition that will affect the alien's ability to work, attend school, or otherwise support himself or herself. As part of the immigration medical examination, when identifying a Class B medical condition, civil surgeons and panel physicians are required to report on certain disabilities, including the nature and severity of the disability, its impact on the alien's ability to work, attend school, or otherwise support himself or herself, and whether the disability will require hospitalization or institutionalization. Under the proposed rule, DHS would only consider disability as part of the health factor to the extent that such disability, in the context of the alien's individual circumstances, impacts the likelihood of the alien becoming a public charge. Frequently, this would entail consideration of the potential effects on the alien's ability to work, attend school or otherwise support him or herself.

[459] 42 CFR 34.4(b)(2).

[460] *See* INA section 212(g)(1), 8 U.S.C. 1182(g)(1). Although a waiver is unavailable for inadmissibility due to drug abuse or addiction, an applicant may still overcome this inadmissibility if his or her drug abuse or addiction is found to be in remission. *See* Ctrs. for Disease Control & Prevention, *Technical Instructions for Panel Physicians and Civil Surgeons, Remission, available at https://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html* (last updated Oct. 23, 2017).

[461] *See* 42 CFR 34.2(b)(2).

[462] *See* Ctrs. for Disease Control & Prevention, *Required Evaluations—Other Physical or Mental Abnormality, Disease, or Disability, Technical Instructions For Medical Examination Of Aliens, available at https://www.cdc.gov/immigrantrefugeehealth/exams/ti/panel/technical-instructions/panel-physicians/other-physical-mental.html* (last updated Nov. 23, 2016); Ctrs. for Disease Control & Prevention, *Required Evaluation Components Other Physical or Mental Abnormality, Disease or Disability, Technical Instructions for the Medical Examination of Aliens in the United States, available at https://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions/civil-surgeons/required-evaluation-components/other-disease-disability.html* (last updated Aug. 3, 2010). The HHS regulations require physicians conducting medical examinations for an alien to comply with the CDC's Technical Instructions for Medical Examinations of Aliens. 42 CFR 34.3(i).

[463] *See* 42 CFR 34.4(c)(1).

[464] *See* 42 CFR 34.2(*l*) (defining a medical notification as ''[a] medical examination document issued to a U.S. consular authority or DHS by a medical examiner'').

[465] 42 CFR 34.4(c)(2).

[466] Relatedly, as part of the assets, resources and financial status factor, DHS would consider whether the alien either has sufficient household assets and resources, including private health insurance, to cover any reasonably foreseeable medical costs related to a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide care for him- or herself, to attend school, or to work.

The Rehabilitation Act of 1973 [467] and the Americans with Disabilities Act (ADA) of 1990 [468] prohibit discrimination against individuals based on their disabilities.[469] Both laws require, among other things, that employers provide reasonable accommodations for individuals with disabilities who need them to apply for a job, perform a job's essential functions, or enjoy equal benefits and privileges of employment, absent undue hardship (*i.e.,* significant difficulty or expense). The Individuals with Disabilities Education Act (IDEA) [470] ensures equality of educational opportunity and assists States in providing special education and related services to children with disabilities. Further, DHS is specifically prohibited from discriminating against individuals with disabilities and otherwise preventing individuals with disabilities from participating in benefits programs.[471] Congress has noted that ''[d]isability is a natural part of the human experience and in no way diminishes the right of individuals to . . . contribute to society; pursue meaningful careers; and enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society.'' [472] Individuals with disabilities make substantial contributions to the American economy. For example, in 2010, 41.1 percent of people with disabilities between the ages of 21 to 64 were employed (27.5 percent of adults with severe disability and 71.2 percent of adults with non-severe disabilities were employed) during a study conducted by the CDC.[473] The ADA,[474] the Rehabilitation Act of 1973,[475] and the IDEA [476] provide further protections for individuals with disabilities to better ensure that such individuals have the opportunity to make such contributions.[477]

Ultimately, DHS has determined that considering, as part of the health factor, an applicant's disability diagnosis that, in the context of the alien's individual circumstances, affects his or her ability to work, attend school, or otherwise care for him or herself, is not inconsistent with federal statutes and regulations with respect to discrimination, as the alien's disability is treated just as any other medical condition that affects an alien's likelihood, in the totality of the circumstances, of becoming a public charge. Under the totality of the circumstances framework, an alien with a disability is not being treated differently, or singled out, and the disability itself would not be the sole basis for an inadmissibility finding. In other words, as with any other factor and consideration in the public charge inadmissibility determination, DHS would look at each of the mandatory factors, and the affidavit of support, if required, as well as all other factors in the totality of the circumstances.

In sum, an applicant's disability could not be the sole basis for a public charge inadmissibility finding. In addition, as part of its totality of the circumstances determination, DHS would always recognize that the ADA, the Rehabilitation Act, IDEA, and other laws provide important protections for individuals with disabilities, including with respect to employment opportunities. Furthermore, as it relates to a determination of inadmissibility under section 212(a)(4) of the Act, DHS does not stand in the position of an employer vis-a-vis when the alien is applying for the immigration benefit. DHS is also not proposing to include employee benefits of any type in the definition of public benefit.

F. Family Status

An applicant's family status is a factor that must be considered when determining whether the alien is likely to become a public charge in the future.[478] When considering an alien's family status, DHS proposes to consider whether the alien has a household to support, or whether the alien is being supported by another household and whether the alien's household size makes the alien more or less likely to become a public charge. DHS notes that it would frequently view family status in connection with, among other things, the alien's assets and resources, because the amount of assets and resources necessary to support a larger number of people in a household is generally greater. Thus, as described in the Assets, Resources, and Financial Status section below, DHS's proposed standard for evaluating assets, resources and financial status requires DHS to consider whether the alien can support him or herself and the household as defined in 8 CFR 212.21(d), at the level of at least 125 percent of the most recent FPG based on the alien's household size.

As noted in the description above of the proposed definition of the ''alien's household,'' an alien who has no dependents would have a household of one, and would only have to support him or herself. By contrast, a child alien who is part of a parent's household would be part of a larger household, and would have to demonstrate that his or her own assets, resources and financial status and his or her parent's or legal guardian's assets, resources, and financial status are sufficient to support the alien and the rest of the household.

The research and data below discuss how the number of household members may affect the likelihood of receipt of public benefits. Table 16 and Table 17 show that among both U.S. citizens and noncitizens, the receipt of non-cash benefits generally increased as family size increased. Among U.S. citizens, individuals in families with 3 or 4 persons were more likely to receive non-cash benefits compared to families of 2, while individuals in families of 5 or more were about three times as likely to receive non-cash benefits as families of 2. Among noncitizens in families with 3 or 4 people, about 20 percent received non-cash assistance, while about 30 percent of noncitizens in families of 5 or more received non-cash benefits. Across family sizes, the rate of receipt of cash assistance ranged from about 3 to 5 percent among U.S. citizens, and about 1 to 3 percent among noncitizens. The rate of receipt of either TANF or GA

[467] Public Law 93–112, section 504, 87 Stat. 355, 394 (codified as amended at 29 U.S.C. 794) (prohibiting discrimination solely on the basis of disability in Federal and federally-funded programs and activities).

[468] Public Law 101–336, 104 Stat. 327 (codified as amended at 42 U.S.C. 12101–12213).

[469] *See* 42 U.S.C. 12112(b)(5); *see also* 29 CFR 1630.2(o), 1630.9.

[470] Public Law 108–446, 118 Stat 2647 (2004) (codified as amended at 20 U.S.C. 1400–1482).

[471] *See* 6 CFR 15.30(b)(1)(i) (''The Department, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of disability . . . [d]eny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service . . . .''); 6 CFR 15.30(b)(4) (''The Department may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would [s]ubject qualified individuals with a disability to discrimination on the basis of disability; or [d]efeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with a disability.'').

[472] *See* 29 U.S.C. 701(3).

[473] *See* Mathew W. Brault, U.S. Census Bureau, *Americans With Disabilities: 2010,* at 10 (2012), *available at https://www2.census.gov/library/publications/2012/demo/p70-131.pdf.*

[474] *See* Public Law 101–336, 104 Stat. 327 (1990) (codified as amended at 42 U.S.C. 12101–12213).

[475] *See* Public Law 93–112, section 504, 87 Stat. 355, 394 (codified as amended at 29 U.S.C. 794).

[476] *See* Public Law 108–466, 118 Stat 2647 (2004) (codified as amended at 20 U.S.C. 1400–1482).

[477] *See generally* Dep't of Justice, Civil Rights Div., Disability Rights Sec., *A Guide to Disability Rights Laws* (July 2009), *https://www.ada.gov/cguide.htm.*

[478] *See* proposed 8 CFR 212.2; *see also* INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

was about 1 percent or less regardless of family size or citizenship status.

BILLING CODE 4410–10–P

Table 16. Public Benefit Participation Among U.S. Citizens by Family Size, 2013 (in thousands)

	Nonfamily household			Family size 2			Family size 3		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	59,207	19.0%		76,493	24.6%		51,516	16.6%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	11,002	18.6%	0.5%	9,867	12.9%	0.4%	11,296	21.9%	0.5%
Cash benefits	3,072	5.2%	0.3%	2,221	2.9%	0.2%	2,000	3.9%	0.2%
SSI	2,795	4.7%	0.3%	1,794	2.3%	0.2%	1,332	2.6%	0.2%
TANF	*83	*0.1%	0.0%	269	0.4%	0.1%	544	1.1%	0.1%
GA	279	0.5%	0.1%	222	0.3%	0.1%	194	0.4%	0.1%
Non-cash benefits	10,640	18.0%	0.5%	9,451	12.4%	0.4%	11,014	21.4%	0.5%
Medicaid	6,617	11.2%	0.4%	7,108	9.3%	0.3%	8,920	17.3%	0.5%
SNAP	6,095	10.3%	0.4%	5,231	6.8%	0.3%	6,154	11.9%	0.4%
Housing vouchers	1,038	1.8%	0.2%	747	1.0%	0.1%	938	1.8%	0.2%
Rent subsidy	3,488	5.9%	0.3%	2,170	2.8%	0.2%	2,058	4.0%	0.3%

	Family size 4			Family size 5+		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	53,883	17.3%		49,604	16.0%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	11,200	20.8%	0.5%	17,115	34.5%	0.6%
Cash benefits	1,342	2.5%	0.2%	1,796	3.6%	0.2%
SSI	708	1.3%	0.1%	1,023	2.1%	0.2%
TANF	592	1.1%	0.1%	693	1.4%	0.2%
GA	*81	*0.2%	0.0%	124	0.3%	0.1%
Non-cash benefits	11,035	20.5%	0.5%	16,888	34.0%	0.6%
Medicaid	9,387	17.4%	0.5%	14,412	29.0%	0.6%
SNAP	5,895	10.9%	0.4%	9,709	19.6%	0.5%
Housing vouchers	802	1.5%	0.2%	1,121	2.3%	0.2%
Rent subsidy	1,668	3.1%	0.2%	2,179	4.4%	0.3%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).

*Estimate is considered unreliable due to a high relative standard error.

- Estimate of zero.

**Nonfamily households consist of an individual living alone or living only with nonrelatives.

Table 17. Public Benefit Participation Among Noncitizens by Family Size, 2013 (in thousands)

	Nonfamily household			Family size 2			Family size 3		
Total Population 310,867	**Population** 3,638	**% of Total Population** 1.2%		**Population** 3,268	**% of Total Population** 1.1%		**Population** 3,411	**% of Total Population** 1.1%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	533	14.7%	1.7%	632	19.3%	2.2%	768	22.5%	2.2%
Cash benefits	97	2.7%	0.8%	*81	*2.5%	0.9%	*35	*1.0%	0.5%
SSI	*79	*2.2%	0.7%	*56	*1.7%	0.7%	*20	*0.6%	0.4%
TANF	*4	*0.1%	0.2%	*25	*0.8%	0.5%	*8	*0.2%	0.2%
GA	*14	*0.4%	0.3%	*4	*0.1%	0.2%	*8	*0.2%	0.3%
Non-cash benefits	516	14.2%	1.7%	624	19.1%	2.2%	761	22.3%	2.2%
Medicaid	308	8.5%	1.4%	372	11.4%	1.8%	547	16.0%	1.9%
SNAP	225	6.2%	1.2%	216	6.6%	1.4%	240	7.0%	1.3%
Housing vouchers	*17	*0.5%	0.3%	*69	*2.1%	0.8%	*49	*1.4%	0.6%
Rent subsidy	178	4.9%	1.1%	209	6.4%	1.4%	130	3.8%	1.0%

	Family size 4			Family size 5+		
Total Population 310,867	**Population** 4,056	**% of Total Population** 1.3%		**Population** 5,789	**% of Total Population** 1.9%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	842	20.7%	1.9%	1,783	30.8%	1.8%
Cash benefits	*52	*1.3%	0.5%	104	1.8%	0.5%
SSI	*43	*1.0%	0.5%	*57	*1.0%	0.4%
TANF	*8	*0.2%	0.2%	*29	*0.5%	0.3%
GA	*1	*0.0%	0.1%	*19	*0.3%	0.2%
Non-cash benefits	837	20.6%	1.9%	1,760	30.4%	1.8%
Medicaid	655	16.1%	1.7%	1,247	21.6%	1.6%
SNAP	342	8.4%	1.3%	804	13.9%	1.3%
Housing vouchers	*39	*1.0%	0.5%	113	2.0%	0.5%
Rent subsidy	111	2.7%	0.8%	241	4.2%	0.8%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).
*Estimate is considered unreliable due to a high relative standard error.
- Estimate of zero.
**Nonfamily households consist of an individual living alone or living only with nonrelatives.

BILLING CODE 4410–10–C

In light of the above data on the relationship between family size and receipt of public benefits, DHS proposes that in evaluating family status for purposes of the public charge inadmissibility determination, DHS would consider the number of people in a household as defined in the proposed 8 CFR 212.21(d). As with the other factors, household size, on its own, would never dictate the outcome of a public charge inadmissibility determination. Regardless of household size, that an alien may present other factors (*e.g.,* assets, resources, financial status, education, and skills) that weigh for or against a finding that the alien is likely to become a public charge. For instance, an alien who is part of a large household may have his or her own income or access to additional assets and resources that would assist in supporting the household and therefore would also be considered in the totality of the circumstances.

G. Assets, Resources, and Financial Status

In addition to age, health, and family status, USCIS must consider an applicant's assets, resources, and financial status in making a public charge determination.[479] The statute does not define these terms, but the agency has historically interpreted these terms to include information that would provide an overview of the alien's financial means and overall financial health. Since Legacy INS issued the 1999 Interim Field Guidance, the practical focus has been primarily on the sufficiency of an Affidavit of Support submitted on the alien's behalf. However, given that the statute sets out the Affidavit of Support as a separate

[479] *See* INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

requirement and the statute includes the mandatory review of assets, resources and financial status as a factor,[480] DHS is proposing to consider in the totality of the circumstances whether the alien can, taking into account both the alien's assets and liabilities, establish the ability to support himself or herself and the household as defined in the proposed 8 CFR 212.21(d).

All else being equal, the more assets and resources an alien has, the more self-sufficient the alien is likely to be, and the less likely the alien is to receive public benefits. On the other hand, an alien's lack of assets and resources, including income, makes an alien more likely to receive public benefits. Whether a person may be qualified for public benefits frequently depends on where the person's household income falls with respect to the FPG.[481] Federal, State, and local public benefit granting agencies frequently use the FPG to determine eligibility for public benefits.[482] Some major means-tested programs, however, rely on different income-related measurements for purposes of determining eligibility.[483]

Because assets and resources include the employment income earned by an alien and the members of an alien's household, and are an important factor in determining whether the alien is likely to receive public benefits in the future, DHS proposes that when considering an alien's assets and resources, DHS will consider whether the alien has gross household income of at least 125 percent of the FPG based on the household size. If the alien's household income is less than 125 percent of the FPG, the alien's other household assets and resources should be at least 5 times the difference between the household income and 125 of the FPG based on the household size.[484]

DHS has chosen a household income of at least 125 percent of the FPG, which has long served as a touchpoint for public charge inadmissibility determinations.[485] As of February 2018, within the contiguous United States, 125 percent of FPG ranges from approximately $20,300 for a family of two to $51,650 for a family of eight.[486] Additionally, consistent with the affidavit of support context, if the alien's household income is under 125 percent of the FPG, the alien may use his or her assets, as well household members' assets, to meet the minimum income threshold to avoid the alien's household income being considered a negative factor in the totality of the circumstances review.[487] If using household assets to demonstrate that the alien can meet the 125 percent of FPG threshold, the alien must present evidence that the assets total value is at least 5 times the difference between the household income and 125 percent of FPG for the household size.

The following example illustrates how an applicant would be able to use his or her household assets and resources to demonstrate that he or she has financial support at 125 percent of the FPG. The applicant has filed an application for adjustment of status. The applicant has a household size of 4, where 125 percent of the FPG for that household size is $31,375. The applicant's household income is $24,000, which is $7,375 below 125 percent of the FPG for a household of 4. Therefore, in order to avoid DHS determining that the applicant's household income is a negative factor in the totality of the circumstances, the alien would need $36,875 in household assets and resources.

An alien's financial status would also include the alien's liabilities as evidenced by the alien's credit report and score, as well as whether the alien has in the past, or is currently, receiving public benefits, among other considerations. Below, DHS describes the proposed rule's evidentiary requirements for this factor.

DHS welcomes public comments on whether 125 percent of the FPG is an appropriate threshold in considering the alien's assets and resources or if there are other potential alternatives, including any studies or data that would provide a basis for a different measure or threshold.

1. Evidence of Assets and Resources

DHS proposes that USCIS would consider certain types of evidence when reviewing this factor. USCIS consideration of an alien's assets and resources would include, but not be limited to, a review of such information as:

- The alien's annual gross household income (*i.e.,* all sources of income before deductions), excluding any income from public benefits;
- Any additional income from individuals not included in the alien's household as defined in the proposed 8 CFR 212.21(d) who physically reside with the alien and whose income will be relied on by the alien to meet the proposed standard of household income at or above 125 percent of FPG;
- Any additional income to the alien from another person or source not included in the alien's household on a continuing monthly or yearly basis for the most recent calendar year, excluding any income from public benefits;
- The household's cash assets and resources, including as reflected in checking and savings account statements in the last 12 months;
- The household's non-cash assets and resources that can be converted into cash within 12 months, such as net cash value of real estate holdings minus the sum of all loans secured by a mortgage, trust deed, or other lien on the home; annuities; securities; retirement and educational accounts; and any other assets that can be converted into cash easily.

All of this information is potentially relevant to a determination of the alien's assets and resources, and likelihood of becoming a public charge.

2. Evidence of Financial Status

When reviewing whether the alien has any financial liabilities or past reliance on public benefits that make the alien more or less likely to become a public charge, DHS proposes to review the following evidence:

- Evidence that the alien has applied for or received any public benefit, as defined in the proposed 8 CFR 212.21(b), on or after the effective date of the final rule;
- Been certified or approved to receive public benefits, as defined in 8 CFR 212.21(b), on or after the effective date of the final rule;
- Evidence that the alien has applied for or received a fee waiver for

[480] See INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

[481] The poverty guidelines are updated periodically in the **Federal Register** by HHS. The U.S. Census Bureau definition of family and family household can be found in U.S. Census Bureau, *Current Population Survey 2017 Annual Social and Economic Supplement (ASEC)* 9–1 to 9–2, *available at https://www2.census.gov/programs-surveys/cps/techdocs/cpsmar17.pdf* (last visited Sept. 13, 2018).

[482] Different Federal programs use different percentages of the FPG such as 125 percent, 150 percent, or 185 percent. *See* U.S. Dep't of Health & Human Servs., Office of the Assistant Sec'y for Planning & Evaluation, *Frequently Asked Questions Related to the Poverty Guidelines and Poverty, What Programs Use the Federal Poverty Guidelines, available at* https://aspe.hhs.gov/frequently-asked-questions-related-poverty-guidelines-and-poverty#collapseExample9 (last visited Sept. 8, 2018).

[483] *See* U.S. Dep't of Health & Human Servs., Office of the Assistant Sec'y for Planning & Evaluation, *Frequently Asked Questions Related to the Poverty Guidelines and Poverty, What Programs Use the Federal Poverty Guidelines, available at https://aspe.hhs.gov/frequently-asked-questions-related-poverty-guidelines-and-poverty#collapse Example9* (last visited Sept. 8, 2018).

[484] This is consistent with the provisions for assets under the affidavit of support in 8 CFR 213a.2(c)(2)(iii)(B)(3).

[485] *See* INA section 213A(f)(1)(E), 8 U.S.C. 1183a(f)(1)(E).

[486] *Annual Update of the HHS Poverty Guidelines,* 83 FR 2642 (Jan. 18, 2018).

[487] *See* INA section 213A(f)(1)(E), 8 U.S.C. 1183a(f)(1)(E).

immigration benefits after the effective date of the final rule;

- Credit histories and credit scores; and
- Whether the alien has the private health insurance or the financial resources to pay for medical costs associated with a medical condition identified in 8 CFR 212.22(b)(2).

(a) Public Benefits

Current or past applications for or receipt of public benefits, as defined in the proposed 8 CFR 212.21(b), suggests that the alien's overall financial status is so weak that he or she is or was unable to fully support him or herself without government assistance, *i.e.,* that the alien will receive such benefits in the future. DHS, therefore, proposes to consider any current and past receipt of public benefits as set forth in 8 CFR 212.21(b) as a negative factor in the totality of the circumstances, because it is indicative of a weak financial status and increases the likelihood that the alien will become a public charge in the future. The weight given to this factor would depend on how recently the alien has received public benefits, and whether the person has received public benefits for an extended period of time (*i.e.,* receives public benefits for multiple years) or at multiple different time periods (*i.e.,* 3 times in the last two years).[488]

DHS would also consider whether the alien has been certified or approved to receive public benefits, as defined in 8 CFR 212.21(b), on or after the effective date of the final rule. For example, a person may be certified for SNAP benefits for a month or up to 24 months at one time and then receive the benefits from the EBT card on a monthly basis. In general, an alien who is certified or preapproved for benefits in the future is likely to continue to receive public benefits in the future. An alien nevertheless may otherwise establish that he or she has terminated the receipt of those benefits through documentation from the benefit-granting agency.

DHS recognizes that a person who previously received public benefits may have changed circumstances and DHS would review those circumstances as part of the totality of the circumstances. For example, where an alien is currently unemployed and finishing a college education and received benefits, the alien may provide evidence that he or she has pending employment with benefits upon graduation from college and attaining a degree. It is possible that in the review of the totality of the circumstances, the alien would not be found likely to become a public charge.

Review of past applications for or receipt of public benefits would include a review of both cash and non-cash public benefits as defined in the proposed 8 CFR 212.21(b). According to the U.S. Census Bureau, in 2012, approximately 52.2 million people in the United States (or 21.3 percent of the overall population) participated in major means-tested government assistance programs each month.[489] In addition, among those with family income below the poverty level[490] an average of 61.3 percent participated in at least one major means tested benefit.[491] Participation rates were highest for Medicaid (15.3 percent) and SNAP (13.4 percent).[492] The largest share of participants (43.0 percent) who benefited from one or more means-tested assistance programs between January 2009 and December 2012 stayed in the programs between 37 and 48 months.[493]

(b) Fee Waivers for Immigration Benefits

Under INA section 286(m), 8 U.S.C. 1356(m), USCIS collects fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including the costs of providing similar services without charge to asylum applicants and other immigrants. USCIS may waive fees for specific immigration benefit forms if a person demonstrates ''inability to pay.'' [494]

DHS proposes that USCIS would consider past receipt of a fee waiver as part of the financial status factor.[495] Requesting or receiving a fee waiver for an immigration benefit suggests a weak financial status. Since fee waivers are based on an inability to pay, a fee waiver for an immigration benefit suggests an inability to be self-sufficient. In addition, the Senate Appropriations Report, which accompanied the fiscal year 2017 Department of Homeland Security Appropriations Act,[496] expressed concern about the increased use of fee waivers, as those paying fees are forced to absorb costs for which they receive no benefit.[497] The committee specifically expressed concern that those unable to pay fees are less likely to live in the United States independent of government assistance.[498]

DHS would not consider a fee exemption as part of the determination of whether an alien is likely to become a public charge,[499] as such exemption would have no bearing on whether an alien would be likely to become a public charge in the future. Fee exemptions are not fee waivers and are not affirmatively requested by an alien based on an inability to pay. Instead, fee exemptions are provided either to specific forms or immigrant categories based on statutory authority, regulations, or agency policy.

(c) Credit Report and Score

As also noted above, DHS also proposes that USCIS would consider an alien's liabilities and information of

[488] This proposed policy is generally consistent with longstanding policy affording less weight to benefits that were received longer ago in the past.

[489] *See* Shelley K. Irving & Tracy A. Loveless, U.S. Census Bureau, *Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?* (May 2015), *available at https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf; see also* U.S. Census Bureau, *News Release: 21.3 Percent of U.S. Population Participates in Government Assistance Programs Each Month* (May 28, 2015), *available at https://www.census.gov/newsroom/press-releases/2015/cb15-97.html.* The U.S. Census Bureau included Temporary Assistance for Needy Families (TANF), General Assistance (GA), Supplemental Security Income (SSI), Supplemental Nutrition Assistance Program (SNAP), Medicaid, and housing assistance as major means-tested benefits as major means-tested government benefits.

[490] *See* U.S. Census Bureau, *News Release: 21.3 Percent of U.S. Population Participates in Government Assistance Programs Each Month* (May 28, 2015), at 5, *available at https://www.census.gov/newsroom/press-releases/2015/cb15-97.html.* Note that the Census reports use the term income to poverty ratio.'' A ratio of less than 1 indicates a person's income is below the poverty level. The census report refers to average monthly participation rates.

[491] *See* Shelley K. Irving & Tracy A. Loveless, U.S. Census Bureau, *Household Economic Studies, Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?* 6 (May 2015), *available at https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf.* This report includes Temporary Assistance for Needy Families (TANF), General Assistance (GA), Supplemental Security Income (SSI), Supplemental Nutrition Assistance Program (SNAP), Medicaid, and housing assistance as major means-tested benefits.

[492] *See* Shelley K. Irving & Tracy A. Loveless, U.S. Census Bureau, *Household Economic Studies, Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?* 6 (May 2015), *available at https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf.*

[493] *See* Shelley K. Irving & Tracy A. Loveless, U.S. Census Bureau, *Household Economic Studies, Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?* 6 (May 2015), *available at https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf.*

[494] *See* 8 CFR 103.7(c).

[495] This would be inclusive of fee exceptions where an applicant actively requests a fee waiver under 8 CFR 103.7(d).

[496] *See* Public Law 115–31, div. F, 131 Stat. 135, 404.

[497] *See* S. Rep. No. 114–264, at 125 (2016).

[498] *See* S. Rep. No. 114–264, at 125 (2016).

[499] *See* 8 CFR 103.7(d); *see also* 22 CFR 41.107(c) (listing categories of aliens exempt from nonimmigrant visa fees); 9 FAM 403.4–3 (same). Diplomats, UN visitors, U.S. Government employees, and those coming to perform charitable work are typical classes of aliens whose nonimmigrant visa fees are exempted.

such liabilities in a U.S. credit report and score as part of the financial status factor. Not everyone has a credit history in the United States. Nevertheless, a good credit score in the United States is a positive factor that indicates a person is likely to be self-sufficient and support the household. Conversely, a lower credit score or negative credit history in the United States may indicate that a person's financial status is weak and that he or she may not be self-sufficient. Credit reports contain information about a person's bill payment history, loans, current debt, and other financial information.[500] Credit reports may also provide information about work and residences, lawsuits, arrests, and bankruptcies in the United States.[501]

A U.S. credit score is a number that rates a person's credit risk at a point in time.[502] It can help creditors determine whether to give the person credit, affect the terms of credit the person is offered, or impact the rate the person will pay for a loan in the United States.[503] U.S. banks and other entities use credit scoring to determine whether a person is likely to repay any loan or debt. A credit report takes into account a person's bill-paying history, the number and type of accounts with overdue payments, collection actions, outstanding debt, and the age of the accounts in the United States.[504] Because credit reports and scores provide information on a person's financial status, DHS is proposing that USCIS would review any available U.S. credit reports as part of its public charge inadmissibility determinations. USCIS would generally consider a credit score characterized as ''good'' or better to be a positive factor as it demonstrates an applicant may be able to support him or herself and any dependents assuming all other financial records are sufficient. A ''good'' credit report is generally near or slightly above the average of U.S. consumers,[505] and therefore the person may be self-sufficient and less likely to become a public charge. A poor credit report is well below the average of U.S. consumers.[506]

DHS recognizes that not everyone has a credit report in the United States. The absence of an established U.S. credit history would not necessarily be a negative factor when evaluating public charge in the totality of the circumstances. Absent a U.S. credit report or score, USCIS may give positive weight to an alien who can show little to no debt and a history of paying bills timely. An alien may provide evidence of regular and timely payment of bills, and limited balances on credit cards and loans. In addition, USCIS would not consider any error on a credit score that has been verified by the credit agency in determining whether an alien is likely to become a public charge in the future. DHS welcomes comments on whether DHS should also consider credit scores that are categorized less than ''good,'' the types of credit reports to be considered and the type of information from the credit history that should be reviewed.

(d) Financial Means To Pay for Medical Costs

DHS also proposes that USCIS would consider evidence of whether an alien has the financial means for pay for certain reasonably foreseeable medical costs, including through private health insurance, as part of the financial factor for public charge inadmissibility determinations.

Health insurance helps cover the cost of health care and being covered by health insurance programs, other than the ones included in the definition of public benefits under proposed 8 CFR 212.21(b). Some aliens currently obtain health insurance with government funding.[507]

Having private health insurance would be a positive factor in the totality of the circumstances. DHS would not consider health insurance provided through government employment as a public benefit, but instead consider it a positive factor in the totality of the circumstances. By contrast, lack of health insurance or lack of the financial resources to pay for the medical costs would be a negative factor in the totality of the circumstances for any person.[508]

While having health insurance would generally be a positive factor in the totality of the circumstances, recent (within the past 36 months) or current receipt of health insurance that constitutes a public benefit under proposed 8 CFR 212.21(b), would generally be weighed heavily as a negative factor. Regardless of health status, DHS recognizes that an alien may have financial assets, resources, earned benefits, education or skills, or other support that may decrease his or her likelihood of becoming a public charge and would consider those factors in the totality of the circumstances.

I. Education and Skills

An applicant's education and skills are mandatory statutory factors that must be considered when determining whether an alien is likely to become a public charge in the future.[509] In general, an alien with educational credentials and skills is more employable and less likely to become a public charge. DHS, therefore, proposes that when considering this factor, DHS would consider whether the alien has adequate education and skills to either obtain or maintain employment sufficient to avoid becoming a public charge, if authorized for employment.[510]

[500] *See USA.gov, Credit Reports and Scores, available at https://www.usa.gov/credit-reports* (last updated Mar. 8, 2018).

[501] *See USA.gov, Credit Reports and Scores, available at https://www.usa.gov/credit-reports* (last updated Mar. 8, 2018).

[502] *See USA.gov, Credit Reports and Scores, available at https://www.usa.gov/credit-reports* (last updated Mar. 8, 2018).

[503] *See USA.gov, Credit Reports and Scores, available at https://www.usa.gov/credit-reports* (last updated Mar. 8, 2018).

[504] *See* Fed. Trade Comm'n, *Consumer Information: Credit Scores* (Sept. 2013), *available at https://www.consumer.ftc.gov/articles/0152-credit-scores#how.*

[505] MyFICO, *Understanding FICO Scores* 5, *available at https://www.myfico.com/Downloads/Files/myFICO_UYFS_Booklet.pdf* (last visited Aug. 6, 2018).

[506] MyFICO, *Understanding FICO Scores* 5, *available at https://www.myfico.com/Downloads/Files/myFICO_UYFS_Booklet.pdf* (last visited Aug. 6, 2018).

[507] *See* Jessica C. Barnett & Edward R. Berchick, U.S. Census Bureau, *Health Insurance Coverage in the United States: 2016 Current Population Reports* (Sept. 2017), *available at https://www.census.gov/content/dam/Census/library/publications/2017/demo/p60-260.pdf.*

[508] In 2016, 6,147,000 (26 percent) noncitizens and 1,726,000 (8.4 percent) naturalized citizens did not have health insurance. *See* U.S. Census Bureau, Current Population Survey, *available at https://www.census.gov/cps/data/cpstablecreator.html* (last visited Feb. 20, 2018) (Nativity and Health Insurance Coverage). In 2005, the estimated number of uninsured noncitizens was 45 percent (9.6 million people); U.S. Dep't of Health & Human Servs., Office of the Assistant Sec'y for Planning & Evaluation, *Estimating The Number Of Individuals in the U.S. Without Health Insurance,* Table: Immigration Status (Apr. 8, 2005), *available at https://aspe.hhs.gov/dataset/table-1immigration-status.*

[509] *See* INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

[510] The level of education may be an indicator for continued employment. *See* U.S. Bureau of Labor Statistics, *Employment Projections, Unemployment Rates and Earnings by Educational Attainment, 2016, available at https://www.bls.gov/emp/ep_chart_001.htm* (last updated Mar. 27, 2018).

Various studies and data support the concept that a person's education and skills are positive factors for self-sufficiency. The U.S. Bureau of Labor Statistics (BLS) observed in 2016 that there was a relationship between the educational level and unemployment rate.[511] The unemployment rate for an individual with a doctoral degree was only 1.6 percent compared to 7.4 percent for an individual with less than a high school diploma.[512] According to the U.S. Census Bureau, lower educational attainment was associated with higher public benefit program participation rates for people over the age of 18.[513] In 2012, 37.3 percent of people who did not graduate from high school received means-tested benefits, compared with 21.6 percent of high school graduates and 9.6 percent of individuals with 1 or more years of college.[514]

Additionally, the data suggest that people who have lower education levels are not only more likely to receive public benefits but they tend to stay on them longer. For example, 49.4 percent of people with less than 4 years of high school who received public benefits from a major means-tested program between January 2009 and December 2012 stayed on the benefit program for 37 to 48 months. In contrast, only 39.3 percent of high school graduates and 29.0 percent of those with 1 or more years of college who received public benefits during the same time period stayed on the public benefit program for 37 to 48 months.[515] The National Center for Education Statistics found that ''[i]n 2015, the poverty rate for children under age 18 was highest for those whose parents had not completed high school (52 percent) and lowest for those whose parents had attained a bachelor's or higher degree (4 percent).'' [516] The data suggests that a lack of education increases the likelihood of poverty and unemployment, which may in turn increase the likelihood to need public assistance.

The results of DHS's analysis of the SIPP data also show a relationship between education level and self-sufficiency. Tables 18 and 19 indicate a relationship between education level and public benefit participation rates among both U.S. citizens and noncitizens in 2013. U.S. citizens with less than a high school education were more likely to participate in either cash or non-cash welfare programs compared to U.S. citizens with any other education level. In particular, 37.2 percent of U.S. citizens with less than a high school education received either cash or non-cash benefits, while 19.2 percent of those with a high school degree and about 13.3 percent with some college received those benefits. When examining the cohort of U.S. citizens that have attained a college degree, only 5.5 percent with a Bachelor's degree, and 2.8 percent with a graduate degree received those benefits. For the noncitizen population, the rate of receipt of cash or non-cash benefits among those with less than a high school education was 28.2 percent, while among those with a diploma had a rate of receipt at 23.6 percent. Among those with some college the rate of receipt for cash and non-cash benefits was 18.0 percent, and with a Bachelor's or graduate degree, the rate was about 10 percent. For U.S. citizens and noncitizens alike, the rate of receipt of cash benefits was much higher among those without a high school education (12.2 percent of U.S. citizens and 3.7 percent of noncitizens) than among any other education group (ranging from between 1 and 4 percent of U.S. citizens, and 1 percent or less of noncitizens).

BILLING CODE 4410–10–P

[511] *See* U.S. Bureau of Labor Statistics, *Employment Projections, Unemployment Rates and Earnings by Educational Attainment, 2016, available at https://www.bls.gov/emp/ep_chart_001.htm* (last updated Mar. 27, 2018).

[512] *See* U.S. Bureau of Labor Statistics, *Employment Projections, Unemployment Rates and Earnings by Educational Attainment, 2016, available at https://www.bls.gov/emp/ep_chart_001.htm* (last updated Mar. 27, 2018).

[513] *See* Shelley K. Irving & Tracy A. Loveless, U.S. Census Bureau, *Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?* 10 (May 2015), *available at https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf.*

[514] *See* Shelley K. Irving &Tracy A. Loveless, U.S. Census Bureau, *Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?* 10 (May 2015), *available at https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf.*

[515] *See* Shelley K. Irving & Tracy A. Loveless, U.S. Census Bureau, *Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?* 10 (May 2015), *available at https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf.*

[516] *See* Nat'l Ctr. for Educ. Statistics, *Characteristics of Children's Families, available at https://nces.ed.gov/programs/coe/indicator_cce.asp#* (last updated May 2018).

Table 18. Public Benefit Participation of U.S. Citizens Age 18+, by Education Level, 2013 (in thousands)

	Less than High School			High School graduate			Some college/Associate's degree		
Total Population 310,867	**Population** 23,141	**% of Total Population** 7.4%		**Population** 65,539	**% of Total Population** 21.1%		**Population** 67,138	**% of Total Population** 21.6%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	8,607	37.2%	0.9%	12,577	19.2%	0.4%	8,896	13.3%	0.4%
Cash benefits	2,823	12.2%	0.6%	2,835	4.3%	0.2%	1,453	2.2%	0.2%
SSI	2,489	10.8%	0.6%	2,438	3.7%	0.2%	1,182	1.8%	0.1%
TANF	198	0.9%	0.2%	242	0.4%	0.1%	141	0.2%	0.1%
GA	232	1.0%	0.2%	228	0.3%	0.1%	163	0.2%	0.1%
Non-cash benefits	8,250	35.7%	0.9%	12,152	18.5%	0.4%	8,587	12.8%	0.4%
Medicaid	5,904	25.5%	0.8%	8,131	12.4%	0.4%	5,478	8.2%	0.3%
SNAP	5,176	22.4%	0.7%	7,435	11.3%	0.4%	5,051	7.5%	0.3%
Housing vouchers	808	3.5%	0.3%	993	1.5%	0.1%	811	1.2%	0.1%
Rent subsidy	2,155	9.3%	0.5%	2,728	4.2%	0.2%	2,004	3.0%	0.2%

	Bachelor's degree			Graduate degree		
Total Population 310,867	**Population** 42,426	**% of Total Population** 13.6%		**Population** 23,771	**% of Total Population** 7.6%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	2,319	5.5%	0.3%	676	2.8%	0.3%
Cash benefits	414	1.0%	0.2%	189	0.8%	0.2%
SSI	367	0.9%	0.1%	170	0.7%	0.2%
TANF	*17	*0.0%	0.0%	*19	*0.1%	0.1%
GA	*37	*0.1%	0.0%	-	-	-
Non-cash benefits	2,186	5.2%	0.3%	608	2.6%	0.3%
Medicaid	1,309	3.1%	0.3%	396	1.7%	0.3%
SNAP	930	2.2%	0.2%	335	1.4%	0.2%
Housing vouchers	197	0.5%	0.1%	*35	*0.1%	0.1%
Rent subsidy	609	1.4%	0.2%	151	0.6%	0.2%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).
*Estimate is considered unreliable due to a high relative standard error.
- Estimate of zero.

Table 19. Public Benefit Participation of Noncitizens Age 18+, by Education Level, 2013 (in thousands)

	Less than High School			High School graduate			Some college/Associate's degree		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	6,881	2.2%		4,518	1.5%		2,749	0.9%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	1,943	28.2%	1.6%	1,067	23.6%	1.9%	493	18.0%	2.3%
Cash benefits	252	3.7%	0.7%	*53	*1.2%	0.5%	*22	*0.8%	0.5%
SSI	200	2.9%	0.6%	*34	*0.8%	0.4%	*17	*0.6%	0.5%
TANF	*21	*0.3%	0.2%	*19	*0.4%	0.3%	*4	*0.2%	0.2%
GA	*31	*0.4%	0.2%	-	-	-	*4	*0.2%	0.2%
Non-cash benefits	1,911	27.8%	1.6%	1,057	23.4%	1.9%	485	17.7%	2.2%
Medicaid	1,268	18.4%	1.4%	681	15.1%	1.6%	338	12.3%	1.9%
SNAP	856	12.4%	1.2%	452	10.0%	1.4%	172	6.2%	1.4%
Housing vouchers	118	1.7%	0.5%	67	1.5%	0.5%	34	1.2%	0.6%
Rent subsidy	386	5.6%	0.8%	200	4.4%	0.9%	108	3.9%	1.1%

	Bachelor's degree			Graduate degree		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	2,502	0.8%		1,808	0.6%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	247	9.9%	1.9%	122	6.7%	1.9%
Cash benefits	*13	*0.5%	0.5%	*2	*0.1%	0.3%
SSI	*3	*0.1%	0.2%	-	-	-
TANF	-	-	-	-	-	-
GA	*10	*0.4%	0.4%	*2	*0.1%	0.3%
Non-cash benefits	238	9.5%	1.9%	122	6.7%	1.9%
Medicaid	189	7.6%	1.7%	*61	*3.4%	1.4%
SNAP	*70	*2.8%	1.1%	*21	*1.1%	0.8%
Housing vouchers	*18	*0.7%	0.5%	-	-	-
Rent subsidy	*29	*1.2%	0.7%	*41	*2.3%	1.2%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).
*Estimate is considered unreliable due to a high relative standard error.
- Estimate of zero.

Moreover, according to the National Center for Education Statistics, increased education is associated with increased employment productivity and increased earnings.[517] Unemployment decreases as skills gained through education increase.[518] In 2013, only 27 percent of U.S. jobs required less than a high school degree, while 74 percent required skills associated with formal education (39 percent required a high school degree, 18 percent required a bachelor's degree, and 16 percent required more than a bachelor's degree).[519]

Tables 20 and 21 below show that among U.S. citizens and noncitizens, individuals holding professional certificates or licenses had lower rates of non-cash means-tested public benefits participation compared to their respective overall populations in 2013. In particular, 8.5 percent of U.S. citizens and 13.7 percent of noncitizens with professional certificates or licenses received non-cash benefits compared to about 20 percent of the overall U.S. citizen and noncitizen populations. The rate of receipt of cash benefits among those with a professional certificate was 1.4 percent for U.S. citizens and 0.4 percent for noncitizens, compared to a rate of 3.6 percent among U.S. citizens

[517] *See* Nat'l Ctr. for Educ. Statistics, *Education and the Economy: An Indicators Report* (Mar. 1997), *available at https://nces.ed.gov/pubs97/web/97939.asp.*

[518] *See* U.S. Bureau of Labor Statistics, *Employment Projections, Unemployment Rates and Earnings by Educational Attainment, 2016, available at https://www.bls.gov/emp/ep_chart_001.htm* (last updated Mar. 27, 2018).

[519] *See* U.S. Bureau of Labor Statistics, *Education Level and Jobs: Opportunities by State* (Sept. 2014), *available at https://www.bls.gov/careeroutlook/2014/article/education-level-and-jobs.htm.*

overall, and 1.8 percent among noncitizens overall.

Table 20. Public Benefit Participation of U.S. Citizens Overall, and with a Professional Certification or License, 2013 (in thousands)

	Citizen			Citizen with prof. cert.		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	290,704	93.5%		52,514	16.9%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	60,480	20.8%	0.2%	4,683	8.9%	0.4%
Cash benefits	10,429	3.6%	0.1%	724	1.4%	0.2%
SSI	7,652	2.6%	0.1%	571	1.1%	0.1%
TANF	2,181	0.8%	0.0%	*76	*0.1%	0.0%
GA	900	0.3%	0.0%	*93	*0.2%	0.1%
Non-cash benefits	59,029	20.3%	0.2%	4,447	8.5%	0.4%
Medicaid	46,443	16.0%	0.2%	2,808	5.3%	0.3%
SNAP	33,085	11.4%	0.2%	2,579	4.9%	0.3%
Housing vouchers	4,645	1.6%	0.1%	381	0.7%	0.1%
Rent subsidy	11,562	4.0%	0.1%	1,032	2.0%	0.2%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).
*Estimate is considered unreliable due to a high relative standard error.
- Estimate of zero.

Table 21. Public Benefit Participation of Noncitizens Overall, and with a Professional Certification or License, 2013 (in thousands)

	Noncitizen			Noncitizen with prof. cert.		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	20,163	6.5%		2,020	0.6%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	4,558	22.6%	0.9%	280	13.8%	2.4%
Cash benefits	370	1.8%	0.3%	*8	*0.4%	0.4%
SSI	254	1.3%	0.2%	*8	*0.4%	0.4%
TANF	*73	*0.4%	0.1%	-	-	-
GA	*47	*0.2%	0.1%	-	-	-
Non-cash benefits	4,498	22.3%	0.9%	276	13.7%	2.4%
Medicaid	3,130	15.5%	0.8%	197	9.8%	2.1%
SNAP	1,828	9.1%	0.6%	*63	*3.1%	1.2%
Housing vouchers	287	1.4%	0.3%	*16	*0.8%	0.6%
Rent subsidy	869	4.3%	0.4%	*65	*3.2%	1.3%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).
*Estimate is considered unreliable due to a high relative standard error.
- Estimate of zero.

Similar to those holding professional certificates or licenses, the rates of non-cash participation among the U.S. citizen and noncitizen populations were lower for those having an educational certificate compared to their respective overall populations in 2013, as highlighted in Tables 22 and 23. For example, among U.S. citizens, the participation rate for non-cash benefits was 12.7 percent for those having an educational certificate compared to 20.3 percent overall. Among noncitizens, the participation rate for non-cash benefits was very similar to that of U.S. citizens, with a rate of 13.1 percent among those having an educational certificate compared to 21.3 percent overall. The

rate of receipt of cash benefits among those having an educational certificate was about 2.4 percent among U.S. citizens and 0.8 percent among noncitizens.

Table 22. Public Benefit Participation of U.S. Citizens Overall, and with an Educational Certificate from a College, University, or Trade School, 2013 (in thousands)

	Citizen			Citizen with ed. certificate		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	290,704	93.5%		32,068	10.3%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	60,480	20.8%	0.2%	4,250	13.3%	0.6%
Cash benefits	10,429	3.6%	0.1%	764	2.4%	0.3%
SSI	7,652	2.6%	0.1%	624	1.9%	0.2%
TANF	2,181	0.8%	0.0%	*75	*0.2%	0.1%
GA	900	0.3%	0.0%	*86	*0.3%	0.1%
Non-cash benefits	59,029	20.3%	0.2%	4,061	12.7%	0.5%
Medicaid	46,443	16.0%	0.2%	2,504	7.8%	0.4%
SNAP	33,085	11.4%	0.2%	2,587	8.1%	0.4%
Housing vouchers	4,645	1.6%	0.1%	442	1.4%	0.2%
Rent subsidy	11,562	4.0%	0.1%	1,022	3.2%	0.3%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).[520]
*Estimate is considered unreliable due to a high relative standard error.
- Estimate of zero.

[520] The SIPP includes questions on professional certification and licenses developed by the Interagency Working Group on Expanded Measures of Enrollment and Attainment (GEMEnA). *See* Nat'l Ctr. for Educ. Statistics, *Working Definitions of Non-Degree Credentials, https://nces.ed.gov/surveys/gemena/definitions.asp* (last visited Sept. 12, 2018); *see also* U.S. Bureau of Labor Statistics, *Adding Questions on Certifications and Licenses to the Current Population Survey* (Nov. 2016), *available at https://www.bls.gov/opub/mlr/2016/article/pdf/adding-questions-on-certifications-and-licenses-to-the-current-population-survey.pdf.* GEMEnA developed working definitions that categorize certification as a credential awarded by a non-governmental body, and involve successfully passing an examination. A license is awarded by a government agency and provides legal authority to do a specific job. Both certifications and licenses are time-limited, so must be renewed periodically. Educational certificates are awarded by an educational institution and need not be renewed. See also *See* U.S. Bureau of Labor Statistics, *Education Level and Jobs: Opportunities by State* (Sept. 2014), *available at https://www.bls.gov/careeroutlook/2014/article/education-level-and-jobs.htm.*

Table 23. Public Benefit Participation of Noncitizens Overall, and with an Educational Certificate from a College, University, or Trade School, 2013 (in thousands)

	Noncitizen			Noncitizen with ed. certificate		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	20,163	6.5%		1,178	0.4%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	4,558	22.6%	0.9%	159	13.5%	3.1%
Cash benefits	370	1.8%	0.3%	*9	*0.8%	0.8%
SSI	254	1.3%	0.2%	*9	*0.8%	0.8%
TANF	*73	*0.4%	0.1%	-	-	-
GA	*47	*0.2%	0.1%	-	-	-
Non-cash benefits	4,498	22.3%	0.9%	155	13.1%	3.0%
Medicaid	3,130	15.5%	0.8%	106	9.0%	2.6%
SNAP	1,828	9.1%	0.6%	*55	*4.7%	1.9%
Housing vouchers	287	1.4%	0.3%	*3	*0.3%	0.5%
Rent subsidy	869	4.3%	0.4%	*40	*3.4%	1.6%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).[521]
* Estimate is considered unreliable due to a high relative standard error.
- Estimate of zero.

Relatedly, English language proficiency is a skill that also is relevant in determining whether an alien is likely to become a public charge in the future. An inability to speak and understand English may adversely affect whether an alien can obtain employment.[522] Aliens who cannot speak English may be unable to obtain employment in areas where only English is spoken. People with the lowest English speaking ability tend to have the lowest employment rate, lowest rate of full-time employment, and lowest median earnings.[523] According to U.S. Census Bureau data, people who spoke a language other than English at home were less likely to be employed, and less likely to find full-time work when employed.[524] In a 2005 study, ''on average, workers who spoke only English earned $5,600 more than people who spoke another language,'' [525] however, between the people who spoke English ''very well'' and people who spoke only English the difference was only $966.[526] People who spoke English ''very well'' had higher earnings than people who spoke English ''well''—an earning differential of $7,000.[527]

Table 24 highlights a relationship between English language proficiency and public benefit participation in 2013. Among the noncitizen adults who speak a language other than English at home, the participation rates for both cash and non-cash benefits are higher among those who do not speak English well, or at all, than among those who speak the language well. The SIPP data indicate that the rate of coverage of non-cash benefits among those who spoke English either well or very well (about 15 to 20 percent) was significantly lower than the rate among those who either spoke English poorly or not at all (about 25 to 30 percent). The rate of receipt of cash benefits for each of these groups ranged from about 1 to 5 percent.

[521] *See* Nat'l Ctr. for Educ. Statistics, *Working Definitions of Non-Degree Credentials*, *https://nces.ed.gov/surveys/gemena/definitions.asp* (last visited Sept. 12, 2018).

[522] *See* Jennifer Cheeseman Day and Hyon B. Shin, U.S. Census Bureau, *How Does Ability to Speak English Affect Earnings?* 2 (2005), *available at https://www.census.gov/hhes/socdemo/language/data/acs/PAA_2005_AbilityandEarnings.pdf.*

[523] *See* Jennifer Cheeseman Day and Hyon B. Shin, U.S. Census Bureau, *How Does Ability to Speak English Affect Earnings?* 6 (2005), *available at https://www.census.gov/hhes/socdemo/language/data/acs/PAA_2005_AbilityandEarnings.pdf.*

[524] *See* Jennifer Cheeseman Day and Hyon B. Shin, U.S. Census Bureau, *How Does Ability to Speak English Affect Earnings?* 6 (2005), *available at https://www.census.gov/hhes/socdemo/language/data/acs/PAA_2005_AbilityandEarnings.pdf.*

[525] *See* Jennifer Cheeseman Day and Hyon B. Shin, U.S. Census Bureau, *How Does Ability to Speak English Affect Earnings?* 6 (2005), *available at https://www.census.gov/hhes/socdemo/language/data/acs/PAA_2005_AbilityandEarnings.pdf.*

[526] *See* Jennifer Cheeseman Day and Hyon B. Shin, U.S. Census Bureau, *How Does Ability to Speak English Affect Earnings?* 6 (2005), *available at https://www.census.gov/hhes/socdemo/language/data/acs/PAA_2005_AbilityandEarnings.pdf.*

[527] *See* Jennifer Cheeseman Day and Hyon B. Shin, U.S. Census Bureau, *How Does Ability to Speak English Affect Earnings?* 6 (2005), *available at https://www.census.gov/hhes/socdemo/language/data/acs/PAA_2005_AbilityandEarnings.pdf.*

Table 24: Public Benefit Participation of Noncitizens Age 18+ who Speak a Language other than English at Home, by How Well English is Spoken, 2013 (in thousands)

	Very well			Well		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	4,274	1.4%		3,157	1.0%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	703	16.5%	1.8%	567	18.0%	2.1%
Cash benefits	*50	*1.2%	0.5%	*32	*1.0%	0.5%
SSI	*28	*0.6%	0.4%	*22	*0.7%	0.5%
TANF	*10	*0.2%	0.2%	*10	*0.3%	0.3%
GA	*13	*0.3%	0.3%	*4	*0.1%	0.2%
Non-cash benefits	680	15.9%	1.8%	554	17.6%	2.0%
Medicaid	426	10.0%	1.4%	393	12.4%	1.8%
SNAP	230	5.4%	1.1%	273	8.7%	1.5%
Housing vouchers	*29	*0.7%	0.4%	*34	*1.1%	0.6%
Rent subsidy	121	2.8%	0.8%	*61	*1.9%	0.7%
	Not well			**Not at all**		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	3,243	1.0%		1,558	0.5%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	797	24.6%	2.2%	488	31.3%	3.4%
Cash benefits	*65	*2.0%	0.7%	*84	*5.4%	1.7%
SSI	*49	*1.5%	0.6%	*79	*5.1%	1.6%
TANF	*8	*0.2%	0.2%	-	-	-
GA	*8	*0.3%	0.3%	*5	*0.3%	0.4%
Non-cash benefits	797	24.6%	2.2%	481	30.8%	3.4%
Medicaid	524	16.2%	1.9%	350	22.5%	3.1%
SNAP	275	8.5%	1.4%	210	13.5%	2.5%
Housing vouchers	*47	*1.5%	0.6%	*20	*1.3%	0.8%
Rent subsidy	180	5.6%	1.2%	97	6.2%	1.8%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).
*Estimate is considered unreliable due to a high relative standard error.
- Estimate of zero.

BILLING CODE 4410–10–C

Additionally, numerous studies have shown that immigrants' English language proficiency or ability to acquire English proficiency directly correlate to a newcomer's economic assimilation into the United States.[528]

DHS may also consider an applicant's proficiency in other languages in addition to English, with appropriate consideration given to market demand, when reviewing the education and skills factor.

1. USCIS Evidentiary Requirements

DHS proposes that USCIS would consider certain types of evidence when reviewing this factor. For the reasons expressed above, USCIS' review would include, but not be limited to:

- Evidence of the alien's recent history of employment;
- The alien's academic degree or certifications including a high school degree (or equivalent) or higher;
- The alien's occupational skills, certifications, or licenses; and
- The alien's proficiency in English or proficiencies in additional languages.

J. Prospective Immigration Status and Expected Period of Admission

DHS would also take into consideration the immigration status and duration of admission sought by an alien, and the classification the alien is seeking, as part of this determination. The type of evidence generally required of an applicant for an immigrant visa,

[528] Barry R. Chiswick & Paul W. Miller, *Immigrant Earnings: Language Skills, Linguistic Concentrations and the Business Cycle,* 15 J. Population Econ., 31, 31–57 (2002); Christian Dustmann, *Fluency, Writing Fluency, and Earnings of Migrants,* 7 J. Population Econ., 133, 133–156 (1994); Ingo E. Isphording, IZA Discussion Paper No. 7360, *Disadvantages of Linguistic Origin: Evidence from Immigrant Literacy Scores* (2013), *available at http://ftp.iza.org/dp7360.pdf;* Org. for Econ. Cooperation & Dev./European Union, *Indicators of Immigrant Integration 2015: Settling In* (2015), *available at http://www.oecd.org/els/mig/Indicators-of-Immigrant-Integration-2015.pdf.*

admission as an immigrant, or adjustment of status would generally differ in scope from the evidence required of a bona fide applicant seeking a nonimmigrant visa or admission as a nonimmigrant. For example, an alien seeking permanent residence in the United States may be eligible for certain public benefits upon his or her entry as a permanent resident or after five years. As a result, there is a chance that he or she would avail him or herself of the available public benefit. USCIS would consider this possibility in the totality of the circumstances.

On the other hand, aliens who are coming to the United States temporarily as a nonimmigrant may be less likely to avail themselves of public benefits, particularly if they are coming to the United States for a short period of time or if they are coming to the United States for employment purposes. For example, an alien coming to the United States on a nonimmigrant visitor (B–2) for a vacation in the United States for two weeks must establish he or she has sufficient funds to cover any expenses in the United States. Therefore, generally, a nonimmigrant visitor would be unlikely to avail him or herself of any public benefits for which he or she would be eligible based on being lawfully present in the United States. Therefore, such an alien, if otherwise entitled to a nonimmigrant visa and admission as a nonimmigrant, generally would not be subject to the public charge inadmissibility ground under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), although it is possible that evidence may exist that gives rise to a public charge concern.

K. Affidavit of Support

Failure to submit a required affidavit of support when required under section 212(a)(4)(C) or section 212(a)(4)(D) of the Act, 8 U.S.C. 1182(a)(4)(C) or 1182(a)(4)(D), necessarily results in a determination of inadmissibility based on the public charge ground without review of any other statutory factors.[529] For aliens who submit an affidavit of support, the statute allows DHS to consider the affidavit of support under section 213A of the Act, 8 U.S.C. 1183a, in public charge inadmissibility determinations.[530] DHS, therefore, proposes to consider any required affidavit of support[531] as part of the totality of the circumstances.

1. General Consideration of Sponsorship and Affidavits of Support

DHS would consider a sponsor's facially sufficient affidavit of support as a positive factor in the totality of the circumstances, but a sufficient affidavit of support alone would not result in a finding that an alien is unlikely at any time to become a public charge due the statute's requirement to consider the mandatory factors. Moreover, DHS has concerns about relying on sponsors to ensure that aliens will not become a public charge, as submitting a sufficient affidavit of support does not guarantee that the alien will not receive public benefits in the future.

PRWORA and IIRIRA amended the INA by setting forth requirements for submitting what would be an enforceable affidavit of support, *i.e.,* current Form I–864.[532] Approximately 1 month after PRWORA was enacted, Congress amended the public charge inadmissibility ground, through passage of IIRIRA, to require certain applicants for lawful permanent resident status to submit an affidavit of support in accordance with section 213A of the Act, 8 U.S.C. 1183a.[533] An Affidavit of Support under Section 213A of the INA (Form I–864)[534] is a contract between the sponsor and the U.S. Government that imposes on the sponsor a legally enforceable obligation to support the alien. The sponsor generally must demonstrate that he or she is able to maintain the sponsored alien at an annual income of not less than 125 percent of the FPG.[535] By creating these requirements in section 213A of the Act, 8 U.S.C. 1183a, Congress intended to ensure that affidavits of support were enforceable and that public benefit-granting agencies could be reimbursed for certain aid provided to the sponsored alien.[536]

As part of PRWORA, benefit-granting agencies assess the combined income and resources of the sponsor (and his or her spouse) and the alien to determine whether the combined income and resources meet the eligibility requirements.[537] This is called ''sponsor-to-alien deeming.'' Public benefits agencies, however, have encountered challenges obtaining information about the sponsor's income when determining the alien's eligibility for public benefits. A U.S. Government Accountability Office (GAO) 2009 report found that although the number of sponsored noncitizens potentially affected by such deeming is unknown, most recent information then available suggested that 11 percent (473,000) of sponsored aliens in 2007 applied for TANF, Medicaid, or SNAP during the course of 2007, and less than one percent applied for SSI.[538] In addition, according to a 2002 study of the New York and Los Angeles areas by the Urban Institute for the Office of the Assistant Secretary for Planning and Evaluation of HHS, individuals who have become lawful permanent residents since the affidavit of support under section 213A of the Act was enacted in 1996 were poorer (with incomes below 100 percent of the FPL) than those who arrived earlier.[539] ''Legal immigrants who entered the country since 1996 are poorer than those who arrived earlier, despite new policies requiring their sponsors to demonstrate incomes over 125 percent of the [FPL].''[540] The report also indicates that some immigrant families with incomes below twice the poverty level[541] received SNAP, TANF or Medicaid from 1999–2000.[542] For example, in Los Angeles 13 percent and in New York City 22 percent of noncitizen families

[529] Certain applicants are exempt from filing the affidavit of support under INA section 213A, 8 U.S.C. 1183a.

[530] *See* INA section 212(a)(4)(B)(ii), 8 U.S.C. 1182(a)(4)(B)(ii); *see also* proposed 8 CFR 212.22(b)(7).

[531] *See* INA section 212(a)(4)(C) and (a)(4)(D), 8 U.S.C. 1182(a)(4)(C) and 1182(a)(4)(D).

[532] *See* INA sections 212(a)(4) and 213A, 8 U.S.C. 1182(a)(4) and 1183a.

[533] *See* IIRIRA, Public Law 104–208, div. C, section 531(b), 110 Stat. 3009–546, 3009–675.

[534] The Affidavit of Support Under Section 213A of the INA, Form I–864EZ, may be used instead of Form I–864 in certain circumstances. References to the affidavit of support in this rule include Form I–864EZ.

[535] *See* INA section 213A, 8 U.S.C. 1183a.

[536] In explaining the provision, Congress continued to emphasize that the affidavits of support (before 1996) were previously unenforceable. Congress highlighted the difference between the situation at the time, before 1996, and the new law which would make the affidavits enforceable and permit benefit-providing agencies to seek reimbursement. *See* H.R. Rep. No. 104–651, at 1449 (1996).

[537] *See* PRWORA, Public Law 104–193, section 423, 11 Stat. 2105, 2271–74.

[538] *See* U.S. Gov't Accountability Office, GAO–09–375, *Sponsored Noncitizens and Public Benefits* (May 2009), *available at https://www.gao.gov/products/GAO-09-375.*

[539] *See* Randy Capps et al., *How Are Immigrants Faring After Welfare Reform? Preliminary Evidence from Los Angeles and New York City* ii (Mar. 4, 2002), *available at https://aspe.hhs.gov/system/files/pdf/72691/report.pdf.*

[540] Randy Capps et al., *How Are Immigrants Faring After Welfare Reform? Preliminary Evidence from Los Angeles and New York City* ii (Mar. 4, 2002), *available at https://aspe.hhs.gov/system/files/pdf/72691/report.pdf.*

[541] The report describes these families as low-income families.

[542] *See* Randy Capps et al., *How Are Immigrants Faring After Welfare Reform? Preliminary Evidence from Los Angeles and New York City* iv (Mar. 4, 2002), *available at https://aspe.hhs.gov/system/files/pdf/72691/report.pdf.* Note that this report uses a household centered approach to evaluate data.

with income below twice the poverty level received food stamps (SNAP).[543]

2. Proposal To Consider Required Affidavits of Support

Certain aliens are required to submit an affidavit of support.[544] With certain exceptions, the requirement to submit an affidavit of support applies to immediate relatives (including orphans), family-preference immigrants, and those employment-based immigrants whose petitioners are relatives or a firm in which a U.S. citizen or lawful permanent resident relative holds a significant ownership interest.[545] Immigrants seeking admission or adjustment of status in these categories are inadmissible under subparagraphs (C) and (D) of section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4)(C) and (D), unless an appropriate sponsor has completed and filed a sufficient affidavit of support.[546]

A sufficient affidavit of support does not guarantee that the alien will not receive public benefits in the future and, therefore, DHS would only consider the affidavit of support as one factor in the totality of the circumstances. When determining the weight to give an affidavit of support in the totality of the circumstances, USCIS would assess the sponsor's annual income, assets, resources, and financial status, relationship to applicant, the likelihood that the sponsor would actually provide financial support to the alien, and any other related considerations.

In order to assess the sponsor's likelihood of meeting his or her obligation to support the alien, DHS would look at how close of a relationship the sponsor has to the alien, as close family members would be more likely to financially support the alien if necessary. DHS would also look at whether the sponsor lives with this alien, as this could be indicative of the sponsor's willingness to support the alien if needed. Additionally, DHS would look at whether the sponsor has submitted affidavit of support with respect to other individuals, as this may be indicative of the sponsor's willingness or ability to financially support the alien.

To the extent that the initial evidence submitted by the sponsor is insufficient to make this determination, USCIS would request additional information from the sponsor or interview the sponsor to determine whether the sponsor is willing and able to support the alien on a long-term basis. The inability or unwillingness of the sponsor to financially support the alien may be viewed as a negative factor in the totality of the circumstances. DHS expects that a sponsor's sufficient affidavit of support would not be an outcome-determinative factor in most cases; the presence of a sufficient affidavit of support does not eliminate the need to consider all of the mandatory factors in the totality of the circumstances.[547]

L. Heavily Weighed Factors

DHS proposes a number of factors or factual circumstances that it has determined would generally weigh heavily in determining whether an alien is likely to become a public charge in the future.[548] The mere presence of any one enumerated circumstance would not, alone, be determinative. A heavily weighed factor could be outweighed by countervailing evidence in the totality of the circumstances. Other negative and positive factors, including factors not enumerated elsewhere in this rule, may also be weighed heavily in individual determinations, as circumstances warrant.

1. Heavily Weighed Negative Factors

DHS proposes to consider certain factors listed below as heavily negative because these factors are particularly indicative of a likelihood that the alien would become a public charge.

(a) Lack of Employability

As long as an alien is not a full-time student and is authorized to work, DHS proposes that the absence of current employment, employment history, or reasonable prospect of future employment will be a heavily weighed negative factor.[549] Self-sufficiency generally involves people being capable and willing to work and being able to maintain gainful employment. A person who is capable and able to work but does not work demonstrates a lack of self-sufficiency. As previously discussed, various studies and data support the concept that a person's education and skills may be positive factors for purposes of evidencing self-sufficiency, including the SIPP data reviewed in the Education and Skills section, and the U.S. Census Bureau report that indicates that lower educational attainment is associated with higher public benefit program participation rates for people over the age of 18.[550]

In addition, the concept that a person's education and skills may be positive factors for purposes of evidencing self-sufficiency is supported by two Census Bureau studies covering 2004 to 2007 and 2009 to 2012, showing that in each of the covered years, individuals with full-time work were less likely to receive means-tested benefits during the year (ranging from 4.5 percent to 5.1 percent) than those with either part-time work (ranging from 12.6 percent to 14.2 percent) or those who were unemployed (ranging from 24.8 percent to 31.2 percent).[551]

DHS recognizes however, that not everyone authorized to work needs to work. Some aliens may have sufficient assets and resources, including a household member's income and assets, which may overcome any negative factor related to lack of employment. DHS would review those considerations in the totality of the circumstances.

(b) Current Receipt of One or More Public Benefits

DHS proposes that current receipt of one or more public benefits, as defined

[543] *See* Randy Capps et al., *How Are Immigrants Faring After Welfare Reform? Preliminary Evidence from Los Angeles and New York City* iv (Mar. 4, 2002), *available at https://aspe.hhs.gov/system/files/pdf/72691/report.pdf.*

[544] *See* INA section 212(a)(4).

[545] *See* INA sections 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D); *see also* 8 CFR 213a.2(a)(2).

[546] Certain immigrant categories are exempt from the affidavit of support requirements including: Qualified battered spouses and children (and their eligible family members) and qualified widow(er)s of citizens, if these aliens have filed visa petitions on their own behalf. For more information on who must file an affidavit of support, *see* AFM Ch. 20.5.

[547] However, the statute requires a finding of inadmissibility on public charge grounds if the alien is required to submit an affidavit of support and fails to do so. INA section 212(a)(4)(D), 8 U.S.C. 1182(a)(4)(D).

[548] *See* proposed 8 CFR 212.22.

[549] *See* proposed 8 CFR 212.22(c)(1)(ii). While a full-time student must still demonstrate he or she is not likely to become a public charge, because the public charge determination is based on the totality of the circumstances under the proposed 8 CFR 212.22(d) that includes consideration of the alien's immigration status, the lack of employment or employment history is not counted as a heavily weighed negative factor when making public charge determinations regarding full-time students. The full-time student is working toward a degree, which makes the student more employable in the future, and as such, has a reasonable prospect of employment in the future.

[550] *See* Shelley K. Irving & Tracy A. Loveless, U.S. Census Bureau, *Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?* 10 (May 2015), *available at https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf.*

[551] *See* Jeongsoo Kim, Shelley K. Irving, & Tracy A. Loveless, U.S. Census Bureau, *Dynamics of Economic Well-Being: Participation in Government Programs, 2004 to 2007 and 2009—Who Gets Assistance?* 12 (July 2012), available at *https://www2.census.gov/library/publications/2012/demo/p70-130.pdf;* Shelley K. Irving & Tracy A. Loveless, U.S. Census Bureau, *Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance?* 10 (May 2015), *available at https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf.*

in proposed 212.21(b), would be a heavily weighed negative factor in a public charge inadmissibility determination.[552] Current receipt of public benefits, alone, would not justify a finding of inadmissibility on public charge grounds. However, an alien's current receipt of one or more public benefits means that the alien is currently a public charge as defined under proposed 8 CFR 212.21(a), and suggests that the alien may continue to receive public benefits in the future and be more likely to continue to be a public charge.

Research indicates that the largest share of participants (43.0 percent) who benefited from one or more means-tested assistance programs between January 2009 and December 2012 stayed in the programs between 37 and 48 months.[553] DHS is also aware that a separate study showed that receipt of benefits across a two-year timespan is likely to occur in all months, suggesting relatively long welfare spell lengths. Between January 2004 and December 2005, a greater share of the population received one or more means-tested benefits for the entire 24-month study period (10.2 percent) than for either one to 11 months (8.5 percent) or 12 to 23 months (6.5 percent).[554] These studies, though, do not directly address the issue of individuals who stopped receiving benefits later returning to these programs.

Some studies suggest that although most people who leave welfare programs are working after they leave those programs, people may come back to receive additional public benefits.[555] In a research study funded by HHS, *A Profile of Families Cycling On and Off Welfare,* researchers conclude that people who left welfare (leavers) experienced ''a fair amount of employment instability—the median proportion of people employed in all four post-exit quarters was 37 percent. Thus, job loss among welfare leavers may give rise to cycling back to welfare.'' [556] Regarding Medicaid and food stamp participation among leavers, the authors found ''the proportion of leavers who receive these benefits at some point in the year after exit is much higher than the proportion who receives them in any given quarter, suggesting a fair amount of cycling into and out of these programs.'' [557]

HHS also funds various research projects on welfare. Across fifteen state and county welfare studies funded by HHS, it was found that the number of leavers who received food stamps within one year of exit was between 41 and 88 percent.[558] Furthermore, TANF leavers returned to the program at a rate ranging between 17 and 38 percent within one year of exit.[559] Twelve of these studies included household surveys, with some conducting interviews less than a year post-exit, and some as much as 34 months after exit.[560] A review of these surveys found that among those who left Medicaid, the rate of re-enrollment at the time of interview was between 33 and 81 percent among adults, and between 51 and 85 percent among children. Employment rates at the time of interview ranged between 57 and 71 percent.[561]

DHS thus would view current receipt of public benefits as a strong indicator that an alien will continue to receive public benefits, and is therefore likely to become a public charge. However, an alien may be able to establish circumstances indicating that the receipt of public benefits will stop in the near future and he or she will have sufficient income to support him or herself.

(c) Receipt of Public Benefits Within 36 Months of Filing Application

Similarly, DHS proposes that an alien's past receipt of public benefits within the 36 months immediately preceding his or her application also carries significant weight in determining whether the alien is likely to become a public charge. The weight given to this factor will depend on how recently the alien has received public benefits, and whether the person has received public benefits for an extended period of time (*i.e.,* receives public benefits for multiple years) or at multiple different time periods (*i.e.,* 3 times in the last two years).[562]

As previously discussed, some studies suggest that although most people who leave welfare programs are working after they leave those programs, people may come back to receive additional public benefits.[563] In a research study funded by HHS, *A Profile of Families Cycling On and Off Welfare,* researchers conclude that people who left welfare (leavers) experienced ''a fair amount of employment instability—the median proportion of people employed in all four post-exit quarters was 37 percent. Thus, job loss among welfare leavers may give rise to cycling back to welfare.'' [564] Regarding Medicaid and food stamp participation among leavers, the authors found ''the proportion of leavers who receive these benefits at some point in the year after exit is much higher than the proportion who receives them in any given quarter, suggesting a fair amount of cycling into and out of these programs.'' [565]

HHS also funds various research projects on welfare. Across fifteen state and county welfare studies funded by

[552] *See* proposed 8 CFR 212.22(c)(1)(ii) and (iii).

[553] *See* U.S. Census Bureau, *News Release: 21.3 Percent of U.S. Population Participates in Government Assistance Programs Each Month* (May 28, 2015), *available at https://www.census.gov/newsroom/press-releases/2015/cb15-97.html.*

[554] *See* Jeongsoo Kim, Shelley K. Irving, & Tracy A. Loveless, U.S. Census Bureau, *Dynamics of Economic Well-Being: Participation in Government Programs, 2004 to 2007 and 2009—Who Gets Assistance?* 4 fig.4 (July 2012), *available at https://www2.census.gov/library/publications/2012/demo/p70-130.pdf.*

[555] *See* Lashawn Richburg-Hayes & Stephen Freedman, *A Profile of Families Cycling On and Off Welfare* 4 (Apr. 2004), *available at https://aspe.hhs.gov/system/files/pdf/73451/report.pdf.*

[556] Lashawn Richburg-Hayes & Stephen Freedman, *A Profile of Families Cycling On and Off Welfare* 4 (Apr. 2004) (citing Gregory Arcs & Pamela Loprest, U.S. Dep't of Health & Human Servs., Office of the Assistant Sec'y for Planning & Evaluation, *Final Synthesis Report of Findings from ASPE ''Leavers'' Grants* (2001)), *available at https://aspe.hhs.gov/system/files/pdf/73451/report.pdf.* This study was based on the first and fourth quarter.

[557] Lashawn Richburg-Hayes & Stephen Freedman, *A Profile of Families Cycling On and Off Welfare* 4 (Apr. 2004), *available at https://aspe.hhs.gov/system/files/pdf/73451/report.pdf.*

[558] *See* U.S. Dep't of Health & Human Servs., Office of the Assistant Sec'y for Planning & Evaluation, *Status Report on Research on the Outcomes of Welfare Reform* app. B (Aug. 2001), *available at https://aspe.hhs.gov/report/status-report-research-outcomes-welfare-reform-2001.*

[559] *See* U.S. Dep't of Health & Human Servs., Office of the Assistant Sec'y for Planning & Evaluation, *Status Report on Research on the Outcomes of Welfare Reform* app. B (Aug. 2001), *available at https://aspe.hhs.gov/report/status-report-research-outcomes-welfare-reform-2001.*

[560] *See* U.S. Dep't of Health & Human Servs., Office of the Assistant Sec'y for Planning & Evaluation, *Status Report on Research on the Outcomes of Welfare Reform* app. B (Aug. 2001), *available at https://aspe.hhs.gov/report/status-report-research-outcomes-welfare-reform-2001.*

[561] *See* U.S. Dep't of Health & Human Servs., Office of the Assistant Sec'y for Planning & Evaluation, *Status Report on Research on the Outcomes of Welfare Reform* app. B (Aug. 2001), *available at https://aspe.hhs.gov/report/status-report-research-outcomes-welfare-reform-2001.*

[562] This proposed policy is generally consistent with longstanding policy affording less weight to benefits that were received longer ago in the past.

[563] *See* Lashawn Richburg-Hayes & Stephen Freedman, *A Profile of Families Cycling On and Off Welfare* 4 (Apr. 2004), *available at https://aspe.hhs.gov/system/files/pdf/73451/report.pdf.*

[564] Lashawn Richburg-Hayes & Stephen Freedman, *A Profile of Families Cycling On and Off Welfare* 4 (Apr. 2004) (citing Gregory Arcs & Pamela Loprest, U.S. Dep't of Health & Human Servs., Office of the Assistant Sec'y for Planning & Evaluation, *Final Synthesis Report of Findings from ASPE ''Leavers'' Grants* (2001)), *available at https://aspe.hhs.gov/system/files/pdf/73451/report.pdf.* This study was based on the first and fourth quarter.

[565] Lashawn Richburg-Hayes & Stephen Freedman, *A Profile of Families Cycling On and Off Welfare* 4 (Apr. 2004), *available at https://aspe.hhs.gov/system/files/pdf/73451/report.pdf.*

HHS, it was found that the number of leavers who received food stamps within one year of exit was between 41 and 88 percent.[566] Furthermore, TANF leavers returned to the program at a rate ranging between 17 and 38 percent within one year of exit.[567] Twelve of these studies included household surveys, with some conducting interviews less than a year post-exit, and some as much as 34 months after exit.[568] A review of these surveys found that among those who left Medicaid, the rate of re-enrollment at the time of interview was between 33 and 81 percent among adults, and between 51 and 85 percent among children. Employment rates at the time of interview ranged between 57 and 71 percent.[569]

DHS would view past receipt of public benefits within 36 months as a strong indicator that an alien will continue to receive public benefits, and therefore is likely to become a public charge. However, the weight given to public benefits will depend on whether the alien received multiple benefits, how long ago the benefits were received, and the amounts received.[570] For example, the receipt of a public benefit 5 years ago would be a negative factor; however, a public benefit received six months before the adjustment of status application would be considered a heavily weighed negative factor.

DHS welcomes public comments on the appropriate period of time to examine. DHS is particularly interested in data regarding how frequently individuals who previously used public benefits later do so again, and whether a 24-month or 48-month timeframe would be more appropriate.

(d) Financial Means To Pay for Medical Costs

An alien is a high risk of becoming a public charge if he or she does not have private health insurance or the financial resources to pay for reasonably foreseeable medical costs related to a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide care for him- or herself, to attend school, or to work. However, the alien may provide evidence of the prospect of obtaining health insurance, such as pending employment that provides employer-sponsored health insurance.

DHS proposes this factual circumstance as a heavily weighed negative factor in 8 CFR 212.22(c)(1)(iv). Certain chronic medical conditions can be costly to treat.[571] Certain conditions may adversely affect an applicant's ability and capacity to obtain and retain gainful employment. Other conditions could result in long-term institutionalization in a health care facility at government expense. According to the *Multiple Chronic Conditions Chartbook 2010 Medical Expenditure Panel Survey Data*,[572] 86 percent of the nation's $2.7 trillion annual health care expenditures were for individuals with chronic and mental health conditions.[573] The Centers for Disease Control and Prevention (CDC) has listed the five most expensive health conditions as heart disease, cancer, trauma, mental disorders, and pulmonary conditions.[574] These are all classified as costly medical conditions.[575] In the United States, chronic diseases and conditions that cause them account for most of the health care costs.[576]

- From 2012 to 2013, the total annual direct medical costs for heart disease and strokes were $190 billion;[577]
- Cancer care cost $157 billion in 2010 dollars;[578] and
- In 2017, the total estimated direct medical cost for diagnosed diabetes was $237 billion.[579]

[566] *See* U.S. Dep't of Health & Human Servs., Office of the Assistant Sec'y for Planning & Evaluation, *Status Report on Research on the Outcomes of Welfare Reform* app. B (Aug. 2001), *available at https://aspe.hhs.gov/report/status-report-research-outcomes-welfare-reform-2001.*

[567] *See* U.S. Dep't of Health & Human Servs., Office of the Assistant Sec'y for Planning & Evaluation, *Status Report on Research on the Outcomes of Welfare Reform* app. B (Aug. 2001), *available at https://aspe.hhs.gov/report/status-report-research-outcomes-welfare-reform-2001.*

[568] *See* U.S. Dep't of Health & Human Servs., Office of the Assistant Sec'y for Planning & Evaluation, *Status Report on Research on the Outcomes of Welfare Reform* app. B (Aug. 2001), *available at https://aspe.hhs.gov/report/status-report-research-outcomes-welfare-reform-2001.*

[569] *See* U.S. Dep't of Health & Human Servs., Office of the Assistant Sec'y for Planning & Evaluation, *Status Report on Research on the Outcomes of Welfare Reform* app. B (Aug. 2001), *available at https://aspe.hhs.gov/report/status-report-research-outcomes-welfare-reform-2001.*

[570] This proposed policy is generally consistent with longstanding policy affording less weight to benefits that were received longer ago in the past.

[571] *See* U.S. Dep't of Health & Human Servs., *Research In Action, Issue #19: The High Concentration of U.S. Health Care Expenditures* (June 2006), *available at https://archive.ahrq.gov/research/findings/factsheets/costs/expriach/expendria.pdf; see also* Ctrs. for Medicare & Medicaid Servs., *NHE Fact Sheet, available at https://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/nationalhealthexpenddata/nhe-fact-sheet.html* (last modified Sept 13, 2018) (in 2016, NHE grew to $3.3 trillion). For a discussion of expenditures, *see generally* Ctrs. for Medicare & Medicaid Servs., *National Health Expenditure Data, available at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData* (last modified Sept 13, 2018); *see also* Ctrs. for Disease Control & Prevention, *Chronic Disease Prevention and Health Promotion, Chronic Disease Data available at https://www.cdc.gov/chronicdisease/data/index.htm* (last visited Sept. 13, 2018). The CDC collects large amounts of data on numerous major chronic diseases. In addition, the CDC provides an overview of chronic diseases in the United States, including prevalence and cost. *See* Ctrs. for Disease Control & Prevention, *National Center for Chronic Disease Prevention and Health Promotion, About Chronic Diseases, Health and Economic Costs of Chronic Diseases, available at https://www.cdc.gov/chronicdisease/about/costs/index.htm* (last visited Sept. 13, 2018).

[572] As cited by the CDC. *See* Ctrs. for Disease Control & Prevention, *National Center for Chronic Disease Prevention and Health Promotion, About Chronic Diseases, Health and Economic Costs of Chronic Diseases, available at https://www.cdc.gov/chronicdisease/about/costs/index.htm* (last visited Sept. 13, 2018).

[573] *See* Ctrs. for Disease Control & Prevention, *National Center for Chronic Disease Prevention and Health Promotion, About Chronic Diseases, Health and Economic Costs of Chronic Diseases, available at https://www.cdc.gov/chronicdisease/about/costs/index.htm* (last visited Sept. 13, 2018).

[574] *See* U.S. Dep't of Health & Human Servs., *Research In Action, Issue #19: The High Concentration of U.S. Health Care Expenditures* (June 2006), *available at https://archive.ahrq.gov/research/findings/factsheets/costs/expriach/expendria.pdf; see also* Ctrs. for Disease Control & Prevention, *National Center for Chronic Disease Prevention and Health Promotion, About Chronic Diseases, Health and Economic Costs of Chronic Diseases, available at https://www.cdc.gov/chronicdisease/about/costs/index.htm* (last visited Sept. 13, 2018). *See also generally* the Ctrs. for Disease Control & Prevention, *Statistics on Chronic Disease Prevention and Health Promotion, Chronic Disease Data available at https://www.cdc.gov/chronicdisease/data/index.htm* (last visited Sept. 13, 2018).

[575] *See* U.S. Dep't of Health & Human Servs., *Research In Action, Issue #19: The High Concentration of U.S. Health Care Expenditures* (June 2006), *available at https://archive.ahrq.gov/research/findings/factsheets/costs/expriach/expendria.pdf; see also* Ctrs. for Disease Control & Prevention, *National Center for Chronic Disease Prevention and Health Promotion, About Chronic Diseases, Health and Economic Costs of Chronic Diseases, available at https://www.cdc.gov/chronicdisease/about/costs/index.htm* (last visited Sept. 13, 2018). *See also generally* the Ctrs. for Disease Control & Prevention, *Statistics on Chronic Disease Prevention and Health Promotion, Chronic Disease Data available at https://www.cdc.gov/chronicdisease/data/index.htm* (last visited Sept. 13, 2018).

[576] *See* Ctrs. for Disease Control & Prevention, *National Center for Chronic Disease Prevention and Health Promotion, About Chronic Diseases, Health and Economic Costs of Chronic Diseases, available at https://www.cdc.gov/chronicdisease/about/costs/index.htm* (last visited Sept. 13, 2018).

[577] *See* Ctrs. for Disease Control & Prevention, *National Center for Chronic Disease Prevention and Health Promotion, About Chronic Diseases, Health and Economic Costs of Chronic Diseases, available at https://www.cdc.gov/chronicdisease/about/costs/index.htm* (last visited Sept. 13, 2018).

[578] *See* Nat'l Cancer Inst., *Cancer Prevalence and Cost of Care Projections, http://costprojections.cancer.gov/* (last visited Sept. 13, 2018).

[579] *See* American Diabetes Association, *The Cost of Diabetes,* available at *http://www.diabetes.org/advocacy/news-events/cost-of-diabetes.html* (last visted Sept. 13, 2018). *See also* Ctrs. for Disease Control & Prevention, *National Center for Chronic Disease Prevention and Health Promotion, About Chronic Diseases, Health and Economic Costs of*

Individuals in poor to fair health are more likely to access public benefits to treat their medical condition. Tables 25 and 26 show a relationship between health and receipt of public benefits irrespective of citizenship status, with higher rates of participation in most programs among those who reported their health as fair or poor than those who reported their health as excellent, very good, or good.

DHS also acknowledges that the health of certain individuals may have improved because of their access to these subsidized health insurance and other public benefits. In other cases, individuals may have needed the public benefits because of their compromised health. About 40 percent of U.S. citizens and 50 percent of noncitizens [580] who described their health as poor received some form of cash or non-cash public benefit. Moreover, about 20 percent of U.S. citizens and noncitizens who reported their health as excellent participated in at least one type of cash or non-cash benefit program in 2013. The rate of receipt of cash or non-cash benefits was about 20 percent among U.S. citizens who reported their health as excellent, very good, or good; and the rate was 30 to 40 percent among U.S. citizens who reported their health as fair or poor. Among noncitizens, the rate of receipt of these benefits among those who reported their health as excellent, very good, or good was similarly about 20 percent, while among those who reported their health as fair or poor, the rate was 30 to 50 percent. About 1 to 2 percent of both U.S. citizens and noncitizens who reported their health as excellent or good received at least one of SSI, TANF, or GA, which was a rate much lower than those who reported their health as either good (10.0 percent of U.S. citizens and 7.1 percent of noncitizens) or excellent (17.3 percent of citizens and 12.8 percent of noncitizens).[581]

Chronic Diseases, available at https://www.cdc.gov/chronicdisease/about/costs/index.htm (last visited Sept. 13, 2018).

[580] The difference in rates between citizens and noncitizens who describe their health as poor is not statistically significant.

[581] *See* Amy Finkelstein et al., Nat'l Bureau of Econ. Research, Working Paper 17190, *The Oregon Health Insurance Experiment: Evidence from the First Year* (July 2011), *available at http://www.nber.org/papers/w17190.pdf.*

Table 25: Public Benefit Participation of U.S. Citizens, by Health Status, 2013 (in thousands)

	Excellent			Very good			Good		
Total Population 310,867	**Population** 99,975	**% of Total Population** 32.2%		**Population** 85,478	**% of Total Population** 27.5%		**Population** 66,323	**% of Total Population** 21.3%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	19,702	19.7%	0.4%	13,987	16.4%	0.4%	13,383	20.2%	0.4%
Cash benefits	1,659	1.7%	0.1%	1,577	1.8%	0.1%	2,468	3.7%	0.2%
SSI	584	0.6%	0.1%	921	1.1%	0.1%	1,932	2.9%	0.2%
TANF	927	0.9%	0.1%	542	0.6%	0.1%	460	0.7%	0.1%
GA	201	0.2%	0.0%	130	0.2%	0.0%	185	0.3%	0.1%
Non-cash benefits	19,539	19.5%	0.4%	13,680	16.0%	0.4%	12,980	19.6%	0.4%
Medicaid	16,520	16.5%	0.4%	10,934	12.8%	0.3%	9,700	14.6%	0.4%
SNAP	9,946	9.9%	0.3%	7,405	8.7%	0.3%	7,506	11.3%	0.4%
Housing vouchers	1,347	1.3%	0.1%	1,085	1.3%	0.1%	1,075	1.6%	0.1%
Rent subsidy	3,122	3.1%	0.2%	2,599	3.0%	0.2%	2,658	4.0%	0.2%

	Fair			Poor		
Total Population 310,867	**Population** 27,631	**% of Total Population** 8.9%		**Population** 11,298	**% of Total Population** 3.6%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	8,795	31.8%	0.8%	4,614	40.8%	1.2%
Cash benefits	2,770	10.0%	0.5%	1,954	17.3%	1.0%
SSI	2,467	8.9%	0.5%	1,749	15.5%	0.9%
TANF	189	0.7%	0.1%	*63	*0.6%	0.2%
GA	195	0.7%	0.1%	189	1.7%	0.3%
Non-cash benefits	8,448	30.6%	0.8%	4,382	38.8%	1.2%
Medicaid	6,058	21.9%	0.7%	3,231	28.6%	1.1%
SNAP	5,444	19.7%	0.7%	2,784	24.6%	1.1%
Housing vouchers	749	2.7%	0.3%	389	3.4%	0.5%
Rent subsidy	2,067	7.5%	0.4%	1,116	9.9%	0.8%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP). Medicaid coverage is associated with higher rates of self-reported health status as good, very good, or excellent, which would lead to higher rates of Medicaid enrollment in those categories.[581]

* Estimate is considered unreliable due to a high relative standard error.

- Estimate of zero.

Table 26: Public Benefit Participation of Noncitizens, by Health Status, 2013 (in thousands)

	Excellent			Very good			Good		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	6,494	2.1%		5,792	1.9%		5,646	1.8%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	1,181	18.2%	1.5%	1,185	20.5%	1.6%	1,349	23.9%	1.7%
Cash benefits	*39	*0.6%	0.3%	*84	*1.4%	0.5%	*59	*1.0%	0.4%
SSI	*14	*0.2%	0.2%	*42	*0.7%	0.3%	*34	*0.6%	0.3%
TANF	*25	*0.4%	0.2%	*32	*0.5%	0.3%	*11	*0.2%	0.2%
GA	*1	*0.0%	0.0%	*11	*0.2%	0.2%	*14	*0.2%	0.2%
Non-cash benefits	1,181	18.2%	1.5%	1,156	20.0%	1.6%	1,337	23.7%	1.7%
Medicaid	815	12.6%	1.2%	794	13.7%	1.4%	949	16.8%	1.5%
SNAP	436	6.7%	0.9%	487	8.4%	1.1%	533	9.4%	1.2%
Housing vouchers	108	1.7%	0.5%	*56	*1.0%	0.4%	*93	*1.7%	0.5%
Rent subsidy	240	3.7%	0.7%	213	3.7%	0.8%	223	4.0%	0.8%

	Fair			Poor		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	1,705	0.5%		526	0.2%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	584	34.2%	3.4%	259	49.2%	6.5%
Cash benefits	121	7.1%	1.8%	*67	*12.8%	4.3%
SSI	108	6.3%	1.7%	*57	*10.8%	4.0%
TANF	*4	*0.3%	0.4%	*1	*0.2%	0.6%
GA	*13	*0.8%	0.6%	*9	*1.7%	1.7%
Non-cash benefits	575	33.7%	3.4%	248	47.2%	6.5%
Medicaid	383	22.5%	3.0%	189	36.0%	6.2%
SNAP	257	15.1%	2.6%	115	21.9%	5.4%
Housing vouchers	*24	*1.4%	0.8%	*6	*1.2%	1.4%
Rent subsidy	121	7.1%	1.8%	*72	*13.7%	4.5%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP). Medicaid coverage is associated with higher rates of self-reported health status as good, very good, or excellent, which would lead to higher rates of Medicaid enrollment in those categories. *See* Amy Finkelstein et al., Nat'l Bureau of Econ. Research, Working Paper 17190, *The Oregon Health Insurance Experiment: Evidence from the First Year* (July 2011), *available at* http://www.nber.org/papers/w17190.pdf.
* Estimate is considered unreliable due to a high relative standard error.
- Estimate of zero.

As noted in the discussion of the health factor above, USCIS would rely on panel physician and civil surgeon medical examination for purposes of whether an individual's circumstances gives rise to this heavily weighted negative factor. USCIS would consider it a heavily weighed negative factor if the panel physician or civil surgeon reports a medical condition that is likely to require extensive medical treatment or institutionalization, or that will interfere with the alien's ability to provide for him- or herself, attend school, or work; and the alien is uninsured or has health insurance that constitutes a public benefit under 212.21(b), or the alien has no prospect of obtaining private health insurance, or other non-governmental means of paying for medical treatment.

(e) Alien Previously Found Inadmissible or Deportable Based on Public Charge

DHS is proposing to consider an alien previously found inadmissible or deportable based on public charge grounds to be a high risk of becoming a public charge in the future.[582] Absent countervailing positive factors and evidence to show that current

[582] *See* proposed 8 CFR 212.22(c)(1)(v).

circumstances outweigh the conditions that supported the finding of inadmissibility, the previous finding will carry heavy weight in determining that an alien is likely to be a public charge again.

2. Heavily Weighed Positive Factors

Significant income, assets, and resources play a major role in whether an individual is likely to become a public charge. In addition, as described above, Tables 27 and 28 show a relationship between the FPG and welfare participation rates among both U.S. citizens and noncitizens in receipt of non-cash benefits in 2013. The percentage of people receiving these public benefits generally goes down as the income percentage increases. Specifically, 52.0 percent of U.S. citizens living below 125 percent of the FPG received non-cash benefits compared to 42.4 percent of those living between 125 and 250 percent of the FPG, 36.9 percent of those living between 250 and 400 percent of the FPG, and 13.5 percent of those above 400 percent of the FPL. Noncitizen participation rates in non-cash benefit programs among those living below 125 percent of the FPG was about 40 percent, compared to about 35 percent of those either between 125 and 250 percent of the FPG or 250 and 400 percent of the FPG.[583] Among noncitizens living above 400 percent of the FPG, the rate of receipt was 17.1 percent. Among U.S. citizens, the rate of receipt of cash benefits among those living below 125 percent of the FPG was 12.9 percent, compared to a rate of 10.3 percent among those living between 125 and 250 percent of the FPG, 5.5 percent among those living between 250 and 400 percent of the FPG, and 1.9 percent of those living above 400 percent of the FPG. Among noncitizens, the rates of receipt were 6.7 percent among those living below 125 percent of the FPG, about 2 to 3 percent among those either living between 125 to 250 percent of the FPG or living between 250 to 400 percent of the FPG, and 1.1 percent among those living above 400 percent of the FPG. Because many public benefit programs determine eligibility based on the FPG, individuals living above 250 percent of the FPG are less likely to receive public benefits.

For these reasons, and based on the data that follows, DHS proposes to consider it a heavily weighed positive factor if the alien has financial assets, resources, support, or annual income of at least 250 percent of the FPG in the totality of the circumstances.[584] However, DHS notes that an alien with an annual income of less than 250 percent of FPG would not automatically be inadmissible based on public charge. Instead, all the factors as discussed above would be considered in the totality of the circumstances, which may be favorable to be person regardless of whether the income is below 250 percent of the FPG.

[583] The difference in rates between noncitizens living below 125 percent of the FPG and those living either between 125 and 250 percent of the FPG, or 250 and 400 percent of the FPG, was not statistically significant.

[584] Income between 125 and 250 percent of the FPL is considered a positive factor in the public charge inadmissibility analysis.

Table 27. Public Benefit Participation Among U.S. Citizens by Federal Poverty Guidelines (FPG), 2013 (in thousands)

	0-125% FPG			>125-250% FPG		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	19,947	6.4%		20,790	6.7%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	10,506	52.7%	1.0%	9,006	43.3%	0.9%
Cash benefits	2,572	12.9%	0.6%	2,138	10.3%	0.6%
SSI	1,909	9.6%	0.6%	1,480	7.1%	0.5%
TANF	463	2.3%	0.3%	561	2.7%	0.3%
GA	240	1.2%	0.2%	178	0.9%	0.2%
Non-cash benefits	10,368	52.0%	1.0%	8,819	42.4%	0.9%
Medicaid	7,844	39.3%	0.9%	6,545	31.5%	0.9%
SNAP	7,596	38.1%	0.9%	6,215	29.9%	0.9%
Housing vouchers	1,455	7.3%	0.5%	956	4.6%	0.4%
Rent subsidy	3,671	18.4%	0.7%	2,558	12.3%	0.6%

	>250-400% FPG			>400% FPG		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	26,101	8.4%		223,865	72.0%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	9,774	37.4%	0.8%	31,194	13.9%	0.2%
Cash benefits	1,439	5.5%	0.4%	4,280	1.9%	0.1%
SSI	1,036	4.0%	0.3%	3,227	1.4%	0.1%
TANF	313	1.2%	0.2%	844	0.4%	0.0%
GA	120	0.5%	0.1%	361	0.2%	0.0%
Non-cash benefits	9,635	36.9%	0.8%	30,207	13.5%	0.2%
Medicaid	7,528	28.8%	0.8%	24,525	11.0%	0.2%
SNAP	6,107	23.4%	0.7%	13,167	5.9%	0.1%
Housing vouchers	995	3.8%	0.3%	1,240	0.6%	0.0%
Rent subsidy	2,103	8.1%	0.5%	3,229	1.4%	0.1%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).
*Estimate is considered unreliable due to a high relative standard error.
- Estimate of zero.

Table 28. Public Benefit Participation Among Noncitizens by Federal Poverty Guidelines (FPG), 2013 (in thousands)

	0-125% FPG			>125-250% FPG		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	1,580	0.5%		1,495	0.5%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	629	39.8%	3.6%	526	35.1%	3.6%
Cash benefits	106	6.7%	1.8%	*42	*2.8%	1.3%
SSI	*67	*4.2%	1.5%	*38	*2.6%	1.2%
TANF	*27	*1.7%	0.9%	*4	*0.3%	0.4%
GA	*13	*0.8%	0.6%	-	-	-
Non-cash benefits	619	39.2%	3.5%	523	34.9%	3.6%
Medicaid	501	31.7%	3.4%	363	24.2%	3.3%
SNAP	274	17.4%	2.8%	317	21.2%	3.1%
Housing vouchers	*65	*4.1%	1.4%	*56	*3.7%	1.4%
Rent subsidy	206	13.0%	2.4%	106	7.1%	1.9%
	>250-400% FPG			**>400% FPG**		
Total Population	**Population**	**% of Total Population**		**Population**	**% of Total Population**	
310,867	2,377	0.8%		14,711	4.7%	
Benefit program	**Total**	**Pct.**	**S.E.**	**Total**	**Pct.**	**S.E.**
Cash or non-cash	849	35.7%	2.9%	2,554	17.4%	1.0%
Cash benefits	*55	*2.3%	0.9%	167	1.1%	0.3%
SSI	*45	*1.9%	0.8%	104	0.7%	0.2%
TANF	*5	*0.2%	0.3%	*37	*0.3%	0.1%
GA	*4	*0.2%	0.3%	*30	*0.2%	0.1%
Non-cash benefits	840	35.3%	2.9%	2,516	17.1%	0.9%
Medicaid	516	21.7%	2.5%	1,751	11.9%	0.8%
SNAP	357	15.0%	2.1%	880	6.0%	0.6%
Housing vouchers	*57	*2.4%	0.9%	110	0.7%	0.2%
Rent subsidy	181	7.6%	1.6%	377	2.6%	0.4%

Source: USCIS analysis of Wave 1 of the 2014 Survey of Income and Program Participation (SIPP).
*Estimate is considered unreliable due to a high relative standard error.
- Estimate of zero.

(f) Previously Excluded Benefits

DHS would not consider public benefits under the proposed 8 CFR 212.21(b) that were previously excluded under the 1999 Interim Field Guidance if received before effective date of the final rule. DHS, however, would continue to consider cash benefits for income maintenance SSI, TANF and benefits for long-term institutionalization (*i.e.* those previously considered under the 1999 Interim Field Guidance) that an alien received before the effective date of the final rule.[585]

Public benefits previously considered under the 1999 Interim Field Guidance and received prior to the effective date of this rule would be considered as a negative factor in the totality of the circumstances analysis when determining whether an alien is inadmissible as likely at any time to become a public charge. However, the

[585] Under the 1999 Interim Field Guidance, DHS would consider the current receipt of cash benefits for income maintenance or long-term institutionalization at government expense in the totality of the circumstances. *See Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,* 64 FR 28689, 28690 (May 26, 1999) (''If at the time of application for admission or adjustment an alien is receiving a cash public assistance for income maintenance or is institutionalized for long-term care (as discussed in section 6, below), that benefit should be taken into account under the totality of the circumstances test, along with the other statutory factors under section 212(a)(4)(B)(i) and any [adjustment of status].''). DHS would also consider past receipt of cash benefits for income maintenance or long-term institutionalization at government expense in the totality of the circumstances. *See Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,* 64 FR 28689, 28690 (May 26, 1999) (''[P]ast receipt of cash income-maintenance benefits does not automatically make an alien inadmissible as likely to become a public charge, nor does past institutionalization for long-term care at government expense. Rather this history would be one of many factors to be considered in applying the totality of the circumstances test.'').

receipt of such benefits would not be considered as a heavily weighed negative factor.

Table 29 provides a summary of how benefits received prior to and after the effective date of this proposed rule would be considered under the proposed rule.

Table 29. Consideration of Benefits Received Prior to and After the Effective Date of this Rule		
	Benefits received before the effective date of this rule	**Public Benefits received after the effective date of this rule**
Benefits excluded under the 1999 Interim Field Guidance **Example: SNAP**[586]	Not considered	Considered, as set forth in 8 CFR 212.21(b).
Benefits considered under the 1999 Interim Field Guidance **Example: cash assistance for income maintenance, including SSI, TANF, General Assistance programs, programs supporting aliens who are institutionalized for long-term care**	Considered. DHS will consider as a negative factor any amount of these benefits received as provided under the 1999 Interim Field Guidance [587]	Considered, as set forth in in 8 CFR 212.21(b).

Examples

The following examples illustrate how DHS will consider benefits received prior to the effective date of the rule for the purposes of making public charge inadmissibility determinations. These examples are for illustrative purposes only and assume a closed universe of facts for purposes of simplicity. The examples are not intended to represent actual possible outcomes, as each case is reviewed individually on its own merits. Under the proposed rule, benefits received prior to the effective date of the rule would be excluded from consideration unless such benefits would have been considered under the 1999 Interim Field Guidance.[588] However, benefits received after the effective date of the rule would be considered to the extent that they are a public benefit, as defined in 8 CFR 212.21(b).

Example 1: Benefits Excluded Under the 1999 Interim Field Guidance

Example 1 is based on the following scenario: The DHS rule on public charge inadmissibility under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), goes into effect on January 1, 2019. The alien is the only member of the household, has been paroled into the United States pursuant to section 212(d)(5) of the Act for over five years, and is seeking to adjust status based on a visa category subject to public charge inadmissibility. The alien files the adjustment of status application on May 1, 2019, and the application is adjudicated on September 1, 2019. HHS published the new FPG in early January 2019, which contains the same values as the 2018 FPG for purposes of this example. For a household of 1, the FPG is $12,140. Fifteen percent of the FPG is $1,821 in a 12-month period. The alien is certified to receive SNAP benefits for 36 months, beginning on January 1, 2018. For the consecutive 12-month period between January 1, 2018 and December 31, 2018, the alien receives $2,160 in SNAP benefits. For the consecutive twelve-month period between January 1, 2019 and December 31, 2019, the alien receives $2,160 in SNAP benefits. The alien received no other public benefits. SNAP was previously excluded under the 1999 Interim Field Guidance, but is included in proposed 8 CFR 212.21(b).

Under proposed 8 CFR 212.22(d), the SNAP benefits the alien received before January 1, 2019, the effective date of the public charge rule, would not be considered. However, the SNAP benefits the alien received on or after January 1, 2019 would be considered if the aggregate annual value of SNAP benefits received since the effective date of the rule exceeds $1,821 (fifteen percent of the FPG for the household of one within any period of consecutive twelve consecutive months). For the consecutive twelve-month period between January 1, 2019 and September 1, 2019, the date of adjudication, the alien had only received a total of $1,620 in SNAP benefits, which is less than the threshold amount. However, because the alien is certified to receive $2,160 in SNAP benefits for a consecutive twelve-month period beginning after the rule's effective date, and such amount exceeds fifteen percent of the FPG, these benefits would be considered as a heavily weighed negative factor in the totality of the circumstances, as illustrated in Table 30. In this case, absent other evidence tending to show that the alien is unlikely to receive the benefits covered by the certification, USCIS would probably find that the alien is likely to become a public charge and is ineligible for adjustment of status.[589]

[586] SNAP benefits received after the effective date of the proposed rule will be valued as set forth in proposed 8 CFR 212.24(a).

[587] The 1999 Interim Field Guidance suggests that any past or current receipt of the type of public benefits included for consideration will be included in the public charge inadmissibility determination. *See Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,* 64 FR 28689, 28690 (May 26, 1999) (''If at the time of application for admission or adjustment an alien is receiving *a* cash public assistance for income maintenance or is institutionalized for long-term care (as discussed in section 6, below), *that benefit* should be taken into account under the totality of the circumstances test, along with the other statutory factors under section 212(a)(4)(B)(i) and any AOS . . . . Past receipt of cash income-maintenance benefits does not automatically make an alien inadmissible as likely to become a public charge, nor does past institutionalization for long-term care at government expense. Rather this history would be one of many factors to be considered in applying the totality of the circumstances test. In the case of an alien who has received cash income-maintenance benefits in the past or who has been institutionalized for long-term care at government expense, a Service officer determining admissibility should assess the totality of the alien's circumstances at the time of the application for admission or adjustment and make a forward-looking determination regarding the likelihood that the alien will become a public charge after admission or adjustment.'' (emphasis added)).

[588] *See* proposed 8 CFR 212.21(c).

[589] Pursuant to proposed 8 CFR 212.24(a), for SNAP benefits, DHS would calculate the value of the benefit attributable to the alien in proportion to the total number of people covered by the benefit, based on the amount(s) deposited as defined in 212.21(b) which the benefits are received in the Electronic Benefits Transfer (EBT) card account.

Table 30. Example 1, Benefits Excluded Under the 1999 Interim Field Guidance			
Consecutive 12 Month Period	**Benefit Received**	**Total Amount Received During Consecutive 12-month Period/Total Amount Certified for Consecutive 12-Month Period**	**Considered for purposes of the public charge inadmissibility determination under the proposed rule?**
Jan. 1, 2018 to Dec. 31, 2018	SNAP[589]	$2,160/certified for $2,160	No – SNAP benefits were previously excluded under the 1999 Interim Field Guidance, and therefore, any amount received prior to the effective date of the rule would not be considered.
Jan. 1, 2019 to to December 31, 2020	SNAP	$1,620 received as of date of adjudication/certified for $2,160	Yes – although the proportional amount of SNAP benefits received during this consecutive 12-month period does not exceed 15 percent of the 2019 FPG ($1,821) for a household size at the time of adjudication, because the alien was certified to receive SNAP for this entire period, in an amount that exceeds 15% of the FPG, this certification would be a heavily weighed negative factor in the totality of the circumstances.

Example 2: Benefits Excluded Under the 1999 Interim Field Guidance

Example 2 is based on the following scenario: The DHS rule on public charge inadmissibility under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), goes into effect on January 1, 2019. An alien is the only member of the household, has been paroled pursuant to section 212(d)(5) of the Act for over five years, and is seeking to adjust status based on a visa category subject to a public charge inadmissibility determination. The alien files the adjustment of status application on May 1, 2020, and the application is adjudicated on September 1, 2020. HHS publishes the calendar year 2019 FPG in early January 2019 and the 2020 FPG in early January 2020. For the purposes of this example, the FPG for 2019 and 2020 contains the same values as the FPG for 2018, which is $12,140. Fifteen percent of the FPG for 2018, 2019 and 2020 would be $1,821 in the relevant consecutive 12-month periods for this example .The alien was certified to receive SNAP for 36 months beginning in January 2018. The alien received no other public benefits. For the consecutive twelve-month period between January 1, 2018 and December 31, 2018, the alien received $2,160 in SNAP benefits. For the consecutive twelve-month period between January 1, 2019 and December 31, 2019, the alien received $2,160 in SNAP benefits. Beginning on January 1, 2020, however, the alien no longer receives any SNAP benefits. The alien provided a benefits termination letter as evidence along with the alien's adjustment application.

Under proposed 8 CFR 212.22(d), the SNAP benefits the alien received before January 1, 2019, the effective date of the public charge rule, would not be considered. However, the SNAP benefits the alien received on or after January 1, 2019 would be considered if the aggregate annual value of SNAP benefits received since the effective date of the rule exceeds $1,821 (fifteen percent of the FPG for the household of one within any period of consecutive twelve consecutive months). For the consecutive twelve-month period between January 1, 2019 and December 31, 2019, the SNAP benefits the alien received exceeded the fifteen percent threshold, and therefore would be considered. Because the receipt was within the 36 months immediately preceding the application, it is a heavily weighed factor in the totality of the circumstances. The termination letter suggests, however, that the alien is unlikely to receive future public benefits. DHS would weigh the termination letter along with the other evidence, in the totality of the circumstances. The preceding analysis is summarized in Table 31.[590]

[590] Pursuant to proposed 8 CFR 212.24(a), for SNAP benefits, DHS would calculate the value of the benefit attributable to the alien in proportion to the total number of people covered by the benefit, based on the amount(s) deposited as defined in 212.21(b) which the benefits are received in the Electronic Benefits Transfer (EBT) card account.

Table 31. Example 2 Benefits Excluded Under the 1999 Interim Field Guidance			
Consecutive 12 Month Period	**Benefit Received**	**Total Amount Received During Consecutive 12-month Period/Total Amount Certified for Consecutive 12-Month Period**	**Receipt of Public Benefits considered for purposes of the public charge determination under the proposed rule?**
Jan. 1, 2018 to Dec. 31, 2018	SNAP[590]	$2,160	No – SNAP benefits were previously excluded under the 1999 Interim Field Guidance, and therefore, would not be considered because received prior to the effective date of this rule.
Jan. 1, 2019 to Dec. 31, 2019	SNAP	$2,160	Yes – $2,160 in proportional SNAP benefits received for 12 consecutive months beginning in January 2019 and concluding in December 2019 exceeded 15 percent of the 2019 FPG ($1,821) for a household size of one. Also, as the benefit was received within 36 months of the time of filing the application (May 1, 2020), the receipt would be a heavily weighed negative factor in the totality of the circumstances under proposed 8 CFR 212.22(c)(1)(ii).
Jan. 1, 2020 to September 1, 2020	None	None	N/A

Example 3: Benefits Previously Excluded and Included Under the 1999 Interim Field Guidance

The example is based on the following scenario: The DHS rule on public charge inadmissibility under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), goes into effect on January 1, 2019. An alien has been paroled into the United States pursuant to section 212(d)(5) of the Act for over five year and is seeking to adjust status based on a visa category subject to the public charge inadmissibility determination. The alien's household of three includes the alien and the alien's two U.S. citizen children. The alien files an adjustment of status application on May 1, 2019, and the application is adjudicated on September 1, 2019. HHS publishes the calendar year 2019 FPG in early January 2019. For the purposes of this example, the FPG for 2019 contains the same values as the FPG for 2018. The relevant FPG based on a household of one in a consecutive twelve-month period is $12,140. Fifteen percent of the average FPG for the consecutive twelve-month period between January 1, 2018 and FPG for December 31, 2018 is $1,821. Fifteen percent of the average FPG for the consecutive twelve-month period between January 1, 2019 and FPG for December 31, 2019 is also $1,821.

For the consecutive twelve-month period between January 1, 2018 and December 31, 2018, the alien's household of 3 receives $2,400 in SNAP benefits. The proportional value of the $2,4000 SNAP benefit attributable to the alien based on her household size of 3 for this consecutive twelve-month period would be $800, or one third of $2,400. Similarly, for the consecutive twelve-month period between January 1, 2019 and December 31, 2019, the alien's household is certified to receives $1,800 in SNAP benefits for the a household size of 3.

The alien is also receiving TANF. For the consecutive twelve-month period between January 1, 2018 until December 31, 2018, the alien also receives a proportionate share of $100 per month in TANF benefits or $1,200 for the twelve-month period. The alien is certified to continue to receive TANF at this level through December 2019, and there is no evidence that the alien has terminated receipt.

Under proposed 8 CFR 212.22(d), the SNAP benefits the alien received before January 1, 2019, the effective date of the public charge rule, would not be considered. However, the SNAP benefits the alien received on or after January 1, 2019 would be considered if the cumulative value of all monetizable benefits received exceeded $1,821. TANF was considered under the 1999 Interim Field Guidance and therefore, the total value of the benefit received prior January 1, 2019 would be considered as a negative factor in the totality of the circumstances.[591] TANF benefits received after January 1, 2019 would be considered if the total value of the alien's receipt of one or more public benefits exceeded $1,821 during the relevant consecutive twelve-month period. At the time the alien's application was adjudicated on September 1, 2019, the alien received $600 in proportional SNAP benefits and $900 in TANF benefits during the consecutive 12-month period between January 1, 2019 and September 1, 2019, which, cumulatively, is less than 15 percent of the FPG in the amount of $1,821. Therefore, the alien's receipt of SNAP and TANF in 2019 would not be considered past receipt of public benefits within the 36-month period immediately preceding the application. However, because the alien was certified to receive both SNAP and TANF for the entire consecutive twelve-month period between January 1, 2019 and December 31, 2019 in a cumulative amount that exceeds the fifteen percent threshold, this would be a heavily weighed factor in the totality of the circumstances, as illustrated in Table 32.

[591] Note that considering the past receipt of previously included benefits as a negative factor in the totality of the circumstances is consistent with how such benefits were treated under the 1999 Interim Field Guidance, under which an ''officer determining admissibility should assess the totality of the alien's circumstances at the time of the application for admission or adjustment . . . The longer ago an alien received such cash benefits or was institutionalized, the *less weight* these factors will have as a predictor of future receipt. Also, the 'length of time an applicant has received public cash assistance is a significant factor.' The longer an alien has received cash income-maintenance benefits in the past and the greater the amount of benefits, *the stronger the implication that the alien is likely to become a public charge. The negative implication of past receipt of such benefits* or past institutionalization [sic], however, may be overcome by positive factors in the alien's case demonstrating an ability to be self-supporting.'' *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,* 64 FR 28689, 28690 (May 26, 1999).

Table 32. Example 3, Benefits Previously Excluded and Included Under the 1999 Interim Field Guidance			
12 Consecutive Months Period	**Benefit Type Received**	**Total Amount Received During Consecutive 12-month Period/Total Amount Certified for Consecutive 12-Month Period**	**Receipt of Public Benefits considered for purposes of the public charge determination under the proposed rule?**
Jan. 1, 2018 to Dec. 31, 2018	SNAP	$800	No – SNAP benefits were previously excluded under the 1999 Interim Field Guidance, and therefore, any amount received prior to the effective date of the rule would not be considered.
	TANF	$1,200	Yes – TANF benefits were included for consideration under the 1999 Interim Field Guidance. Considered as a negative factor in the totality of the circumstances.
Jan. 1, 2019 to Sept. 1, 2019 (but certified through Dec. 31, 2019)	SNAP	$600 received (as of 9/2019)), but certified to receive $800 for the consecutive 12-month period between January 1 and December 31, 2019	Yes – the alien was certified to receive a cumulative amount of SNAP and TANF for the consecutive 12 month period between January 1 and December 31, 2019 that exceeds15 percent of FPG based on a household of one, and therefore, is a heavily weighed negative factor in the totality of the circumstances.
	TANF	$900 received(as of 09/2019) but certified to receive $1,200 for the consecutive 12-month period between January 1 and December 31, 2019	
	Total	Received $1,500 but certified to receive a cumulative total of $2,000 for the consecutive 12-month period between January 1 and December 31, 2019	

DHS notes that the proposed exclusion of certain benefits received before the effective date may provide an opportunity for public benefit granting agencies to communicate the consequences of receiving public benefits, to the extent such agencies deem appropriate. In addition, the proposed exclusion provides advance notice to aliens that DHS is considering to change which public benefits it will consider for purposes of public charge inadmissibility determinations. If finalized, this provision, coupled with the proposed 60-day effective date, would give aliens an opportunity to stop receiving public benefits and obtain other means of support before filing for immigration benefits.

DHS welcomes comment on whether DHS should consider receipt of public benefits previously considered under the 1999 Interim Field Guidance as described in Table 29 at all, or if DHS should consider the benefit(s) in some other way than as a negative factor in the totality of the circumstances.

M. Summary of Review of Factors in the Totality of the Circumstances

An alien's likelihood of becoming a public charge, as discussed above, is prospective and based on the totality of the alien's circumstances. The Form I–944, Declaration of Self-Sufficiency, would be used by DHS to assess whether the alien is likely to become a public charge based on the totality of the circumstances. Table 33 below, provides a brief summary of the totality of the circumstances framework for public charge inadmissibility determinations. [592]

[592] The family status factor consideration entails determining the alien's household size and whether the alien has his or her own household or is a part of another individual's household. Among noncitizens in families with 3 or 4 people, about 20 percent received non-cash assistance, while about 30 percent of noncitizens in families of 5 or more received non-cash benefits.

Table 33. Totality of Circumstances Framework for Public Charge Determinations

Factor	*Considerations*	*Examples of Positive or Negative Findings By Factor*	*Weight of Factor*
Age	• 18 ≤ age ≤ 61 • Age > 61 • Age < 18	**Positive** • 18 ≤ age ≤ 61 **Negative** • Age > 61 unless alien can demonstrate employment or sufficient household assets and resources • Age < 18 unless alien can demonstrate employment or sufficient household assets and resources	The degree to which the alien's age affects otherwise makes the alien more or less likely to become a public charge, such as by impacting the alien's ability to work
Health	• Evidence of any medical condition(s) that: (1) Is likely to require extensive treatment or institutionalization, or (2) Will interfere with the alien's ability to care for him- or herself, to attend school, or to work	**Positive** • Absence of any medical conditions that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to care for him- or herself, to attend school, or to work **Negative** • Presence of any medical condition that is likely to require extensive medical treatment or institutionalization, or that will to interfere with the alien's ability to care for him- or herself, to attend school, or to work	The degree to which the alien's health makes the alien more or less likely to become a public charge, including whether the alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide and care for him- or herself, to attend school, or to work upon admission or adjustment of status
Family Status	• Whether alien has a household that he or she supports • Whether another household is supporting the alien	**Positive/ Negative**[592] Alien's household size in relation to alien's household assets and resources	The degree to which the alien's household size makes the alien more or less likely to become a public charge
Assets, Resources, and Financial Status	• Annual gross household income excluding any income from public benefits • Any additional income from individuals not included in the alien's household who physically reside with the alien • Additional income to the alien by or source outside of the household on a continuing monthly or yearly basis for the most recent calendar year excluding any income from public benefits	**Positive** • Annual gross household income ≥ 125% of the most recent FPG based on the household size; or Household assets and resources ≥ 5 times the difference between the total household income and 125% of the FPG for the household size • Alien has sufficient household assets and resources to cover any reasonably foreseeable medical costs related to a medical condition that is	**In General** The degree to which the alien's household's income, assets, and resources make the alien more or less likely to become a public charge **Heavily Weighed Positive** • Household assets, resources, and support ≥ 250% of the FPG for the household size • Alien is authorized to work and currently employed with an annual household income ≥ 250% of the FPG for the household size **Heavily Weighed Negative** • Alien cannot demonstrate current employment, employment history, or reasonable prospect of future employment

Table 33. Totality of Circumstances Framework for Public Charge Determinations

Factor	*Considerations*	*Examples of Positive or Negative Findings By Factor*	*Weight of Factor*
	• Household cash assets and resources, including as reflected in checking and savings account statements covering 12 months prior to filing the application • Non-cash assets and resources that can be converted into cash within 12 months, such as net cash value of real estate holdings minus the sum of all loans secured by a mortgage, trust deed, or other lien on the home; annuities; securities; retirement and educational accounts; and any other assets that can be converted into cash easily • Financial liabilities • Applied for or received any public benefit as defined in 212.21(b) on or after the effective date • Been certified or approved to receive public benefits, as defined in 8 CFR 212.21(b), on or after the effective date • Applied for or received a fee waiver for an immigration benefit request on or after the effective date • Credit history and credit score • Private health insurance or the financial resources to pay for reasonably foreseeable medical costs related to a medical condition that is likely to require extensive medical treatment or institutionalization, or that will interfere with the alien's ability to provide care for him- or herself, to attend school, or to work	likely to require extensive medical treatment or institutionalization, or that will interfere with the alien's ability to provide care for him- or herself, to attend school, or to work • Alien has not applied for or received any public benefits, as defined in 8 CFR 212.21(b), on or after effective date of the rule • Alien was not certified or approved to receive public benefits, as defined in 8 CFR 212.21(b), on or after the effective date of the rule • Alien has not applied for or received an immigration fee waiver on or after the effective date • Alien has good credit and a credit score • Alien has private health insurance or financial resources to pay for reasonably foreseeable medical costs related to a medical condition that is likely to require extensive medical treatment or institutionalization, or that will interfere with the alien's ability to provide care for him- or herself, to attend school, or to work **Negative** • Alien's assets and resources < than 125% of the most recent FPG based on household size; or Alien's household assets and resources < than 5 times the difference between the household income and 125% of the FPG for the household size	• Alien is currently receiving one or more public benefits, as defined 8 CFR 212.21(b). • Alien has received one or more public benefits, as defined in 8 CFR 212.21(b), within 36 months immediately preceding filing his or her application for a visa, admission, or adjustment of status • Alien was diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide for him- or herself, attend school, or work; and the alien is uninsured and has neither the prospect of obtaining private health insurance, or the financial resources to pay for reasonably foreseeable medical costs related to a the medical condition • Alien was previously found inadmissible or deportable on public charge grounds

Table 33. Totality of Circumstances Framework for Public Charge Determinations

Factor	*Considerations*	*Examples of Positive or Negative Findings By Factor*	*Weight of Factor*
		• Alien has insufficient assets and resources to cover any reasonably foreseeable medical costs related to a medical condition that is likely to require extensive medical treatment or institutionalization, or that will interfere with the alien's ability to provide care for him- or herself-care, to attend school, or to work • Financial liabilities • Alien has applied for or received any public benefits, as defined in 8 CFR 212.21(b), on or after effective date of the rule • Alien has been certified or approved to receive public benefits, as defined in 8 CFR 212.21(b), on or after effective date of the rule • Alien has received an immigration benefit fee waiver on or after the effective date • Alien has bad credit and a low credit score Alien does not have private health insurance or financial resources to pay for reasonably foreseeable medical costs related to a medical condition that is likely to require extensive medical treatment or institutionalization, or that will interfere with the alien's ability to provide care for him- or herself, to attend school, or to work	
Education and Skills	• Employment history • High school diploma or higher education • Occupational skills, certifications, or licenses • Proficiency in English or in additional languages	**Positive** • Alien has adequate education and skills to obtain or maintain employment sufficient to avoid becoming a public charge in the United	The degree to which the alien has adequate education and skills to either obtain or maintain employment sufficient to avoid becoming a public charge, if authorized for employment.

Table 33. Totality of Circumstances Framework for Public Charge Determinations

Factor	*Considerations*	*Examples of Positive or Negative Findings By Factor*	*Weight of Factor*
		States • Alien is sufficiently proficient in English or additional languages to enter the U.S. job market • Alien can obtain skilled or higher paid labor **Negative** • No employment history • Lack of high school diploma or higher education • Alien does not have adequate education and skills to either obtain or maintain employment sufficient to avoid becoming a public charge, if authorized for employment • Not familiar with the English language sufficient to enter the job market	
Affidavit of Support[593] **(if required)**	• Sponsor's annual income, assets, and resources • Sponsor's relationship to the applicant • Likelihood that the sponsor would actually provide financial support to the alien	**Positive** • **Assets** and **resources** ≥ **125%** of the most recent **Federal Poverty Guidelines** based on the sponsor's household size • Likely that sponsor would provide financial support to the alien **Negative** • Unlikely that sponsor would provide financial support to the alien	**Disqualifying - Inadmissible** • Assets and resources < 125% of the most recent FPG based on household size

Analysis

- Evaluate all factors and circumstances within each factor. The mere presence of any one enumerated circumstance is not, alone, determinative.[594]
- Assess whether each factor is positive or negative – Any factor or circumstance that decreases the likelihood of an alien becoming a public charge is positive. Any factor or circumstance that increases the likelihood of an alien becoming a public charge is negative.
- Assess the degree to which each factor is positive or negative – Other than the heavily weighed factors, the weight given to an individual factor would generally depend on the particular facts and circumstances of each case and the relationship of the factor to other factors in the analysis.
- Heavily weighed factors – Certain enumerated factors will generally weigh heavily in favor of finding that an alien is likely to become a public charge or finding that an alien is not likely to become a public charge.
- Other than a required but absent or insufficient sponsor's affidavit of support, no one factor alone establishes an alien's admissibility or inadmissibility.

Table 33. Totality of Circumstances Framework for Public Charge Determinations

Factor	*Considerations*	*Examples of Positive or Negative Findings By Factor*	*Weight of Factor*

Admissible or Inadmissible

- ***Admissible*** – If DHS finds that the alien's positive factors and circumstances outweigh the alien's negative factors and circumstances, such that the alien is not likely to receive one or more public benefits at any time in the future as defined in 8 CFR 212.21(b), then DHS would conclude that the alien is not inadmissible likely to become a public charge.
- ***Inadmissible*** – If DHS finds that the alien's negative factors and circumstances outweigh the alien's positive factors and circumstances, such that the alien is likely to receive public benefits at any time in the future as defined in 8 CFR 212.21(b), then DHS would conclude that the applicant is inadmissible as likely to become a public charge.

Below, DHS provides examples of potential public charge inadmissibility determinations. These examples are for illustrative purposes only and assume a closed universe of facts for purposes of simplicity. The examples are not intended to represent actual possible outcomes, as each case is reviewed individually on its own merits.

1. Favorable Determination of Admissibility

The following is an example (Table 34) of a set of facts that would likely result in a favorable determination of admissibility for public charge purposes. An alien would need to meet all other admissibility and eligibility requirements of the immigration benefit the alien is seeking.

[593] A sponsor must be able to demonstrate the means to maintain an income of *at least* 125 percent of the Federal Poverty Guidelines for the sponsor's household size. *See* INA section 213A, 8 U.S.C. 1183a. For aliens who are subject to the sponsor requirements, if a sponsor is not able to have a sufficient affidavit of support, the alien is inadmissible based on public charge under INA sections 212(a)(4) and 213A, 8 U.S.C. 1182(a)(4) and 1183a.

[594] Except that the absence of a sufficient affidavit of support, where required, will lead to an inadmissibility finding. See INA 212(a)(4)(C), (D), 8 U.S.C. 1182(a)(4)(C), (D).

Table 34. Example Applicant A			
Factor	**Considerations**	***Positive or Negative, Findings By Factor***	***Weight of Factor***
Age	• 30	Positive (within Working age of 18-61)	Neutral
Health	• No medical conditions	Positive	Neutral
Family Status	• household of 1	Positive	Neutral
Education and Skills	• Currently working full-time and attending bachelor's degree program	Positive	Neutral
Assets, Resources and Financial Status	• Employed with income at 120 percent of the FPG • Has not received any public benefits or any immigration fee waivers • Has a good credit report and score • Has no health insurance	Negative (income, no health insurance) Positive Positive Negative	Neutral
Affidavit of Support	Not required, not applicable	Not applicable	Neutral
Prospective Immigration Status and Period of Stay	• Applying for Adjustment of Status under Employment Category - Unskilled worker (Cook) EW-6 • LPR/Permanent period of stay	Positive	Neutral
Analysis in the totality of the circumstances:	The alien does not have any heavily weighed negative factors and the alien is applying for an employment-based immigrant status, which is a positive factor in the prospective immigration status factor. Although the alien has no current health insurance, the alien has no medical conditions that are likely to require extensive medical treatment, institutionalization, or that that will affect her ability to work, go to school, or otherwise care for herself. The applicant is not receiving and has not received public benefits or immigration fee waivers, is young, healthy, employed, attending college, and not responsible for providing financial support for any household members. Based on a consideration of these facts and circumstances in the totality, the alien is not likely to receive public benefits in the future, and therefore, would not be found inadmissible on the public charge ground.		

2. Unfavorable Determination of Admissibility

The following is an example (Table 35) of a set of facts that would likely result in an unfavorable determination of admissibility for public charge purposes. The alien may also be subject to other inadmissibility grounds.

Table 35: Example Applicant B			
Factor	**Considerations**	**Positive or Negative Findings By Factor**	**Weight of Factor**
Age	• 68	Negative	Neutral
Health	• Arthritis and heart disease (Class B medical conditions) that affect ability to work and require extensive medical treatment, as indicated in the medical examination	Negative	Neutral
Family Status	• Widow, adult child is providing alien with over 50% of support. Household of 6 (alien, alien's adult child, and the adult child's spouse, and 3 children)	Positive - in comparison to assets and resources	Neutral
Assets, Resources and Financial Status	• Alien has no earned income	Negative	Neutral
	• Annual household gross income is at 125 percent of the FPG for household of 6 (including adult child's income)	Positive	Neutral
	• Alien has no pension and no additional assets or resources	Negative	Neutral
	• Currently receiving a state cash benefit for income maintenance in excess of 15 percent of FPG consecutively for over the last 12 months	Negative	Heavily Weighed
	• Has not received any immigration fee waivers	Positive	Neutral
	• No information on credit history or score	Not applicable	Neutral
	• The alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide for herself or work; and the alien is uninsured and has neither the prospect of obtaining private health insurance, or the financial resources to pay for reasonably foreseeable medical costs related to the medical condition.	Negative	Heavily weighed
Education and Skills	• No history of employment • No high school diploma or other education or skills	Negative	Neutral
Affidavit of Support	• Sufficient Affidavit of Support from adult child at 125 percent of the FPG for household of 6	Positive	Neutral
Prospective Immigration Status and Period of Stay	• Applying for Adjustment of Status under Family Category - Parent of a U.S. citizen (IR-0) • LPR/Permanent period of stay	Neutral	Neutral
Analysis in the totality of the circumstances:	Although the alien's family status, assets, sources, and financial status (household income is at 125 percent of the FPG), and sufficient affidavit of support are positive factors, the alien's negative factors outweigh the alien's positive factors. The alien's health, lack of employment history, and lack of education and skills indicate that the alien is unlikely to work in the future to meet her needs. Moreover, the alien has two heavily weighed negative factors. The alien has Class B medical conditions that are likely to require extensive medical treatment, and the alien has no earned income, personal assets and resources, or prospect of private health insurance to cover the cost of medical care to treat the diagnosed Class B medical conditions.		

	The alien is also current receiving a state cash benefit for income maintenance in excess of the 15 percent threshold. In this example, USCIS issued a RFE or NOID, giving the alien the opportunity to provide evidence of termination of public benefits and evidence of newly acquired assets or resources that would allow her to overcome the negative factors in her case. However, the alien's response did not provide any additional information relevant to the public charge inadmissibility factors. Based on a consideration of these facts and circumstances in the totality, USCIS concluded that the alien is likely to receive public benefits in the future, as defined in 8 CFR 212.21(b), and accordingly found the alien inadmissible based on the public charge ground.

N. Valuation of Monetizable Benefits

DHS has consulted with the relevant Federal agencies regarding the inclusion and consideration of certain monetizable public benefits, and is proposing a benefit-specific methodology to establish a value for certain monetizable benefits in order to determine whether the alien has received in excess of the 15 percent threshold. This methodology ensures that for benefits which are provided on the basis of a household and not the individual, USCIS would only take into consideration the portion of the benefit that is attributable to the alien. However, in circumstances where the alien is not eligible for a given benefit but is part of a household that receives the benefit (such as by living in a household that receives a housing benefit by virtue of other household members' eligibility), such benefit based on the eligibility and receipt of such benefit(s) by his/her household members, USCIS would not consider such use for purpose of a public charge inadmissibility determination.

In valuing the cash monetizable benefits, USCIS would calculate the amount of the benefit attributable to the alien in proportion to the other household members. Thus, for instance, a household cash benefit of $600, shared among three eligible individuals, would be attributed to the alien in the amount of $200.

In valuing the non-cash monetizable benefits, DHS would use the same methodology, as follows:

- With respect to the Supplemental Nutrition Assistance Program (SNAP, or formerly called ''Food Stamps''), 7 U.S.C. 2011 to 2036c, DHS would calculate the annual aggregate amount of the benefit attributable to the alien alone, based on the amount(s) deposited monthly in the Electronic Benefits Transfer (EBT) card account. This calculation would be performed based on the alien's reporting of the monthly amounts deposited. DHS would divide the amount received by the number of eligible household members enrolled in the benefit.
- With respect to the Section 8 Housing Assistance under the Housing Choice Voucher Program, as administered by HUD under 24 CFR part 984; 42 U.S.C. 1437f and 1437u, DHS would calculate the proportional value of the voucher attributable to the eligible alien alone, based on the amount of the benefit received. In calculating the proportional value of the benefit, DHS would use the same methodology—it would divide the value of the benefit by the number of people receiving it. DHS also welcomes comments on a potential alternative methodology, under which DHS would assign value to the benefit using HUD rules at 24 CFR 5.520.
- With respect to Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation) under 24 CFR parts 5, 402, 880–884 and 886, DHS would calculate the proportional value of the rental assistance attributable to the eligible alien alone, based on the amount of the benefit received. In calculating the proportional value of the benefit, DHS would use the same methodology as above—it would divide the value of the benefit by the number of people receiving it. DHS also welcomes comment on a potential alternative methodology, under which DHS would assign value to the benefit using HUD rules at 24 CFR 5.520.

DHS seeks public comments on these proposed approaches described above, including any studies or data that would support an alternative approach.

O. Public Charge Bond for Adjustment of Status Applicants

DHS has the broad authority to prescribe forms of bonds as is deemed necessary for carrying out the Secretary's authority under the provisions of the Act.[595] Additionally, an alien who DHS has determined to be inadmissible based on public charge grounds may, if otherwise admissible, be admitted at the discretion of the Secretary upon giving a suitable and proper bond.[596] Currently, the regulatory authority for posting a public charge bond can be found in 8 CFR 103.6 and 8 CFR 213.1.

1. Overview of Immigration Bonds Generally

Immigration bonds may generally be secured by cash or cash equivalents, or may be underwritten by a surety company certified by the Department of Treasury under 31 U.S.C. 9304–9308.[597] A bond, including a surety bond, is a contract between the United States (the obligee) and an individual or a company (obligor) who pledges a sum of money to guarantee a set of conditions set by the government concerning an alien.[598] Surety bonds are bonds in which the surety company and its agents serve as co-obligors on the bond. Such company and its agents are jointly and severally liable for the payment of the face amount of the bond if the bond is breached.[599]

2. Overview of Public Charge Bonds

(a) Public Charge Bonds

Public charge bonds are intended to hold the United States and all states, territories, counties, towns, municipalities and districts harmless against aliens becoming a public charge.[600] A public charge bond is issued on the condition that the alien does not become a public charge. If the government permits the alien to submit a public charge bond, the government

[595] *See* INA section 103(a)(3), 8 U.S.C. 1103(a)(3).

[596] *See* INA section 213, 8 U.S.C. 1183.

[597] *See generally* 8 CFR 103.6.

[598] *See, e.g., Matter of Allied Fid. Ins. Co.,* 19 I&N Dec. 124, 125–26 (BIA 1984) (discussing the contractual nature of delivery bonds submitted under 8 CFR 103.6); *see* Merriam-Webster Online Dictionary, *Definition of Bond, https://www.merriam-webster.com/dictionary/bond* (last updated Sept. 3, 2018).

[599] *See* 8 CFR 103.6(e).

[600] *See* INA section 213, 8 U.S.C. 1183.

admits the alien despite having found the alien inadmissible as likely to become a public charge.

If an alien admitted after submitting a public charge bond becomes a public charge, the bond is breached. The bond is breached regardless of whether a demand for payment of the public expense has been made otherwise, as reflected below.[601]

(b) Current and Past Public Charge Bond Procedures

Regulations governing public charge bonds can be found at 8 CFR 103.6 and 8 CFR 213.1. Agency guidance is provided in the Adjudicator's Field Manual (AFM), Chapter 61.1. According to the AFM, although DHS has the authority to require public charge bonds, the authority has rarely been exercised since the passage of IIRIRA in 1996, which codified the affidavit of support requirements.[602] Consequently, USCIS does not currently have a process in place to regularly accept public charge bonds.

Prior to 1996, INS had issued public charge bond guidance in the Operating Instructions (OI) 103.6 and 213.1,[603] and its predecessor, the Examinations Handbook, at Part VI, VI–88 through VI–98.[604] Although these manuals do not appear to comprehensively address public charge bonds, the following summarizes parameters of past public charge bond practices:

A consular officer would advise an immigrant visa applicant required to post a bond in writing, specifying the amount to be posted with INS. Without such a letter, INS would not accept the posting of a bond.[605] INS informed the DOS of the posting of the bond as soon as an alien-designated obligor in the United States posted the bond.[606] According to 8 CFR 213.1, a public charge bond had to be at least $1,000. As soon as a bond was posted, INS monitored the bond periodically.[607] Any interested party could request the review and cancellation of the bond at any time.[608] Upon receiving the request, INS would notify the alien of his or her opportunity to present evidence to establish that the bond was not breached and that the alien was not likely to become a public charge in the future; receipt of public assistance was ordinarily sufficient to warrant the continuation of the bond.[609] According to the OIs, if no request to cancel the bond was made, INS would review the bond every 5 years to determine whether INS should cancel the bond. Ordinarily, and in addition to the statutory reasons for cancellation, a bond was cancelled after the initial 5-year period (or earlier, if warranted) if the review showed that the alien had not and would not likely become a public charge.[610] Additionally, and in accordance with 8 CFR 103.6(c)(1), the bond could be cancelled if INS determined that there is no likelihood that the alien would become a public charge.[611]

If the alien became a public charge by using public assistance, the bond was breached in the necessary amount with any remainder continued in effect.[612] According to the Examinations Handbook, if the alien had received any public funds, and the agency from which the alien had obtained the funds requested repayment, the obligor was required to pay the actual expenses to INS within thirty days. If no payment was made, the obligor was then required to pay the total amount due plus $200 to the INS. If the payment was not made, the amount was then extracted from the bond itself.[613]

The 1999 public charge guidance did not detail any procedures on public charge bonds.[614] The current USCIS guidance in the Adjudicator's Field Manual addresses the possibility of a bond in certain circumstances, and outlines that upon termination on account of the statutory reasons, the sums or other security held to secure its performance, except to the extent it is forfeited for violation of its terms, must be returned to the person who posted the bond, or to his legal representatives.[615]

Although the current bond form used by U.S. Immigration and Customs Enforcement (ICE), Immigration Bond (Form I–352), references public charge bonds, ICE does not administer public charge bonds. However, Form I–352 does specify that the obligor shall pay to the United States or to any State, territory, county, town, municipality or district that provided public assistance any and all charges up to the total amount of the bond. In the event that the public authority providing assistance is not authorized to accept reimbursement, the obligor agrees that he or she will pay DHS.

[601] *See* INA section 213, 8 U.S.C. 1183; *see also Matter of Viado,* 19 I&N Dec. 252, 253–54 (BIA 1985).

[602] *See* AFM, Chapter 61.1 (''(b) *Policy.* Although USCIS has the authority to require a public charge bond, such authority is rarely exercised in light of the statutory changes contained in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) which created the enforceable affidavit of support (see *Chapter 20.5* of this field manual).'' IIRIRA section 564(f) amended INA section 213, 8 U.S.C. 1183. In addition to the regular bonding requirements, IIRIRA section 564(a) through (e) also established 3-year pilot programs in 5 district offices of INS to require aliens to post a bond in addition to the affidavit requirements under INA section 213, 8 U.S.C. 1183a, and the deeming requirements under section 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1631. Congress provided that any pilot program established pursuant to this subsection shall require an alien to post a bond in an amount sufficient to cover the cost of benefits described in INA section 213A(d)(2)(B), 8 U.S.C. 1183a, and for the alien and the alien's dependents, and shall remain in effect until the departure, naturalization, or death of the alien. *See* IIRIRA, Public Law 104–208, div. C, section 564(a), 110 Stat 3009–546, 3009–683. Suit on that bond was supposed to be brought under the terms and conditions of INA section 213A, 8 U.S.C. 1183a. Within 180 days after the date of IIRIRA, which was on September 30, 1996, the Attorney General was directed to issue regulations establishing the pilot program, including criteria and procedures for certification of bonding companies, debarment of any such company that fails to pay a bond, and criteria for setting the amount of the bond to assure that the bond is in an amount that is not less than the cost of providing benefits under INA section 213A(d)(2)(B) for the alien and the alien's dependents for 6 months. *See* IIRIRA, Public Law 104–208, div. C, section 564(b), 110 Stat 3009–546, 3009–683 to -684. Congress furthermore imposed an annual reporting requirement, starting 9 months after the date of the implementation of the program. *See* IIRIRA, Public Law 104–208, div. C, section 564(d), 110 Stat 3009–546, 3009–684. DHS is unable to locate implementing materials relating to this pilot program.

[603] *See* INS Operating Instructions (Nov. 1997) [hereinafter OI]. INS removed Operating Instructions in 1998 and transferred the parts relating to the bond to the Inspector's Field Manual, Chapter 45. *See* Transmittal Memo (TM2), M–450 Inspector's Field Manual, Dated March 13, 1998, and Transmittal Memo (TM1), M–450 Inspector's Field Manual, Dated June 24, 1997. No further guidance on public charge bond processing appears to have been issued.

[604] *See* INS Examinations Handbook, Part VI, VI–88 through VI–98 (Oct. 1, 1988) [hereinafter Examinations Handbook].

[605] *See* Examinations Handbook, Part VI, at VI–89; *see* OI 213.1.

[606] *See* Examinations Handbook, Part VI, at VI–89; *see* OI 213.1.

[607] *See* Examinations Handbook, Part VI, at VI–91 and VI–92; *see* OI 103.6(c)(1).

[608] *See* Examinations Handbook, Part VI, at VI–94; *see* OI 103.6(c)(1).

[609] *See* Examinations Handbook, Part VI, at VI–94; *see* OI 103.6(c)(1).

[610] *See* Examinations Handbook, Part VI, at VI–94; *see* OI 103.6(c)(1).

[611] *See* Examinations Handbook, Part VI, at VI–94; *see* OI 103.6(c)(1).

[612] *See* Examinations Handbook, Part VI, at VI–95; *see* OIs 103.6(c)(1).

[613] *See* Examinations Handbook, Part VI, at VI–95.

[614] *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,* 64 FR 28689 (May 26, 1999).

[615] *See* AFM Ch. 61.1, *Posting, Cancellation and Breaching of Public Charge Bonds.* As already mentioned, USCIS' bond authority is rarely exercised in light of the statutory changes contained in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) which created the enforceable affidavit of support.

(c) Relationship of the Public Charge Bond to the Affidavit of Support

The Affidavit of Support and the public charge bond are distinct, but complementary, means to recover costs associated with the alien's receipt of public benefits. As discussed above, certain applicants seeking immigrant status must submit an enforceable Affidavit of Support under Section 213A of the INA (Form I–864).[616] The affidavit of support is a contract between the alien's sponsor and the U.S. Government that imposes on the sponsor a legally enforceable obligation to support the alien. The obligation may be enforced against the sponsor by the sponsored alien, the Federal Government, any State or any political subdivision thereof, or by any other entity that provides any means-tested public benefit.[617] According to section 213A(b) of the Act, 8 U.S.C. 1183a(b), a non-governmental entity that provided such benefit(s) or the appropriate entity of the Federal Government, a State, or any political subdivision of the State must request reimbursement by the sponsor in the amount of the unreimbursed costs of the benefits or, after non-payment, bring an action against the sponsor under section 213A of the Act, 8 U.S.C. 1183A, no later than 10 years after the date on which the sponsored alien last received any means-tested benefit to which the affidavit of support applies.[618] Section 213A of the Act, 8 U.S.C. 1183a, does not require a sponsored immigrant to request the sponsor or joint sponsor to comply with the support obligation before bringing an action to compel compliance.[619] Neither USCIS nor DHS are directly involved in enforcing an Affidavit of Support sponsor's obligation to reimburse an agency. USCIS does, however, make information about the sponsor available to an agency seeking reimbursement.[620]

Under section 213 of the Act, 8 U.S.C. 1183, an alien may be admitted to the United States at the discretion of the Attorney General upon the giving of a suitable and proper bond. In contrast to the affidavit of support, which is a contract between the government and the sponsor, a bond, including a surety bond, is a contract between the United States (the obligee) and an individual or a company (obligor) who pledges a sum of money to guarantee conditions set by the government concerning an alien.[621] Thus, there are distinct differences between the affidavit of support and the bond. For example, unlike the affidavit of support, in which the alien as well as the government entity may have a cause of action to recover expenses, only the government entity being part of the bond contract may pursue recovery from the obligor if the bond is breached and only the obligor may challenge the breach determination.[622]

In section 213 of the Act, 8 U.S.C. 1183, Congress directly addresses the affidavit of support and the deeming requirement imposed in section 213 of the Act when it added a parenthetical to the public charge bond provision stating that the alien may be admitted ''(subject to the affidavit of support requirement and attribution of sponsor's income and resources under Section 213A)'' upon having posted a suitable bond.[623] In the provision amending section 213 of the Act, section 564(f) of IIRIRA, Congress emphasized that the bond was to be considered in addition to the sponsor and deeming requirements under section 213A of the Act, 8 U.S.C. 1183A, and not instead of them.[624] The Joint Explanatory Statement in the House Conference Report for IIRIRA confirms that Congress intended that bonds ''should be required in addition to, and not in lieu of, the new sponsorship and deeming requirements of section 213A of the Act, 8 U.S.C. 1183a.''[625] Correspondingly, Congress also retained in section 213 of the Act, 8 U.S.C. 1183, the longstanding concept that suit on the bond may be made irrespective of the reasons for the breach and irrespective of whether a demand for payment of public expenses have been made.[626]

(d) Summary of Proposed Changes

In this rule, DHS proposes to clarify when an alien seeking adjustment of status will be permitted to post a public charge bond under DHS's authority outlined in sections 103 and 213 of the Act, 8 U.S.C. 1103 and 1183. Additionally, as reflected below, DHS proposes to establish a new minimum bond amount of $10,000 (adjusted annually for inflation), explain the circumstances under which a public charge bond will be cancelled, as well as establish specific conditions under which a public charge bond will be breached.[627] Finally, DHS proposes processing fees for the initial submission of the Public Charge Bond (Form I–945) and for the Request for Cancellation of Public Charge Bond (Form I–356); both fees would be initially set at $25. USCIS plans to establish a process to accept and process public charge bonds, which would be available on the effective date of the final rule. DHS welcomes comments on any aspect of the public charge bond or public charge bond process, including whether the minimum public charge bond amount should be higher or lower, and possible ranges for that amount.

3. Permission To Post a Public Charge Bond

First, the proposed regulation clarifies that permitting an alien who is found inadmissible as a public charge but is otherwise admissible to submit a public charge bond is within DHS's discretion.[628] Section 213 of the Act gives DHS discretion to allow an alien

[616] *See* INA section 213A, 8 U.S.C. 1183a.

[617] *See* INA section 213A(a)(1)(B), 8 U.S.C. 1183a(a)(1)(B).

[618] *See* INA section 213A(b), 8 U.S.C. 1183A(b). Implementing regulations on the request for reimbursement and actions to compel reimbursement can be found at 8 CFR 213a.4. Remedies available to enforce an affidavit of support under this section include any or all of the remedies described in 28 U.S.C. 3201 (Judgement liens), 28 U.S.C. 3203 (Execution), 28 U.S.C. 3204 (Installment payment order), or 28 U.S.C. 3205 (Garnishment), as well as an order for specific performance and payment of legal fees and other costs of collection and include corresponding remedies available under State law. *See* INA section 213A(c), 8 U.S.C. 1183a(c). A Federal agency may seek to collect amounts owed under this section in accordance with the provisions of subchapter II of 31 U.S.C. Chapter 37 (Claims of the United States Government). *See* INA section 213A(c), 8 U.S.C. 1183a(c).

[619] *See* 8 CFR 213a.4(a)(2).

[620] *See* 8 CFR 213a.4(a)(3). Upon receipt of a duly issued subpoena, USCIS will provide the agency with a certified copy of a sponsor's Form I–864. Additionally, USCIS routinely provides the sponsor's name, address and Social Security number to Federal, state, and local agencies providing means-tested benefits.

[621] *See, e.g., Matter of Allied Fid. Ins. Co.,* 19 I&N Dec. 124, 125–26 (BIA 1984).

[622] *Compare* INA section 213A(b)(2), 8 U.S.C. 1183a, *with* INA section 213, 8 U.S.C. 1183. *See also Matter of Ins. Co. of N. Am.,* 17 I&N Dec. 251, 251 (BIA 1978) (finding that only the obligor and the obligee are party to the contract and that only the obligor, but not the alien, may challenge the government breach determination).

[623] *See* IIRIRA, Public Law 104–208, div. C, section 564(f), 110 Stat. 3009–546, 3009–684.

[624] *See* IIRIRA, Public Law 104–208, div. C, section 564(f), 110 Stat. 3009–546, 3009–684 (''(f) Bonds in addition to sponsorship and deeming requirements—Section 213 (8 U.S.C. 1183) is amended by inserting '(subject to the affidavit of support requirement and attribution of sponsor's income and resources under section 213A)' after 'in the discretion of the Attorney General.' '').

[625] *See* H.R. Conf. Rep. No. 104–828, at 243 (1996) (Conf. Rep.).

[626] *See* INA section 213, 8 U.S.C. 1183; see *also Matter of Viado,* 19 I&N Dec. 252, 253 (BIA 1985) (distinguishing inadmissibility under section 212(a)(4) of the Act and a public charge bond from deportability under section 237(a)(5) of the Act); *Matter of B,* 3 I&N Dec. 323, 326 (BIA 1948) (holding that before an alien could be considered deportable on public charge ground, the state authorities must have demanded repayment of charges for services rendered and the charges must thereafter have remained unpaid.).

[627] *See* proposed 8 CFR 213.1.

[628] *See* proposed 8 CFR 213.1.

to post a ''suitable and proper'' public charge bond if the alien is otherwise admissible. Therefore, DHS proposes that in circumstances under which USCIS determines, after a finding of inadmissibility on the public charge ground that a favorable exercise of discretion is warranted, USCIS will notify the alien of the possibility to submit a bond and USCIS will specify the bond amount and bond conditions. The alien would then be permitted to submit the appropriate form for the public charge bond in accordance with the form instructions and with the appropriate fee. DHS proposes that a public charge bond could only be submitted on the alien's behalf after USCIS makes this option available to the alien, and that USCIS would reject any unsolicited attempt to submit a bond.

The same factors that weighed positively when making the public charge inadmissibility determinations will generally indicate that offering the option of a public charge bond to an alien is warranted. Ultimately, the purpose of the public charge bond is to allow DHS to admit an alien who is inadmissible as likely to become a public charge, but who warrants a favorable exercise of discretion. DHS believes that offering a public charge bond in the adjustment of status context would generally only be warranted in limited circumstances in which the alien has no heavily weighed negative factors, but the presence of such factors would not automatically preclude DHS from offering a public charge bond. As explained above, DHS would consider the heavily weighed negative factors particularly indicative of the likelihood that an alien would become a public charge. However, as is the case with any discretionary determination, DHS may also consider any of a range of positive and negative factors applicable to the alien's case when determining whether the alien should be offered the option to post a public charge bond and be admitted to the United States on bond. For example, an officer could consider whether allowing the alien to become a lawful permanent resident would offer benefits to national security, or would be justified for exceptional humanitarian reasons. Another example in which USCIS may offer an alien the possibility to post a bond would be if an alien had a weak financial status, had received public benefits 40 months prior to applying for immigration status, and had a medical condition, but the alien's prospect of obtaining medical insurance (that does not meet the definition of a public benefit under proposed 8 CFR 212.21(b)) is good and the grant of admission upon public bond would be in the interest of family unity.

4. Bond Amount and Submission of a Public Charge Bond

DHS proposes that, in cases in which USCIS has determined that offering a public charge bond to an alien is warranted, the public charge bond be set at no less than $10,000, annually adjusted for inflation based on the Consumer Price Index for All Urban Consumers (CPI–U),[629] and rounded up to the nearest dollar. This would raise the amount that is currently stated in 8 CFR 213.1 from no less than $1,000 to no less than $10,000.

Proposing a base amount sufficient for a public charge bond based on historical public benefit data is difficult, because the amount of average public benefit being considered under the proposed rule depends on the public benefit the person receives and how long the person receives the benefit. The broad range of public benefits available to individuals on the Federal, State, and local level, but not necessarily to immigrants, renders such a determination even more complex.

As indicated above, DHS proposes to set the base amount of the public charge bond at $10,000. The current 8 CFR 213.1 refers to a bond amount of at least $1,000. 8 CFR 213.1 was promulgated in July of 1964.[630] This provision has not been updated and inflation has never been accounted to represent present dollar values. Simply adjusting the amount for inflation using CPI–U would bring the bond floor in June 2018 to about $8,100.[631] DHS notes that bond amounts could be $1,000 or more (in 1964 dollars) and once adjusted for inflation, these amounts are equivalent to $8,100 or more in present dollar values. Additionally, when examining previous public charge bonds granted by legacy immigration agencies, DHS has found that the minimum amount of approved public charge bonds remained relatively stable in inflation-adjusted dollars and fluctuated around or above $10,000.[632] Accordingly, DHS proposes that $10,000 would be an amount that would provide USCIS with an appropriate starting point when determining the public charge bond amount that is minimally necessary to ensure that United States can recoup cost of public benefits received by the alien. Additionally, as with determining whether to offer an alien the option of posting a public charge bond, USCIS will consider the alien's individual circumstances when determining the exact amount of the bond the alien is required to post.

If USCIS determines that the alien seeking an adjustment of status may submit a public charge bond, neither the alien nor an obligor, including a surety company, would be able to appeal the amount of the bond required.[633] As discussed more fully in this preamble, DHS has discretion to allow an alien to post a public charge bond ''in such amount and containing such conditions'' as DHS may prescribe. Given the discretionary nature of DHS's authority under section 213 of the Act, 8 U.S.C. 1183, DHS has determined that the bond amount would not be appealable administratively either to the AAO or the BIA, because neither administrative body has jurisdiction over this discretionary determination.[634]

As indicated above, under this proposed rule, USCIS would notify the alien of the bond amount and conditions, including the type of bond the alien may submit. Each submission would be on the form designated and in accordance with the applicable instructions and fees prescribed in 8 CFR 103.7. While the proposed rule

[629] U.S. Bureau of Labor Statistics, *Consumer Price Index for All Urban Consumers, https://data.bls.gov/cgi-bin/surveymost?cu* (select ''U.S. All items, 1982–84=100—CUUR0000SA0'') (last visited Sept. 5, 2018).

[630] *Miscellaneous Amendments to Chapter,* 29 FR 10579 (July 30, 1964).

[631] DHS uses the semi-annual average for the first half of 2018 and the annual average from 1964 from the historical CPI–U for U.S. City Average, All Items. *See https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-201806.pdf.*

Calculation: Annual average for 1st half of 2018 (250.089)/annual average for 1964 (31) = 8.1; CPI–U adjusted present dollar amount = $1,000 * 8.1 = $8,100.

[632] *See, e.g., Wallis* v. *U.S. ex rel. Mannara,* 273 F. 509, 511 (2d Cir. 1921) ($1000 public charge bond posted in September 1920, which would amount to about $12,600.30 in July 2018)*; Matter of Viado,* 19 I&N Dec. 252, 252 (BIA 1985) ($5000 bond posted in February 1979, which would amount to about $$18,234.88 in July 2018); *In re Obligor,* 2007 WL 5326596, at *1 (AAO June 6, 2007) (adjustment upon $10,000 bond in June 1999, which would amount to about $15,162.82 in July 2018). For purposes of these calculations, DHS used the CPI Inflation Calculator from the Bureau of Labor Statistics at *https://www.bls.gov/data/inflation_calculator.htm* (last visited Aug. 20th, 2018).

[633] *See* proposed 8 CFR 213.1(b).

[634] *See United States ex rel. Chanin* v. *Williams,* 177 F. 689, 690 (2d Cir. 1910) (''The matter of admission under bond of a person once found to be likely to become a public charge is by the statute confided to the Secretary, and we do not see why his refusal to admit is not an adverse exercise of such discretion in any particular case. His reasons for refusal may or may not seem persuasive to a court; but it is to him, not to the court, that Congress has confided the discretion.''); *see also In re Obligor,* 2007 WL 5326596, at *1 (AAO June 6, 2007) (sustained appeal that public charge bond was not breached). The BIA does not have jurisdiction. 8 CFR 1003.1(b)

retains the options for a surety bond or a cash or cash equivalent such as a cashier's check or money order deposit and agreement to secure a bond, due to operational feasibility considerations USCIS plans to initially allow for only surety bonds.[635] For example, surety bonds do not involve the actual exchange of money until the bond is breached, while the undertaking of cash bonds involves additional accounting mechanisms, including the management of interest. DHS proposes to use new USCIS Form I–945, Public Charge Bond for this purpose. As discussed in greater detail below, DHS is proposing a $25 public charge bond processing fee to be submitted with the Form I–945.

For all public charge surety bonds, an acceptable surety company is generally one that appears on the current Treasury Department Circular 570 as a company holding the requisite certificate of authority to act as a surety on Federal bonds.[636] Treasury-certified sureties have agents throughout the United States from whom aliens could seek assistance in procuring an appropriate bond.[637] The Department of the Treasury certifies companies only after having evaluated a surety company's qualifications to underwrite Federal bonds, including whether those sureties meet the specified corporate and financial standards. Under 31 U.S.C. 9305(b)(3), a surety (or the obligor) must carry out its contracts and comply with statutory requirements, including prompt payment of demands arising from an administratively final determination that the bond had been breached.

If an alien successfully posts a public charge bond in the amount and under the conditions specified in the form instructions and USCIS notice, USCIS will continue to adjudicate the alien's application for adjustment of status and will grant such application if all eligibility criteria are met. Additionally, if the bond has been successfully posted, USCIS must ensure that the bond is maintained during the effective period of the bond. To achieve this goal, DHS proposes that an obligor would need to notify DHS within 30 days of any change in the obligor's or the alien's physical and mailing address. Given the contractual nature of the public charge bond, the change of address requirement imposed is similar to the one imposed on a sponsor's change of address requirement for purposes of the affidavit of support under 8 CFR 213a.3, except that the obligor would also need to notify USCIS of the bonded alien's change of address. An alien would still need to comply with the change of address requirements under section 265 of the Act, 8 U.S.C. 1305, and 8 CFR 265.1 to notify USCIS of his or her change of address.

If the alien does not respond to the notice soliciting a public charge bond, or the bond submitted does not comply with the bond amount and conditions set by USCIS, USCIS will deny the alien's application. Given the complexity of a bond process, DHS plans to issue separate guidance addressing the specifics of public charge bond submission.

5. Public Charge Bond Substitution

DHS proposes that if USCIS accepts a bond of limited duration, the bond on file must be substituted with a new bond 180 days before the bond on file with USCIS expires.[638] A bond of limited duration is a bond that expires on a date certain regardless of whether the statutory terms for cancellation of such a bond have been met (*i.e.,* naturalization, permanent departure, or death of the alien). A bond of unlimited duration is a bond that does not have a specific end date but ends upon USCIS canceling the bond. Bonds of limited duration are sometimes easier and cheaper to obtain and DHS is proposing to allow for this option so long as a substitute bond is valid and effective before the expiration date of the bond on file. Because a bond has to be maintained until cancelled by USCIS, substitution ensures continuous indemnification of the United States against the alien receiving public benefits until the conditions for the cancellation of the bond have been met. Additionally, requiring that the substitute bond for a bond of limited duration is submitted to DHS at least 180 days before the expiration of the bond previously submitted expires permits USCIS to allow for some time to adjudicate the sufficiency of any substitute bonds, which further ensures continuous indemnification of the United States against the alien receiving public benefits.

Either the obligor, a substitute obligor, or the alien would be able to submit the substitute bond at any time and regardless of the reasons. The substitute bond would need to be valid, properly submitted with the appropriate fee, and effective on the day the previously submitted bond on file with USCIS expires. The substitute bond would need to meet all of the requirements applicable to the bond on file with USCIS, as required by 8 CFR 103.6 and 8 CFR 213.1. To ensure continued bond coverage of the alien as required under section 213 of the Act, the substitute bond would also need to cover a bond breach that occurred before USCIS accepted the substitute bond, in the event USCIS does not have knowledge of the breach until after the expiration or cancellation of the bond on file with USCIS. If USCIS determined that the substitute bond proffered is sufficient, it would accept the bond and the bond would become effective on the day the bond currently on file expires or when the new bond takes effect, if prior to the expiration of the bond on file.[639] Additionally, the bond previously on file would be cancelled, if needed.[640] If the substitute bond was insufficient, USCIS would notify the obligor of the substitute bond so that the obligor could correct the deficiency within the timeframe stipulated in the notice. USCIS may also send a copy of the notification to the alien, the alien's representative (if any), and the initial obligor. If the deficiency is not corrected within the timeframe stipulated in the notice, the substitute would be rejected.

6. Public Charge Bond Cancellation

(a) Conditions

A public charge bond must remain in effect until the alien naturalizes or otherwise obtains U.S. citizenship, permanently departs the United States, or dies, until the bond is substituted with another bond, or until the bond is otherwise cancelled by DHS.[641] During this period, as a condition of the bond, an alien on whose behalf a public charge bond has been accepted agrees to not receive public benefits, as defined in 8 CFR 212.21(b), after the alien's adjustment of status to that of a legal permanent resident and until the bond is cancelled according to proposed 8 CFR 212.21(g). The alien also has to comply with any other conditions imposed as part of the bond. That means that a bond is considered breached if the alien receives public benefits, as defined in proposed 8 CFR 212.21(b), after the

[635] *See* proposed 8 CFR 213.1(b)(1).

[636] *See* 8 CFR 103.6(b); *see also* proposed 8 CFR 103.6, as published in 83 FR 25951 (June 5, 2018).

[637] *See* Dep't of Treasury Circular 570, *Listing of Approved Sureties* (July 1, 2018).

[638] *See* proposed 8 CFR 213.1.

[639] *See* proposed 8 CFR 213.1.

[640] For purposes of this type of cancellation, neither the obligor nor the alien must submit Form I–356. Form I–356 is submitted to assess whether the alien has received any public benefits, as defined in 8 CFR 212.21(b), or otherwise breached a condition of the bond. At the time for substitution, USCIS does not engage in a breach assessment as the bond is substituted with another, not actually cancelled according to the terms of proposed 8 CFR 213.1(g).

[641] *See* INA section 213, 8 U.S.C. 1183; *see also* proposed 8 CFR 213.1.

alien's adjustment of status to that of a lawful permanent resident and until the bond is cancelled under proposed 8 CFR 213.1(g). A bond is also considered breached if the alien fails to comply with any other condition of the bond. In these situations, USCIS cannot cancel the bond. Public benefits, as defined in proposed 8 CFR 212.21(b), received by an alien present in the United States in an immigration status that is exempt from the public charge ground of inadmissibility under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), and public benefits received after the alien obtained U.S. citizenship are not counted towards any breach determination, and therefore, also for purposes of the cancellation determination.[642] Additionally, consistent with the public benefits definition proposed in this rule, DHS would not consider as part of a public charge bond cancellation determination any public benefits received by an alien enlisted in the U.S. armed forces under the authority of 10 U.S.C. 504(b)(1)(B) or 10 U.S.C. 504(b)(2), serving in active duty or in the Ready Reserve component of the U.S. Armed Forces, or if received by such an individual's spouse or child as defined in section 101(b) of the Act, 8 U.S.C. 1101(b), regardless of whether such receipt occurred prior to the alien enlisting into the U.S. Armed Forces.

(b) Definition of Permanent Departure

According to section 213 of the Act, a public charge bond must be cancelled when the alien naturalizes or otherwise obtains U.S. citizenship, permanently departs the United States, or dies. When codifying section 213 of the Act, Congress did not define ''permanent'' and the concept of permanent departure does not exist in other areas of immigration law. However, ''permanent'' is defined in section 101(a)(31) of the Act, 8 U.S.C. 1101(31), as ''a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.'' ''Departing'' or ''departure'' is not defined in the INA, but DHS believes that it is reasonable to conclude that permanent departure for the purposes of canceling a public charge bond means that the alien has left the United States on a lasting, non-temporary basis after losing the lawful permanent resident status either voluntarily or involuntarily, and is physically outside the United States. Losing lawful permanent resident status either voluntarily or involuntary coupled with physically leaving the United States is consistent with the INA's definition for permanent. The proposed rule will clarify that an alien has permanently departed for bond cancellation when he or she has (1) lost or abandoned lawful permanent resident status, whether involuntary by operation of law or voluntarily, and (2) physically left the United States.[643] An alien must establish that both elements, as described above, have been met before USCIS may cancel the bond.

DHS further proposes that an alien is only deemed to have involuntarily lost lawful permanent resident status in removal proceedings with the entry of a final order of removal[644] or through rescission of adjustment of status.[645] An alien may be found to have abandoned LPR status, even if the assessment is made outside of removal proceedings and if the alien's actions were unintentional.[646] If an alien loses his or her LPR status through operation of law, the alien would be required to provide evidence of the loss of status by submitting evidence of the official determination of loss of LPR status before USCIS will cancel the bond.[647]

Generally, determining whether an alien has abandoned his or her status is highly fact specific and courts consider factors such as the length of an alien's absence from the United States, family and employment ties, property holdings, residence, and the alien's intent or actions.[648] An alien may intentionally relinquish lawful permanent resident status through his or her voluntary actions, such as by submitting a declaration of intent to abandon LPR status. Neither the INA nor DHS regulations direct how aliens may formally inform the U.S. Government of their abandoning their lawful permanent resident status. To simplify the process, USCIS had developed, in the past, Form I–407, Record of Abandonment of Lawful Permanent Resident Status as a means by which an alien may formally record that they have abandoned LPR status. The purpose of the form is to create a record and to ensure that the alien acts voluntarily and willingly, and is informed of the right to a hearing before an Immigration Judge and has knowingly, willingly, and affirmatively waived that right.[649]

Given that it is difficult to assess whether an alien voluntarily abandoned his or her lawful permanent resident status, DHS proposes that an alien may demonstrate voluntarily relinquishment of the lawful permanent resident status for purposes of bond cancellation only by showing proof that he or she has submitted Form I–407 to the U.S. Government.[650] In addition to the advantages of the Form I–407 enumerated above, requiring evidence of a Form I–407 filing would ensure consistent adjudication of bond cancellation requests because officers have the necessary information and would not have to otherwise determine

[642] *See* proposed 8 CFR 213.1(h).

[643] *See* proposed 8 CFR 213.1.

[644] *See* 8 CFR 1.2; *see also Matter of Lok,* 18 I&N Dec. 101, 105–06 (BIA 1981).

[645] *See* INA section 246, 8 U.S.C. 1256.

[646] Abandonment is not directly addressed in the INA. The question typically arises in the context of LPRs returning to the United States. INA section 101(a)(20), 8 U.S.C. 1101(a)(20), defines the term ''lawfully admitted for permanent residence'' as ''the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, *such status not having changed*'' (emphasis added). INA section 211(b), 8 U.S.C. 1181, provides for a waiver of the documentary requirements for admission for one who can qualify as a ''returning resident immigrant'' as defined in INA section 101(a)(27)(A), 8 U.S.C. 1101(a)(27)(A), that is as ''an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad.'' Finally, according to INA section 101(a)(13)(C)(i), 8 U.S.C. 1101(a)(13)(C)(i), an alien lawfully admitted for permanent residence in the United States is not regarded as seeking admission into the United States, unless the alien has abandoned or relinquished that status. *See also* INA section 223, 8 U.S.C. 1203.

[647] For example, if the alien has his or her lawful permanent resident status in removal proceedings, the alien must present a copy of the removal order.

[648] *See, e.g., Matter of Huang,* 19 I&N Dec. 749, 755–57 (BIA 1988) (considering the alien's absence from the United States because of her husband's work and study abroad, as well as her own employment abroad, to find that her absence was not temporary in nature and that she had abandoned her LPR status); *Matter of Kane,* 15 I&N Dec. 258, 265 (BIA 1975) (alien who spent 11 months per year living in her native country operating a lodging house abandoned her LPR status; her desire to retain her status, without more, was not sufficient); *Matter of Quijencio,* 15 I&N Dec. 95, 97–98 (BIA 1974) (alien's lawful permanent resident status considered abandoned after 12 year absence); *Matter of Castro,* 14 I&N Dec. 492, 494 (BIA 1973) (alien who severed his ties to the United States for six years, moved abroad, acquired land, built a house and obtained steady employment, but made brief business trips to the United States was not a returning resident and had abandoned his status); *Matter of Montero,* 14 I&N Dec. 399, 400–01 (BIA 1973) (alien who returned to her native country to join her husband, children, home, employment and financial resources without fixed intent to return within a fixed period had abandoned her lawful permanent resident status); *cf. Khoshfahm* v. *Holder,* 655 F.3d 1147, 1154 (9th Cir. 2011) (alien child who was out of the country for 6 years and prevented from returning due to the father's heart condition and the events of September 11 did not abandon his lawful permanent resident status).

[649] *See* Purpose of Form I–407 and its instructions at *www.uscis.gov/i-407.* Even though an alien completed and submitted Form I–407, the alien may still challenge the declaration of abandonment as part of removal proceedings because a declaration is not dispositive.

[650] *See* proposed 8 CFR 213.1.

the alien's intent in regards to the voluntary abandonment of the lawful permanent resident status and the permanent departure. Requesting the filing of a declaration would also be consistent with evidence required in the BIA precedent *Matter of De Los Santos,* in which the bond was cancelled after the alien was required, among other things, to submit a formal statement attesting to the desire to abandon permanent resident status.[651] Form I–407 would not have a fee.

(c) Bond Cancellation for Lawful Permanent Residents After 5 Years and Cancellation If the Alien Obtains an Immigration Status Exempt From Public Charge Ground of Inadmissibility Following the Initial Grant of Lawful Permanent Resident Status

Currently, 8 CFR 103.6(c)(1) requires that DHS cancel a public charge bond submitted for an alien after the fifth anniversary of admission of the immigrant, provided that the alien has filed a request to cancel the bond and provided that the alien did not become a public charge prior to the fifth anniversary.[652] The provision was added in 1984 based on INS's belief that the public would be adequately protected even with such a limitation on the bond liability.[653] INS reasoned that if an alien is self-sustaining for a five-year period, it would not be probable that the alien becomes a public charge after five years because the reason for the becoming a public charge is based on factors in existence prior to admission as an immigrant.[654] Additionally, INS explained that limiting the bond liability in this manner parallels the deportation liability.[655]

DHS proposes to continue to cancel the public charge bond after the fifth anniversary of the alien's adjustment of status to that of a lawful permanent resident, provided that the alien files a request to cancel the bond and the alien has not received any public benefits as defined in 8 CFR 212.21(b) after obtaining lawful permanent resident status or otherwise violated the conditions of the public charge bond. Retaining the possibility for this type of cancellation of the public charge bond is not just consistent with the current period of time in which an alien may become removable for receiving public benefits after entry for causes that existed prior to entry,[656] but is also consistent with the 5-year ineligibility period for certain public benefits under PRWORA.[657] Finally, as noted previously, the public charge bond statutory provision requires DHS to cancel the bond upon the alien's death, naturalization, or permanent departure from the United States.[658] However, DHS believes that section 213 of the Act sets forth the situations when DHS must cancel the public charge bond, but leaves to DHS the discretion of canceling the bond for other reasons.[659] Therefore, retaining the cancellation provision is consistent with the statutory text and the purpose of this rule.

In addition, DHS is proposing to not retain the discretion to cancel a public charge bond at any time if it subsequently determines that the alien is not likely to become a public charge.[660] First, for many aliens who adjust status in the United States, DHS is unlikely to make a second public charge determination under section 212(a)(4) of the Act.[661] Second, given that Congress selected a 5-year timeframe in related contexts (in the parallel deportation statue under section 237(a)(5) of the Act, 8 U.S.C. 1227(a)(5), under PRWORA at 8 U.S.C. 1613, and as part of naturalization requirements under INA section 316, 8 U.S.C. 1427), DHS believes that retaining a bond for at least 5 years is a reasonable timeframe that will ensure the ability of U.S. government to recoup the costs of public benefits that may be received by aliens before most of them are generally eligible to naturalize.

Finally, DHS proposes that USCIS would cancel the public charge bond if an alien subject to a public charge bond obtains an immigration status while present in the United States that is exempt from public charge grounds of inadmissibility, as listed in 8 CFR 212.23, following the initial grant of status as a lawful permanent resident, provided that the alien or the obligor has filed a request for cancellation of public charge bond, on the form designated by DHS, in accordance with form instructions, and provided that the alien has not breached the bond conditions as described in paragraphs (h) of proposed 8 CFR 213.1. An example of when this ground of cancellation may apply is if an alien loses or abandons his or her LPR status but nonetheless qualifies for another status not subject to public charge inadmissibility, *e.g.* asylum. DHS believes that maintaining the bond in this situation no longer serves the intended purpose of the bond if the population is exempt from public charge grounds of inadmissibility, as the purpose of the public charge bond is to ensure that the alien does not become a public charge.[662] As discussed in the section on exemptions, most of these aliens are, at that time, members of a vulnerable population, and the status provided to these aliens serves distinct policy goals separate from the general immigration system.

As with other bases for bond cancellation, however, if a request for cancellation of a public charge bond is not filed, the bond shall remain in effect until the form is filed, reviewed, and a decision is rendered. Additionally, if these aliens adjust status in the future on a basis that is subject to section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), they may again be subject to public charge grounds of inadmissibility and DHS may assess whether a bond is appropriate at that time.

(d) Request To Cancel the Bond, and Adjudication of the Cancelation Request

DHS proposes that USCIS would cancel the bond upon request by the alien, following a determination that the conditions of a bond have been met and the bond has not been breached, as outlined in proposed 8 CFR 213.1.

[651] *Matter of De Los Santos,* 11 I&N Dec. 121, 121 (BIA 1965).

[652] *See* 8 CFR 103.6(c)(1).

[653] *See Powers and Duties of Service Officers, Availability of Service Records; Public Charge Bonds,* 49 FR 24010, 24011 (June 11, 1984).

[654] *See* 49 FR 24010, 24011.

[655] *See* 49 FR 24010, 24011 (''The Service believes that the public will be adequately protected by limiting the duration of liability of public charge bonds to a five-year period which parallels the deportation liability.'')

[656] *See* INA section 237(a)(5), 8 U.S.C. 1227(a)(5).

[657] *See* 8 U.S.C. 1611–1646.

[658] *See* INA section 213, 8 U.S.C. 1183 (''Such bond or undertaking *shall* terminate upon the permanent departure from the United States, the naturalization, or the death of such alien, and any sums or other security held to secure performance thereof, except to the extent forfeited for violation of the terms thereof, shall be returned to the person by whom furnished, or to his legal representatives.'' (emphasis added)).

[659] *See* 8 CFR 103.6(c)(1) (''The district director may cancel a public charge bond at any time if he/she finds that the immigrant is not likely to become a public charge. A bond may also be cancelled in order to allow substitution of another bond. A public charge bond shall be cancelled by the district director upon review following the fifth anniversary of the admission of the immigrant, provided that the alien has filed Form I–356, Request for Cancellation of Public Charge Bond, and the district director finds that the immigrant did not become a public charge prior to the fifth anniversary. If Form I–356 is not filed, the bond shall remain in effect until the form is filed and the district director reviews the evidence supporting the form and renders a decision to breach or cancel the bond.'').

[660] *See* 8 CFR 103.6(c)(1).

[661] *See* INA section 101(a)(13)(C), 8 U.S.C. 1101(a)(13)(C), under which an LPR would be considered an applicant for admission only under specifically outlined circumstances (*e.g.*. if he or she has abandoned LPR status, was absent from the United States continuously longer than 180 days, has engaged in illegal activity after departing the United States, etc.).

[662] *See* INA section 213, 8 U.S.C. 1183.

Return of the bond amount is ''to the extent [the bond] has been forfeited for violation of the terms thereof.'' [663] DHS proposes to interpret this authority to allow DHS to impose, as a condition of the bond, forfeiture of the entire amount in the event of a breach. Once USCIS determines that the alien has violated the bond conditions by receiving public benefits, USCIS would declare the bond breached and collect. The request to cancel the bond would be submitted on the form designated by DHS, according to its instructions, and with any mandatory fee. USCIS proposes to designate Form I–356, Request for Cancellation of Public Charge Bond, to be used to request cancellation of a public charge bond. As discussed in more detail below, DHS is also proposing an initial processing fee of $25 to be submitted with the Form I–356. Given the obligor's and the alien's interest in having the bond cancelled, the alien, or the obligor or co-obligor, would be able to submit a request to cancel the public charge bond to USCIS.

A request to cancel the bond is necessary because typically, after an alien obtains an immigration benefit from USCIS or enters as an immigrant, USCIS has little interaction with the alien until he or she seeks another immigration benefit. In addition, USCIS is typically not notified if an alien has permanently departed or died. Information currently collected by DHS is insufficient for USCIS to determine on its own whether the alien intended a departure to be permanent. Therefore, as part of the cancellation request, the alien would need to submit evidence of naturalization or otherwise having obtained U.S. citizenship, permanent departure, or if the person is deceased, the alien's executor would submit a death certificate. Additionally, the alien or the alien's executor must also submit the information requested in Form I–356 regarding receipt of public benefits as defined in 8 CFR 212.21(b).[664] Any information collected would be in accordance with relevant privacy laws.

The obligor and the alien would have the burden to establish, by a preponderance of the evidence, that the conditions for cancellation of the public charge bond have been met.[665] If USCIS finds that the information included in the request is insufficient to determine whether cancellation is appropriate, USCIS may request additional information in accordance with 8 CFR part 103.

(e) Decision and Appeal

If USCIS determines that the request warrants a cancellation of a bond, USCIS would notify the obligor, and return the full value of any cash or cash equivalent, such as a cashier's check or money order deposited by the obligor to secure the bond plus interest, similar to current practice.[666] When the bond is cancelled, the obligor would be released from liability.[667]

If USCIS denies the request to cancel the bond, it will notify the obligor of the reasons why and of the right to appeal in accordance with the requirements of 8 CFR part 103, subpart A.[668] A bond obligor could appeal the denial to cancel the bond to the Administrative Appeals Office (AAO) of USCIS by filing Notice of Appeal or Motion (Form I–290B) together with the appropriate fee and required evidence. *See* 8 CFR 103.1; 103.3. For operational efficiency, DHS proposes that an obligor may only file a motion after an unfavorable decision by the Administrative Appeals Office (AAO) on appeal. As part of an appeal, the regulations a 8 CFR 103.3(a)(2) require the officer rendering the initial decision to review the initial decision; if the reviewing officer agrees that the decision is incorrect, he or she may treat the appeal as a motion and may enter a favorable decision.[669] USCIS would also inform the alien and the alien's representative (if any) of the denial. The alien would not be able to appeal a denial because the bond contract is between the obligor and the U.S. government; the alien is not party to the contract.[670]

7. Breach of a Public Charge Bond and Appeal

(a) Breach Conditions and Adjudication

A bond would be considered breached if the alien has received public benefits, as defined in proposed 8 CFR 212.21(b), after the alien's adjustment of status to that of a lawful permanent resident and until the public charge bond is cancelled under 8 CFR 213.1(g). Consistent with other proposed regulatory provisions contained in this NPRM, public benefits received during periods while an alien is present in the United States in a status exempt from the public charge ground of inadmissibility, as listed in 8 CFR 212.23, following the initial grant of lawful permanent resident status, would not be considered when determining whether the conditions of the bond have been breached. Additionally, consistent with the public benefits definition proposed in this rule, DHS would not consider as part of a public charge bond breach determination any public benefits received by an alien enlisted in the U.S. armed forces under the authority of 10 U.S.C. 504(b)(1)(B) or 10 U.S.C. 504(b)(2), serving in active duty or in the Ready Reserve component of the U.S. Armed Forces, or if received by such an individual's spouse or child as defined in section 101(b) of the Act, 8 U.S.C. 1101(b), regardless of whether such receipt occurred prior to the alien enlisting into the U.S. Armed Forces. Finally, DHS would not consider public benefits received after the alien who is the subject of the public charge bond obtains U.S. citizenship, as U.S. citizens are no longer subject to public charge grounds of inadmissibility, and therefore, the term of the public charge bond.

A bond would be considered breached if any other condition imposed by USCIS as part of the public charge bond is breached.[671]

Under current 8 CFR 103.6, an immigration bond is considered breached when there has been a substantial violation of the stipulated conditions. The term ''substantial violation'' is generally interpreted according to contractual principles.[672] However, public charge bonds have been distinguished from other immigration bonds in this regard, given that the public charge bond's condition is that the alien will not become a public charge.[673] Therefore, DHS proposes to not retain the phrase ''substantial violation'' in the proposed public charge bond provision at 8 CFR 213.1. Instead, DHS proposes to incorporate the substantial violation standard via incorporating principles that govern the public charge and public benefits definitions at proposed 8 CFR 212.21(a) and (b) (defining public charge and public benefits). Under the proposed approach, the bond would be

[663] *See* INA section 213, 8 U.S.C. 1183.

[664] *See* proposed 8 CFR 213.1.

[665] *See* proposed 8 CFR 213.1.

[666] *See* 8 CFR 103.6(c) and proposed 8 CFR 213.1.

[667] *See* proposed 8 CFR 213.1.

[668] *See* proposed 8 CFR 213.1.

[669] *See* 8 CFR 103.3(a)(2)(ii)–(v).

[670] *See* proposed 8 CFR 213.1.

[671] *See* proposed 8 CFR 213.1(d) and 8 CFR 213.1(h)

[672] *See, e.g., Aguilar* v. *United States,* 124 Fed. Cl. 9, 16 (2015) (substantial violation under 8 CFR 103.6(e) of a delivery immigration bond is a matter of contract interpretation, in which courts have looked to four factors: (1) The extent of the breach; (2) whether the breach was intentional or accidental; (3) whether the breach was in good faith; and (4) whether the obligor took steps to make amends or place himself in compliance).

[673] *See Matter of Viado,* 19 I&N Dec. 252, 253 (BIA 1985) (each of the other types of immigration bonds provided in the regulation has its own specific conditions; the public charge bond's condition is that the alien will not become a public charge, and the lack of knowledge or good faith of the alien did not render the breach insubstantial).

considered breached if the alien receives public benefits after the alien's adjustment of status to that of a lawful permanent resident and until the bond is cancelled pursuant to 8 CFR 213.1(g), or if the alien breaches any other condition imposed as part of the bond.[674]

If USCIS learns of the breach, and declares a bond breached based on information that is not otherwise protected from the disclosure to the obligor, USCIS would disclose such information to the obligor to the extent permitted by law. For example, USCIS may learn of an alien's having received public benefits, as defined in 8 CFR 212.21(b), if the public benefit-granting agency notifies USCIS that it provided a public benefit(s) to the alien who was admitted on bond.[675] Or, USCIS may learn from the alien, as part of a bond cancellation request that he or she received public benefits, as defined in 8 CFR 212.21(b).

If USCIS found that it has insufficient information to determine whether a breach occurred, USCIS would request additional information from the benefits granting agency, or USCIS would request additional information from alien or the obligor as outlined in 8 CFR part 103. USCIS would also provide the obligor with the opportunity to respond and submit rebuttal evidence, including specifying a deadline for a response. DHS furthermore proposes that it would send a copy of any notification to the obligor or co-obligor regarding the breach also to the alien and the alien's representative (if any).[676]

(b) Decision and Appeal

After the obligor's response or after the deadline for a response has passed, USCIS would make a breach determination, and inform the obligor of the right to appeal in accordance with the requirements of 8 CFR 103, subpart A. *See* proposed 8 CFR 213.1(h). A bond obligor would have the possibility to appeal a breach determination to the Administrative Appeals Office (AAO) of USCIS by filing a Notice of Appeal or Motion (Form I–290B) together with the appropriate fee and required evidence. *See* 8 CFR 103.1; 103.3. Under this rule, DHS proposes that the obligor would only be able to file a motion under 8 CFR 103.5 as part of the unfavorable decision on appeal. DHS believes that such an approach reasonable and operationally efficient; additionally, it provides clarity as to when a breach determination becomes administratively final, as defined in 8 CFR 213.1(h). First, as part of an appeal, pursuant to 8 CFR 103.3(a)(2), a USCIS officer who made the initial breach determination must review the decision before the appeal can be forwarded to the AAO.[677] If the USCIS agrees with the appealing party that favorable action may be warranted, he or she may treat the appeal as a motion and then take favorable action, which would resolve the appeal.[678] However, the official is also not precluded from reopening a proceeding or reconsidering a decision on his or her own motion under 8 CFR 103.5(a)(5)(i). If the reviewing official is not inclined to take a favorable action, the reviewing official will forward the appeal to the AAO. Once the AAO issues the decision, however, an obligor may file a motion of the AAO's decision in accordance with 8 CFR 103.5.[679] Thus, limiting when a motion can be filed is efficient for both the obligor and USCIS. Additionally, a breach determination would be administratively final, among other instances, if the appeals period to the AAO expires; filing a motion does not toll the appeals period stated in 8 CFR 103.3, and if the obligor fails to appeal, the breach determination would become administratively final unless the motion is granted. The denial of a motion can then be appealed to the AAO, and the AAO decision itself, if unfavorable, may be motioned in accordance with 8 CFR 103.5. Additionally, USCIS may reopen a breach determination at any time pursuant to 8 CFR 103.5, even if an appeal is pending. For these reasons, it appears to be more efficient for all parties if the obligor simply appeals a breach determination in the first instance, if review of the initial breach determination is desired.

If the appeal is dismissed or rejected, or the obligor fails to appeal, the breach determination becomes the final agency determination, and USCIS would issue a demand for payment, if the bond was a surety bond, pursuant to 31 CFR 901.2.[680] The alien may not appeal the breach determination or file a motion because the bond contract is between the obligor and the U.S. government; the alien is not party to the contract.[681]

(c) Consequences of Breach

If USCIS determines that the bond has been breached, DHS proposes that USCIS would collect on the bond in full, meaning the total monetary amount of the bond as liquidated damages. This practice appears to differ from the practice described in legacy INS' Operating Instructions, which contemplate forfeiture only of the amount of public benefits received.[682] The total damages to the government go beyond the simple amount of the benefits received, and are difficult if not impossible to calculate with precision. Liquidated damages are an appropriate remedy in such situations, and were an accepted practice in prior immigration bond cases.[683]

8. Exhaustion of Administrative Remedies

A final determination that a bond has been breached would create a claim in favor of the United States. The claim in favor of the United States may not be released or discharged by an immigration officer.[684]

Under the proposed rule, a party must first exhaust all administrative remedies and obtain a final decision from USCIS in accordance with 8 CFR part 103, before being able to bring suit challenging USCIS cancellation or bond breach determination in Federal district court.[685]

Although enforcement and suits may be based on various causes of action, courts have determined that bond breach determinations are always reviewed under the Administrative Procedure Act (APA) framework.[686]

[674] *See* proposed 8 CFR 213.1(h).

[675] *See* INA section 213, 8 U.S.C. 1183. Receipt of public benefits, however, is sufficient to cause a breach of the public charge bond, even in the absence of a demand for repayment. *See Matter of Viado,* 19 I&N Dec. 252, 253 (BIA 1985).

[676] *See* proposed 8 CFR 213.1.

[677] *See* 8 CFR 103.3(a)(2); *see also* Adjudicator's Field Manual, Chapter 10.8.

[678] *See* 8 CFR 103.3(a)(2); *see also* Adjudicator's Field Manual, Chapter 10.8.

[679] *See* 8 CFR 103.5; *see* Administrative Appeal's Office Practice Manual, Chapter 4, Motions to Reopen and Reconsider.

[680] *See* 8 CFR 103.6(e); see proposed 8 CFR 213.1; *see generally United States* v. *Gonzales & Gonzales Bonds & Ins. Agency, Inc.* 728 F. Supp. 2d 1077, 1089–91 (N.D. Cal. 2010); *Safety Nat'l Cas. Corp.* v. *DHS,* 711 F. Supp. 2d 697, 703–04 (S.D. Tex. 2008).

[681] *See* proposed 8 CFR 213.1. *See also, e.g., Matter of Ins. Co. of N. Am.,* 17 I&N Dec. 251, 251 (BIA 1978) (An immigration bond is a contract between the Service and the obligor; the obligor and his or her attorney-in-fact is the proper party to appeal the service's decision).

[682] *See* OI 103.6(c) (If it is found that the alien has become a public charge, the bond shall be breached in the necessary amount with any remainder continued in effect).

[683] *See United States* v. *Goldberg,* 40 F.2d 406 (2d Cir. 1930); *Matta* v. *Tillinghast,* 33 F.2d 64 (1st Cir. 1929); *Ill. Surety Co.* v. *United States,* 229 F. 527 (2d Cir. 1916); *United States* v. *Andreano,* 36 F. Supp. 821 (D.R.I. 1941); *United States* v. *Rubin,* 227 F. 938 (E.D. Pa. 1915); *Matter of B—* , 1 I&N Dec. 121 (BIA 1941).

[684] *See* proposed 8 CFR 213.1.

[685] *See* proposed 8 CFR 213.1(j).

[686] *See United States* v. *Gonzales & Gonzales Bonds & Ins. Agency, Inc.,* 728 F. Supp. 2d 1077, 1089–90 (N.D. Cal. 2010); *Bahramizadeh* v. *INS,* 717 F.2d 1170, 1173 (7th Cir. 1983) (reviewing bond-breach determinations under the APA framework); *Castaneda* v. *Dep't of Justice,* 828 F.2d 501, 502 (8th Cir. 1987) (immigration bond-breach determination reviewed under the APA framework); *Ruiz-Rivera* v. *Moyer,* 70 F.3d 498, 500–01 (7th Cir.

DHS invites public comments on the proposed public charge bond and its procedures, including the public charge bond type, bond amount, duration, substitution, cancellation and any other aspects of a public charge bond.

9. Public Charge Bond Processing Fees

DHS is proposing to charge for the processing of public charge bonds and cancellation requests. In this rule, DHS proposes to charge $25 for the posting of a public charge bond, $25 for the posting of a substitute public charge bond, and $25 when the alien, obligor or co-obligor requests to cancel the public charge bond (*i.e.,* when the Form I–356 is filed). INA section 286(m), 8 U.S.C. 1356(m), authorizes DHS to set fees for providing adjudication and naturalization services at a level that will ensure recovery of the full costs of providing all such services. USCIS must expend resources to process public charge bonds and bond cancellation requests, including start-up costs to operationalize a public charge bond process. USCIS is primarily funded by immigration and naturalization benefit request fees charged to applicants and petitioners. Fees collected from individuals and entities filing immigration benefit requests are deposited into the Immigration Examinations Fee Account (IEFA) and used to fund the cost of processing immigration benefit requests and providing related services (*i.e.,* biometric collections).[687] In addition, DHS complies with the requirements and principles of the Chief Financial Officers Act of 1990, 31 U.S.C. 901–03, (CFO Act), and Office of Management and Budget (OMB) Circular A–25. USCIS reviews the fees deposited into the IEFA biennially and, if necessary, proposes adjustments to ensure recovery of costs necessary to meet national security, customer service, and adjudicative processing goals. USCIS typically uses projected volume data and completion rates (the average time for adjudication of an immigration benefit request) to set the fees for specific immigration benefit requests, and related services.

The proposed $25 fees will not result in recovery of the full cost of intake and adjudication the proposed Forms I–945 and I–356. However, at this time, DHS is not able to estimate the start-up costs for establishing a public charge bond process, nor the number of public charge bonds or cancellation requests that it will receive during any period of time because both the form and process are new to USCIS, and USCIS does not have a reasonable proxy on which to rely for an estimate. In addition, public charge bonds are very fact-specific; USCIS will make a case-by-case determination on whether to offer the submission of a bond to an applicant. Similarly, whether a cancellation request is submitted will be driven by the particular circumstances of each alien by whom or on whose behalf a bond is posted, depending on whether conditions for cancellation have been met. Nevertheless, to recover at least some of the costs of adjudicating Forms I–945 and I–356, and avoid other fee payers having to fund the public charge bond process entirely, DHS is proposing a $25 fee for the initial public charge bond submission, and a $25 fee for the bond cancellation request, with no option to request a fee waiver. Once USCIS implements a public charge bond process, it will be able to obtain data on the volume and burden of public charge bonds and cancellation requests and adjust these fees to amounts necessary to recover the relative costs of these adjudications next time that USCIS reviews the fees deposited into the IEFA.

10. Other Technical Changes

In addition to amending 8 CFR 103.6 and 213.1 to update and establish requirements specific to public charge bonds, this proposed rule would make technical changes to 8 CFR 103.6 to update references to offices and form names.

11. Concurrent Surety Bond Rulemaking

On June 5, 2018, DHS published a proposed rule that would set forth procedures and standards under which DHS would decline surety immigration bonds from Treasury-certified companies.[688] The June 5 proposed rule would also create administrative exhaustion requirements applicable to sureties. This public charge proposed rule is not intended to displace or otherwise affect the proposed changes to 8 CFR 103.6 in the June 5, 2018 proposed rule, although a final public charge rule may depart from the June 5 rule with respect to surety bonds breach determinations, as described above. DHS plans to conduct the two rulemakings concurrently.

VI. Statutory and Regulatory Requirements

A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs.

This proposed rule is designated a ''significant regulatory action'' that is economically significant since it is estimated that the proposed rule would have an annual effect on the economy of $100 million or more, under section 3(f)(1) of Executive Order 12866. Accordingly, OMB has reviewed this proposed regulation.

1. Summary

As previously discussed, DHS is proposing to modify its regulations to add new regulatory provisions for inadmissibility determinations based on public charge grounds under the INA. DHS is proposing to prescribe how it determines whether an alien is inadmissible because he or she is likely at any time to become a public charge and identify the types of public benefits that are considered in the public charge determinations. An alien applying for a visa, admission at the port of entry, or adjustment of status generally must establish that he or she is not likely at any time to become a public charge. DHS proposes that certain factors may be weighed positively or negatively, depending on how the factor impacts the immigrant's likelihood to become a public charge. DHS is also proposing to revise existing regulations to clarify when and how it considers public charge when adjudicating change of status and extension of stay applications. Finally, DHS is proposing to revise its regulations governing the Secretary's discretion to accept a public

1995) (determining whether ''INS' decision that the bond conditions were substantially violated was plainly erroneous or inconsistent with 8 CFR 103.6(e)''); *Ahmed* v. *United States,* 480 F.2d 531, 534 (2d Cir. 1973) (analyzing substantial breach, as required by 8 CFR 103.6).

[687] *See U.S. Citizenship and Immigration Services Fee Schedule,* 81 FR 26904, 26940 (May 4, 2016).

[688] *See Procedures and Standards for Declining Surety Immigration Bonds and Administrative Appeal Requirement for Breaches,* 83 FR 25951 (June 5, 2018).

charge bond or similar undertaking under section 213 of the Act, 8 U.S.C. 1183. Similar to a waiver, a public charge bond permits an alien deemed inadmissible on the public charge ground to obtain adjustment of status, if otherwise admissible.[689]

This proposed rule would impose new costs on the population applying to adjust status using Form I–485 that are subject to the public charge grounds on inadmissibility who would now be required to file the new Form I–944 as part of the public charge inadmissibility determination. DHS would require any adjustment applicants subject to the public charge inadmissibility ground to submit Forms I–944 with their Form I–485 to demonstrate they are not likely to become a public charge. In addition, Form I–129 and Form I–129CW beneficiaries, and Form I–539 filers may also incur additional costs should they receive a RFE to file Form I–944 to determine inadmissibility based on public charge grounds under the provisions of this proposed rule. The proposed rule would also impose additional costs for completing Forms I–485, I–129, I–129CW, and I–539 as the associated time burden estimate for completing each of these forms would increase. Moreover, the proposed rule would impose new costs associated with the proposed public charge bond process, including new costs for completing and filing Form I–945, Public Charge Bond, and Form I–356, Request for Cancellation of Public Charge Bond. DHS estimates that the additional total cost of the proposed rule would range from approximately $45,313,422 to $129,596,845 annually to the population applying to adjust status who also would be required to file Form I–944, for the opportunity cost of time associated with the increased time burden estimates for Forms I–485, I–129, I–129CW, and I–539, and for requesting or cancelling a public charge bond using Form I–944 and Form I–356, respectively.

Over the first 10 years of implementation, DHS estimates the total quantified new direct costs of the proposed rule would range from about $453,134,220 to $1,295,968,450 (undiscounted). In addition, DHS estimates that the 10-year discounted total direct costs of this proposed rule would range from about $386,532,679 to $1,105,487,375 at a 3 percent discount rate and about $318,262,513 to $910,234,008 at a 7 percent discount rate.

The proposed rule would impose new costs on the population seeking extension of stay or change of status using Form I–129, Form I–129CW, or Form I–539 since, for any of these forms, USCIS adjudication officers would then be able to exercise discretion in determining whether it would be necessary to issue a RFE whereby a Form I–129 or I–129CW beneficiary or a Form I–539 applicant may then have to submit Form I–944. DHS conducted a sensitivity analysis estimating the potential cost of filing Form I–129, Form I–129CW, or Form I–539 for a range of 10 to 100 percent of beneficiaries or filers, respectively, receiving a RFE to submit Form I–944. The costs to Form I–129 beneficiaries who may receive a RFE to file Form I–944 range from $6,086,318 to $60,863,181 annually and the costs to Form I–129CW beneficiaries who may receive such a RFE from $114,132 to $1,141,315 annually. The costs to Form I–539 applicants who may receive a RFE to file Form I–944 range from $3,164,375 to $31,643,752 annually.

The proposed rule would also potentially impose new costs on individuals or companies (obligors) if an alien has been found to be a public charge, but has been given the opportunity to submit a public charge bond, for which USCIS intends to use the new Form I–945. DHS estimates the total cost to file Form I–945 would be at minimum about $34,234 annually.[690]

Moreover, the proposed rule would potentially impose new costs on aliens or obligors (individuals or entities) who would submit Form I–356 as part of a request to cancel the public charge bond. DHS estimates the total cost to file Form I–356 would be approximately $825 annually.[691]

The proposed rule would also result in a reduction in transfer payments from the federal government to individuals who may choose to disenroll from or forego enrollment in a public benefits program. Individuals who might choose to disenroll from or forego future enrollment in a public benefits program include foreign-born non-citizens as well as U.S. citizens who are members of mixed-status households.[692] DHS estimates that the total reduction in transfer payments from the federal and state governments would be approximately $2.27 billion annually due to disenrollment or foregone enrollment in public benefits programs by foreign-born non-citizens who may be receiving public benefits. DHS estimates that the 10-year discounted federal and state transfer payments reduction of this proposed rule would be approximately $19.3 billion at a 3 percent discount rate and about $15.9 billion at a 7 percent discount rate. However, DHS notes there may be additional reductions in transfer payments that we are unable to quantify. There may also be additional reductions in transfer payments from states to individuals who may choose to disenroll from or forego enrollment in a public benefits program. Because state participation in these programs may vary depending on the type of benefit provided, DHS was only able to estimate the impact of state transfers. For example, the federal government funds all SNAP food expenses, but only 50 percent of allowable administrative costs for regular operating expenses.[693] Similarly, Federal Medical Assistance Percentages (FMAP) in some HHS programs like Medicaid can vary from between 50 percent to an enhanced rate of 100 percent in some cases.[694] However, assuming that the state share of federal financial participation (FFP) is 50 percent, the 10-year discounted amount of state transfer payments of this proposed policy would be approximately $9.65 billion at a 3 percent discount rate and about $7.95 billion at a 7 percent discount rate. Finally, DHS recognizes that reductions in federal and state transfers under federal benefit programs may have downstream and upstream impacts on state and local economies, large and small businesses, and individuals. For example, the rule might result in reduced revenues for healthcare providers participating in Medicaid, pharmacies that provide prescriptions to

[689] There is no mention of ''waiver'' or ''waive'' in INA section 213, 8 U.S.C. 1183. However, the BIA has viewed that provision as functioning as a waiver of the public charge ground of inadmissibility. *See Matter of Ulloa,* 22 I&N Dec. 725, 726 (BIA 1999).

[690] Calculation: $35.66 (cost per obligor to file Form I–945) * 960 (estimated annual population who would file Form I–945) = $34,233.60 = $34,234 (rounded) annual total cost to file Form I–945.

[691] Calculation: $33.00 (cost per obligor to file Form I–356) * 25 (estimated annual population who would file Form I–356) = $825.00 annual total cost to file Form I–356.

[692] DHS uses the term ''foreign-born non-citizens'' because it is the term used by the Census Bureau for which much of the data in this analysis is based on. DHS generally interprets this term to mean alien in this analysis.

[693] Per section 16(a) of the Food and Nutrition Act of 2008. *See also* USDA, FNS Handbook 901, p. 41 *available at: https://fns-prod.azureedge.net/sites/default/files/apd/FNS_HB901_v2.2_Internet_Ready_Format.pdf.*

[694] *See* Dept. of Health and Human Services, ''Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2016 through September 30, 2017.'' ASPE FMAP 2017 Report. Dec. 29, 2015. *Available at https://aspe.hhs.gov/basic-report/fy2017-federal-medical-assistance-percentages.* Accessed Sept. 13, 2018.

participants in the Medicare Part D low-income subsidy (LIS) program, companies that manufacture medical supplies or pharmaceuticals, grocery retailers participating in SNAP, agricultural producers who grow foods that are eligible for purchase using SNAP benefits, or landlords participating in federally funded housing programs.

Additionally, the proposed rule would add new direct and indirect impacts on various entities and individuals associated with regulatory familiarization with the provisions of the rule. Familiarization costs involve the time spent reading the details of a rule to understand its changes. A foreign-born non-citizen (such as those contemplating disenrollment or foregoing enrollment in a public benefits program) might review the rule to determine whether they are subject to the provisions of the proposed rule and may incur familiarization costs. To the extent that an individual or entity directly regulated by the rule incurs familiarization costs, those familiarization costs are a direct cost of the rule. In addition to those individuals or entities the rule directly regulates, a wide variety of other entities would likely choose to read the rule and, therefore, would incur familiarization costs. For example, immigration lawyers, immigration advocacy groups, health care providers of all types, non-profit organizations, non-governmental organizations, and religious organizations, among others, may need or want to become familiar with the provisions of this proposed rule. DHS believes such non-profit organizations and other advocacy groups might choose to read the rule in order to provide information to those foreign-born non-citizens that might be affected by a reduction in federal and state transfer payments. Familiarization costs incurred by those not directly regulated are indirect costs.

DHS estimates the time that would be necessary to read this proposed rule would be approximately 8 to 10 hours per person, resulting in opportunity costs of time. An entity, such as a non-profit or advocacy group, may have more than one person that reads the rule.

The primary benefit of the proposed rule would be to help ensure that aliens who are admitted to the United States, seek extension of stay or change of status, or apply for adjustment of status are not likely to receive public benefits and will be self-sufficient, *i.e.,* individuals will rely on their own financial resources, as well as the financial resources of the family, sponsors, and private organizations.[695] DHS also anticipates that the proposed rule would produce some benefits from the elimination of Form I–864W. The elimination of this form would potentially reduce the number of forms USCIS would have to process. DHS estimates the amount of cost savings that would accrue from eliminating Form I–864W would be $35.78 per petitioner.[696] However, DHS notes that we are unable to determine the annual number of filings of Form I–864W and, therefore, we are currently unable to estimate the total annual cost savings of this change. Additionally, a public charge bond process would also provide benefits to applicants as they potentially would be given the opportunity to be adjusted if otherwise admissible, at the discretion of DHS, after a determination that he or she is likely to become a public charge.

Table 36 provides a more detailed summary of the proposed provisions and their impacts.

BILLING CODE 4410–10–P

[695] 8 U.S.C. 1601(2).

[696] Calculation of savings from opportunity cost of time for no longer having to complete and submit Form I–864W: ($35.78 per hour * 1.0 hours) = $35.78.

Table 36 Summary of Major Provisions and Economic Impacts of the Proposed Rule		
Provisions	**Purpose**	**Expected Impact of Proposed Rule**
Adding 8 CFR 212.20. Purpose and applicability of public charge inadmissibility.	To define the categories of aliens that are subject to the public charge determination.	**Quantitative**: Benefits • Cost savings of $35.78 per petitioner from no longer having to complete and file Form I-864W. Costs • DHS anticipates a likely increase in the number of denials for adjustment of status applicants based on public charge inadmissibility determinations due to formalizing and standardizing the criteria and process for public charge determinations. **Qualitative**: Benefits • Better ensure that aliens who are admitted to the United States or apply for adjustment of status are self-sufficient through an improved review process of the mandatory statutory factors.
Adding 8 CFR 212.21. Definitions.	To establish key definitions, including public charge, public benefit, likely to become a public charge, and household.	
Adding 8 CFR 212.22. Public charge determination.	Clarifies that evaluating public charge is a prospective determination based on the totality of the circumstances. Outlines minimum and additional factors considered when evaluating whether an alien immigrant is inadmissible based on the public charge ground. Positive and negative factors are weighed to determine an individual's likelihood of becoming a public charge at any time in the future.	
Adding 8 CFR 212.23. Exemptions and waivers for public charge ground of inadmissibility.	Outlines exemptions and waivers for inadmissibility based on public charge grounds.	
Adding 212.24. Valuation of monetizable benefits.	Provides the methodology for calculating the annual aggregate amount of the portion attributable to the alien for the monetizable non-cash benefits and considered in the public charge inadmissibility determination.	
Adding 8 CFR 214.1(a)(3)(iv) and amending 8 CFR 214.1(c)(4). Nonimmigrant general requirements; and	To provide, with limited exceptions, that an application for extension of stay or change of nonimmigrant status will be denied unless the applicant demonstrates that he or she has not received, is not currently receiving, nor is likely to	**Quantitative**: Costs • Potential annual costs for those Form I-129 beneficiaries range from $6.09 million to $60.9 million depending on

amending 8 CFR 248.1(a) and adding 8 CFR 248.1(c)(4). Change of nonimmigrant classification eligibility.	receive, public benefits as defined in proposed 8 CFR 212.21(b).	how many beneficiaries are sent a RFE by USCIS to complete Form I-944. • Potential annual costs for those Form I-129CW beneficiaries range from $0.11 million to $1.14 million depending on how many beneficiaries are sent a RFE by USCIS to complete Form I-944. • Potential annual costs for those Form I-539 applicants range from $3.16 million to $31.6 million depending on how many applicants are sent a RFE by USCIS to complete Form I-944. **Qualitative**: Benefits • Better assurance that aliens who are not exempt from the section 212(a)(4) inadmissibility ground who apply for extension of stay or change of status continue to be self-sufficient during the duration of their stay. • Reduce the likelihood that an alien will receive a covered public benefit at any time in the future.

Amending 8 CFR 245. Adjustment of status to that of a person admitted for permanent residence.	To outline requirements that aliens submit a declaration of self-sufficiency on the form designated by DHS and any other evidence requested by DHS in the public charge inadmissibility determination.	**Quantitative**:
		Direct Costs
		• Total annual direct costs of the proposed rule would range from about $45.3 to $129.6 million, including:
		  • $26.0 million to applicants who must file Form I-944;
		  • $0.69 million to applicants applying to adjust status using Form I-485 with an increased time burden;
		  • $12.1 to $66.9 million for an increased time burden for completing and filing Form I-129 and potential RFE to complete Form I-944;
		  • $0.23 to $1.25 million for an increased time burden for completing and filing Form I-129CW and potential RFE to complete Form I-944;
		  • $6.29 to $34.8 million for an increased time burden for completing and filing Form I-539 and potential RFE to complete Form I-944;
		  • $0.34 million to obligors for filing Form I-945; and
		  • $825 to filers for filing Form I-356.

		• Total costs over a 10-year period would range from:
		  • $453.1 million to $1.30 billion for undiscounted costs;
		  • $386.5 million to $1.11 billion at a 3 percent discount rate; and
		  • $318.3 to $910.2 million at a 7 percent discount rate.
		
		Transfer Payments
		• Total annual transfer payments of the proposed rule would be about $2.27 billion from foreign-born non-citizens and their households who disenroll from or forego enrollment in public benefits programs. The federal-level share of annual transfer payments would be about $1.51 billion and the state-level share of annual transfer payments would be about $756 million.
		• Total transfer payments over a 10-year period, including the combined federal- and state-level shares, would be:
		  • $22.7 billion for undiscounted costs;
		  • $19.3 billion at a 3 percent discount rate; and
		  • $15.9 billion at a 7 percent discount rate.
		
		Qualitative:
		Benefits
		• Potential to improve the efficiency for USCIS in the review process for public charge inadmissibility.
		
		Costs
		• DHS anticipates a likely increase in the number of denials for adjustment of status applicants based on public charge inadmissibility determinations due to formalizing and standardizing the criteria and process for public charge determination.
		• Costs to various entities and individuals associated with regulatory familiarization with the provisions of the proposed rule. Costs would include the opportunity cost of time to read the proposed rule and

		subsequently determine applicability of the proposed rule's provisions. DHS estimates that the time to read this proposed rule in its entirety would be 8 to 10 hours per individual.
Public Charge Bond Provisions		
Amending 8 CFR 103.6. Public charge bonds.	To set forth the Secretary's discretion to approve bonds, cancellation, bond schedules, and breach of bond, and to move principles governing public charge bonds to proposed 8 CFR 213.1.	**Quantitative**: Costs • $0.34 million annually to obligors for submitting Public Charge Bond (Form I-945); and • $825 to annually filers for submitting Request for Cancellation of Public Charge Bond (Form I-356). • Fees paid to surety bond companies to secure public charge bond. Fees could range from 1 – 15 percent of the public charge bond amount based on an individual's credit score. **Qualitative**: Benefits • Potentially enable an alien who was found inadmissible on public charge grounds to be admitted by posting a public charge bond with DHS.
Amending 8 CFR 103.7. Fees.	To add fees for new Form I-945, Public Charge Bond, and Form I-356, Request for Cancellation of Public Charge Bond.	
Amending 8 CFR 213.1. Admission or adjustment of status of aliens on giving of a public charge bond.	In 8 CFR 213.1, to add specifics to the public charge bond provision for aliens who are seeking adjustment of status, including the discretionary availability and the minimum amount required for a public charge bond.	
Source: USCIS analysis.		

In addition to the impacts summarized above and as required by OMB Circular A–4, Table 37 presents the prepared accounting statement showing the costs associated with this proposed regulation.[697]

[697] OMB Circular A–4 is *available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

Table 37. OMB A-4 Accounting Statement ($, 2018)				
Category	**Primary Estimate**	**Minimum Estimate**	**Maximum Estimate**	**Source Citation**
BENEFITS				
Monetized Benefits	Form I-485 applicants would no longer have to file Form I-864W. Applicants would save approximately $35.78 per petition based on the opportunity cost of time.			Preamble
Annualized quantified, but un-monetized, benefits	0	0	0	Preamble
Unquantified Benefits	The primary benefit of the proposed rule would be to ensure that aliens who are admitted to the United States or apply for adjustment of status would not use or receive one or more public benefits which they are entitled to receive, and instead, would rely on their financial resources, and those of family members, sponsors, and private organizations. Potential to improve the efficiency for USCIS in the review process for public charge inadmissibility.			Preamble
COSTS				
Annualized monetized costs (discount rate in parenthesis)	(3%) $82,772,721	$45,313,422	$129,596,845	Preamble
	(7%) $82,772,721	$45,313,422	$129,596,845	Preamble
Annualized quantified, but un-monetized, costs	*N/A*			Preamble
Qualitative (unquantified) costs	DHS anticipates a likely increase in the number of denials for adjustment of status applicants based on public charge inadmissibility determinations due to formalizing and standardizing the criteria and process for public charge determination. Costs to various entities and individuals associated with regulatory familiarization with the provisions of the rule. Costs would include the opportunity cost of time to read the proposed rule and subsequently determine applicability of the proposed rule's provisions. DHS assumes that the time to read this proposed rule in its entirety would be 8 to 10 hours per individual. Fees paid by aliens to obligors to secure public charge bond. Other qualitative, unquantified effects of the proposed rule could include: • Potential lost productivity,			Preamble

	• adverse health effects, • additional medical expenses due to delayed health care treatment, and • increased disability insurance claims			
TRANSFERS				
Annualized monetized transfers: "on budget"	($2,267,842,067)	N/A	N/A	Preamble
From whom to whom?	Reduction in transfer payments from the federal government and state governments to public benefits recipients who are members of households that include foreign-born non-citizens. This amount includes the estimated federal- and state-level shares of transfer payments to foreign-born non-citizens. DHS estimates that the state-level share of transfer payments is 50 percent of the estimated amount of federal transfer payments. DHS estimates the annual federal-level share would be about $1.51 billion and the annual state-level share of transfer payments would be about $756 million.			Preamble
Annualized monetized transfers: "off-budget"	N/A	N/A	N/A	Preamble
From whom to whom?	N/A	N/A	N/A	Preamble
Miscellaneous Analyses/Category	***Effects***			***Source Citation***
Effects on state, local, and/or tribal governments	None			Preamble
Effects on small businesses	DHS believes there may be some impacts to those small entities that file Form I-129 or Form I-129CW for beneficiaries that extend stay or change status. These petitioners would have an increase in time burden for completing and filing Form I-129 or Form I-129CW and possibly have labor turnover costs if the Form I-129 or Form I-129CW EOS/COS request was denied and the beneficiary had to leave the U.S. or the Commonwealth of the Northern Mariana Islands (CNMI), respectively. DHS also believes that some surety companies that are small entities may be impacted by filing Form I-356. DHS estimates the total annual cost to file Form I-356 would be about $825.			Preamble
Effects on wages	None			None
Effects on growth	None			None

BILLING CODE 4410–10–C

2. Background and Purpose of the Rule

As discussed in the preamble, DHS seeks to ensure appropriate application of the public charge ground of inadmissibility. Under the INA, an alien who, at the time of application for a visa, admission, or adjustment of status, is deemed likely at any time to become a public charge is inadmissible to the United States.[698]

While the INA does not define public charge, Congress has specified that when determining if an alien is likely at any time to become a public charge, consular and immigration officers must, at a minimum, consider certain factors including the alien's age, health, and family status; assets, resources, and financial status; and education and skills.[699] Additionally, DHS may consider any affidavit of support submitted under section 213A of the Act, 8 U.S.C. 1183a, on behalf of the applicant when determining whether the applicant may become a public charge.[700] For most family-based and some employment-based immigrant visas or adjustment of status applications, applicants must have a sufficient affidavit of support or they will be found inadmissible as likely to become a public charge.[701]

However, in general, there is a lack of academic literature and economic research examining the link between immigration and public benefits (*i.e.,* welfare), and the strength of that connection.[702] It is also difficult to determine whether immigrants are net contributors or net users of government-supported public assistance programs since much of the answer depends on the data source, how the data are used, and what assumptions are made for

[698] *See* INA section 212(a)(4); 8 U.S.C. 1182(a)(4).

[699] *See* INA section 212(a)(4)(B)(i); 8 U.S.C. 1182(a)(4)(B)(i).

[700] *See* INA section 212(a)(4)(B)(ii). When required, the applicant must submit Form I-864, Affidavit of Support Under Section 213A of the INA.

[701] *See* INA section 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D).

[702] See Borjas, G.J. (2016) *We wanted workers: Unraveling the immigration narrative.* Chapter 9, pp. 175–176, 190–191. W.W. Norton & Company, New York.

analysis.[703] Moreover, DHS also was not able to estimate potential lost productivity, health effects, additional medical expenses due to delayed health care treatment, or increased disability insurance claims as a result of this proposed rule.

Currently, the public charge inadmissibility ground does not apply to all applicants seeking a visa, admission, or adjustment of status. Several immigrant and nonimmigrant categories, by law or regulation, are exempt from the public charge ground of inadmissibility grounds.[704]

The costs and benefits for this proposed rule focus on individuals applying for adjustment of status using Form I–485. Such individuals would be applying from within the United States, rather than applying for a visa from outside the United States at a DOS consulate abroad. In addition, the impact of this proposed rule on nonimmigrants who are seeking an extension of stay or a change of status are also examined in this analysis.

The new process DHS is proposing for making a determination of inadmissibility based on public charge incorporates a new form—Form I–944—in the current process to apply for adjustment of status. Currently, as part of the requirements for filing Form I–485, applicants submit biometrics collection for fingerprints and signature, and also file Form I–693 which is to be completed by a designated civil surgeon. Form I–693 is used to report results of a medical examination to USCIS.

Form I–864 (Affidavit of Support Under Section 213A of the INA) is also filed to satisfy the requirements of section 213A of the Act for most family-based immigrants and some employment-based immigrants to show that they have adequate means of financial support and are not likely to become a public charge. When a sponsor completes and signs Form I–864 in support of an intending immigrant, the sponsor agrees to use his or her resources, financial or otherwise, to support the intending immigrant named in the affidavit, if it becomes necessary.

Immigrants required to submit Form I–864 completed by a sponsor to obtain an immigrant visa overseas or to adjust status to that of lawful permanent resident in the United States, include (1) immediate relatives of U.S. citizens (spouses, unmarried children under 21 years of age, and parents of U.S. citizens 21 years of age and older); (2) family-based preference immigrants (unmarried sons and daughters of U.S. citizens, spouses and unmarried sons and daughters of lawful permanent residents, married sons and daughters of U.S. citizens, and brothers and sisters of U.S. citizens 21 years of age and older); and (3) employment-based preference immigrants in cases only when a U.S. citizen, lawful permanent resident, or U.S. national relative filed the immigrant visa petition or such relative has a significant ownership interest (5 percent or more) in the entity that filed the petition. However, immigrants seeking certain visa classifications are exempt from the requirement to submit a Form I–864 as are intending immigrants who have earned or can receive credit for 40 qualifying quarters (credits) of work in the United States.

Additionally, some sponsors for intending immigrants may be able to file an Affidavit of Support Under Section 213A of the INA (Form I–864EZ). Form I–864EZ is a shorter version of Form I–864 and is designed for cases that meet certain criteria. A sponsor may file Form I–864EZ only if: (1) The sponsor is the person who filed or is filing a Petition for Alien Relative (Form I–130) for a relative being sponsored; (2) the relative being sponsored is the only person listed on Form I–130; and (3) the income the sponsor is using for qualification is based entirely on salary or pension and is shown on one or more Internal Revenue Service (IRS) Form W–2s provided by employers or former employers.

Form I–864 includes attachment, Contract Between Sponsor and Household Member (Form I–864A), which may be filed when a sponsor's income and assets do not meet the income requirements of Form I–864 and the qualifying household member chooses to combine his or her resources with the income and/or assets of a sponsor to meet those requirements. A sponsor must file a separate Form I–864A for each household member whose income and/or assets the sponsor is using to meet the affidavit of support income requirements. The Form I–864A contract must be submitted with Form I–864. The Form I–864A serves as a contractual agreement between the sponsor and household member that, along with the sponsor, the household member is responsible for providing financial and material support to the sponsored immigrant.

In cases where the petitioning sponsor cannot meet the income requirements by him or herself, an individual seeking an immigrant visa or adjustment of status may also meet the affidavit of support requirement by obtaining a joint sponsor who is willing to accept joint and several liability with the petitioning sponsor as to the obligation to provide support to the sponsored alien. The joint sponsor must demonstrate income or assets that independently meet the requirements to support the sponsored immigrant(s) as required under section 213A(f)(2) and (f)(5)(A) of the Act, 8 U.S.C. 1883a(f)(2) and (f)(5)(A). The joint sponsor's income and assets may not be combined with the income/assets of the petitioning sponsor or the sponsored immigrant. Both the petitioning sponsor and the joint sponsor must each complete a Form I–864.

Certain classes of immigrants currently are exempt from the requirement to file Form I–864 or Form I–864EZ and therefore must file Form I–864W. DHS proposes to eliminate Form I–864W and instead individuals would now be required to provide the information previously requested on the Form I–864W using Form I–485. Based on the information provided in the Form I–485, an officer can verify whether an alien is statutorily required to file an affidavit of support.

Some applicants seeking adjustment of status may be eligible for a fee waiver when filing Form I–485. An applicant who is unable to pay the filing fees or biometric services fees for an application or petition may obtain a fee waiver by filing a Request for Fee Waiver (Form I–912). If an applicant's Form I–912 is approved, the agency will waive both the filing fee and biometric services fee. Therefore, DHS assumes for the purposes of this economic analysis that the filing fees and biometric services fees required for Form I–485 are waived if an approved Form I–912 accompanies the application.

When filing Form I–485, a fee waiver is only available if the applicant is applying for adjustment of status based on:

- Special Immigrant Status based on an approved Form I–360 as an Afghan or Iraqi Interpreter, or Afghan or Iraqi national employed by or on behalf of the U.S. Government; or
- An adjustment provision that is exempt from the public charge grounds of inadmissibility under section 212(a)(4) of the INA, including but not limited to the Cuban Adjustment Act, the Haitian Refugee Immigration Fairness Act (HRIFA), and the Nicaraguan Adjustment and Central American Relief Act (NACARA), or similar provisions; continuous residence in the United States since before January 1, 1972, ''Registry,''

[703] *See* Borjas, G.J. (2016) We wanted workers: Unraveling the immigration narrative. Chapter 9, p. 175. W.W. Norton & Company, New York.

[704] *See* proposed 8 CFR 212.23(a).

Asylum Status under section 209(b) of the INA, Special Immigrant Juvenile Status, and Lautenberg parolees.

Additionally, the following individuals seeking adjustment of status may apply for a fee waiver for Form I–485:

- Battered spouses of A, G, E–3, or H nonimmigrants;
- Battered spouses or children of a lawful permanent resident or U.S. citizen under INA section 240A(b)(2);
- T nonimmigrants;
- U nonimmigrants; or
- VAWA self–petitioners.

DHS is proposing to facilitate the current Form I–485 application process by creating a new form—Form I–944—which would collect information to the extent allowed by relevant laws based on factors such as age; health; family status; assets, resources, and financial status; education and skills; and any additional financial support through an affidavit of support, so that DHS could determine whether an applicant applying for adjustment of status who is subject to public charge review would be inadmissible to the United States based on public charge grounds. For the analysis of this proposed rule, DHS assumes that all individuals who apply for an adjustment of status using Form I–485 are required to submit Form I–944, unless he or she is in a class of applicants that is exempt from review for determination of inadmissibility based on public charge at the time of adjustment of status according to statute or regulation.

In addition to those applying for an adjustment of status, any alien applying for an extension of stay or change of status as a nonimmigrant in the United States would now be required to demonstrate that he or she is neither using nor receiving, nor likely to receive, public benefits as defined in this proposed rule unless the applicant is in a class of admission or is seeking to change to a class of admission that is exempt from inadmissibility on public charge grounds.

For applicants seeking adjustment of status or an immigrant visa who are likely to become a public charge after the review for determination of inadmissibility based on public charge, DHS is proposing to establish a bond process for such aliens. DHS currently does not have a specific process or procedure in place to accept public charge bonds, though it has the authority to do so. The proposed public charge bond process would include DHS acceptance of a public charge bond posted on an adjustment of status applicant's behalf if the adjustment of status applicant was deemed inadmissible based on public charge. The process would also include the possibility to substitute an existing bond, the requirement to substitute a bond before the bond on file with DHS expires, the DHS determination of breach of a public charge bond, the possibility to file an appeal upon a breach determination, cancellation of a public charge bond, and the possibility to submit an appeal upon denial of the cancellation request.

3. Population

This proposed rule would affect individuals who are present in the United States who are seeking an adjustment of status to that of a lawful permanent resident. According to statute, an individual who is seeking adjustment of status and is at any time likely to become a public charge is ineligible for such adjustment.[705] The grounds of inadmissibility set forth in section 212 of the Act also apply when certain aliens seek admission to the United States, whether for a temporary purpose or permanently. However, the grounds of public charge inadmissibility (including ineligibility for adjustment of status) do not apply to all applicants since there are various classes of admission that Congress expressly exempted from the public charge inadmissibility ground. Within USCIS, this proposed rule would affect individuals who apply for adjustment of status since these individuals would be required to be reviewed for a determination of inadmissibility based on public charge grounds as long as the individual is not in a class of admission that is exempt from review for public charge. In addition, the proposed rule would affect individuals applying for an extension of stay or change of status because these individuals would have to demonstrate that they have not received, are not currently receiving, and are not likely to receive public benefits in the future, as defined in the proposed rule. This analysis estimates the populations from each of these groups that would be subject to review for receipt of public benefits. DHS notes that the population estimates are based on aliens present in the United States who are applying for adjustment of status or extension of stay or change of status, rather than individuals outside the United States who must apply for an immigrant visa through consular processing at a DOS consulate abroad.

(a) Population Seeking Adjustment of Status

With this proposed rule, DHS intends to ensure that aliens who apply for adjustment of status are self-sufficient and will rely on their own financial resources, as well of those of their families, sponsors, and private organizations. Therefore, DHS estimates the population of individuals who are applying for adjustment of status using Form I–485.[706] Under the proposed rule, these individuals would undergo review for determination of inadmissibility based on public charge grounds, unless an individual is in a class of admission that is exempt from review for public charge determination.

Table 38 shows the total population in fiscal years 2012 to 2016 that applied for adjustment of status. In general, the annual population of individuals who applied to adjust status was consistent. Over the 5-year period, the population of individuals applying for adjustment of status ranged from a low of 530,802 in fiscal year 2013 to a high of 565,427 in fiscal year 2016. In addition, the average population of individuals over 5 fiscal years who applied for adjustment of status over this period was 544,246.

[705] *See* INA section 212(a)(4), 8 U.S.C. 1182(a)(4).

[706] Data on the population of individuals who are applying for adjustment of status and the class of admission come from U.S. Department of Homeland Security, Yearbook of Immigration Statistics for years 2012 to 2016. *See* U.S. Department of Homeland Security. Yearbook of Immigration Statistics. Office of Immigration Statistics. Available at *https://www.dhs.gov/immigration-statistics/yearbook/* (accessed Jan. 24, 2018).

Table 38. Total Population that Applied for Adjustment of Status, Fiscal Year 2012 to 2016.

Fiscal Year	Total Population Applying for Adjustment of Status
2012	547,559
2013	530,802
2014	535,126
2015	542,315
2016	565,427
Total	**2,721,229**
5-year average	**544,246**

Source: USCIS analysis of United States Department of Homeland Security, Yearbook of Immigration Statistics for years 2012 to 2016. Available at https://www.dhs.gov/immigration-statistics/yearbook. Accessed Jan. 24, 2018. For example, *see* United States Department of Homeland Security. Yearbook of Immigration Statistics: 2016, Table 7. Washington, D.C., U.S. Department of Homeland Security, Office of Immigration Statistics, 2017.
Note: The most recent data available are from fiscal year 2016, hence data from fiscal year 2017 are not yet available.

DHS welcomes any public comments on our estimates of the total number of individuals applying for adjustment of status in the United States as the primary basis for developing population estimates of those who would be subject to review for determination of inadmissibility based on public charge grounds.

i. Exemptions From Determination of Inadmissibility Based on Public Charge Grounds

There are exemptions and waivers for certain classes of admission that are not subject to review for determination of inadmissibility based on public charge grounds. Table 39 shows the classes of applicants for admission, adjustment of status, or registry according to statute or regulation that are exempt from inadmissibility based on public charge grounds.

BILLING CODE 4410–10–P

Table 39. Classes of Applicants for Admission, Adjustment of Status, or Registry Exempt from Inadmissibility Based on Public Charge According To Statute or Regulation.	
• Refugees and asylees as follows: at the time admission under section 207 of the Act (refugees) or grant under section 208 of the Act (asylees adjustment of status to lawful permanent resident under sections 207(c)(3) and 209(c) of the Act;	• Amerasian immigrants at the time of application for admission as described in sections 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, Public Law 100-202, 101 Stat. 1329-183, section 101(e) (Dec. 22, 1987), as amended, 8 U.S.C. 1101 note;
• Afghan and Iraqi Interpreter, or Afghan or Iraqi national employed by or on behalf of the U.S. Government as described in section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006 Public Law 109–163 (Jan. 6, 2006), as amended, section 602(b) of the Afghan Allies Protection Act of 2009, Public Law 111–8, title VI (Mar. 11, 2009), as amended, 8 U.S.C. 1101 note, and section 1244(g) of the National Defense Authorization Act for Fiscal Year 2008, as amended Public Law 110-181 (Jan. 28, 2008);	• Cuban and Haitian entrants applying for adjustment of status under in section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603, 100 Stat. 3359 (Nov. 6, 1986), as amended, 8 U.S.C. 1255a note;
• Aliens applying for adjustment of status under the Cuban Adjustment Act, Public Law 89-732 (Nov. 2, 1966), as amended, 8 U.S.C. 1255 note;	• Nicaraguans and other Central Americans applying for adjustment of status under sections 202(a) and section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105-100, 111 Stat. 2193 (Nov. 19, 1997), as amended, 8 U.S.C. 1255 note;
• Haitians applying for adjustment of status under section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Public Law 105-277, 112 Stat. 2681 (Oct. 21, 1998), as amended, 8 U.S.C. 1255 note;	• Lautenberg parolees as described in section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Public Law 101-167, 103 Stat. 1195, title V (Nov. 21, 1989), as amended, 8 U.S.C. 1255 note;
• Special immigrant juveniles as described in section 245(h) of the Act;	• Aliens who entered the United States prior to January 1, 1972 and who meet the other conditions for being granted lawful permanent residence under section 249 of the Act and 8 CFR part 249 (Registry);
• Aliens applying for or re-registering for Temporary Protected Status as described in section 244 of the Act in accordance with section 244(c)(2)(A)(ii) of the Act and 8 CFR 244.3(a);	• A nonimmigrant classified under section 101(a)(15)(T) of the Act, in accordance with section 212(d)(13)(A) of the Act;
• An applicant for, or individual who is granted, nonimmigrant status under section 101(a)(15)(U) of the Act in accordance	• Nonimmigrants classified under section 101(a)(15)(U) of the Act applying for adjustment of status under section 245(m)

with section 212(a)(4)(E)(ii) of the Act;	of the Act and 8 CFR 245.24;
• An alien who is a VAWA self-petitioner under section 212(a)(4)(E)(i) of the Act;	• A qualified alien described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1641(c), in accordance with section 212(a)(4)(E)(iii) of the Act;
• Applicants adjusting status who qualify for a benefit under section 1703 of the National Defense Authorization Act, Public Law 108-136, 117 Stat. 1392 (Nov. 24, 2003), 8 U.S.C. 1151 note (posthumous benefits to surviving spouses, children, and parents);	• American Indians Born in Canada as described in section 289 of the Act;
• Nationals of Vietnam, Cambodia, and Laos applying for adjustment of status under section 586 of Public Law 106-429 under 8 CFR 245.21; and	• Polish and Hungarian Parolees who were paroled into the United States from November 1, 1989 to December 31, 1991 under section 646(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208, Div. C, Title VI, Subtitle D (Sept. 30, 1996), 8 U.S.C. 1255 note.
Source: USCIS.	

BILLING CODE 4410–10–C

To estimate the annual total population of individuals seeking to adjust status who would be subject to review for inadmissibility based on public charge grounds, DHS examined the annual total population of individuals who applied for adjustment of status for fiscal years 2012 to 2016. For each fiscal year, DHS removed individuals from the population whose classes of admission are exempt from public charge review for inadmissibility, as shown in table 39, leaving the total population that would be subject to such review. Further discussion of these exempt classes of admission can be found in the preamble.

Table 40 shows the total estimated population of individuals seeking to adjust status under a class of admission that is exempt from review for inadmissibility based on public charge grounds for fiscal years 2012 to 2016 as well as the total estimated population that would be subject to public charge review.[707] In fiscal year 2016, for example, the total number of persons who applied for an adjustment of status across various classes of admission was 565,427 (see table 38). After removing individuals from this population whose classes of admission are exempt from examination for public charge, DHS estimates the total population of adjustment applicants in fiscal year 2016 that would be subject to public charge review for inadmissibility is 382,769.[708]

[707] Calculation of total estimated population that would be subject to public charge review: (Total Population Applying for Adjustment of Status) – (Total Population Seeking Adjustment of Status that is Exempt from Public Charge Review for Inadmissibility) = Total Population Subject to Public Charge Review for Inadmissibility.

[708] Calculation of total population subject to public charge review for inadmissibility for fiscal year 2016: 565,427 – 182,658 = 382,769.

Table 40. Total Estimated Population of Individuals Seeking Adjustment of Status Who Were Exempt from Public Charge Adjudication.

Fiscal Year	Total Population Seeking Adjustment of Status that is Exempt from Public Charge Review for Inadmissibility	Total Population Subject to Public Charge Review for Inadmissibility
2012	163,333	384,226
2013	132,814	397,988
2014	154,912	380,214
2015	176,190	366,125
2016	182,658	382,769
Total	**809,907**	**1,911,322**
5-year average	**161,981**	**382,264**

Source: USCIS analysis of United States Department of Homeland Security, Yearbook of Immigration Statistics for years 2012 to 2016. Available at https://www.dhs.gov/immigration- statistics/yearbook. Accessed Jan. 24, 2018. For example, see United States Department of Homeland Security. Yearbook of Immigration Statistics: 2016, Table 7. Washington, D.C., U.S. Department of Homeland Security, Office of Immigration Statistics, 2017.

DHS estimates the projected annual average total population of adjustment applicants that would be subject to public charge review for inadmissibility by DHS is 382,264. This estimate is based on the 5-year average of the annual estimated total population subject to public charge review for inadmissibility from fiscal year 2012 to fiscal year 2016. Over this 5-year period, the estimated population of individuals applying for adjustment of status subject to public charge review ranged from a low of 366,125 in fiscal year 2015 to a high of 397,988 in fiscal year 2013.

DHS welcomes any public comments on our estimates of the total population of individuals seeking to adjust status under a class of admission that is exempt from review for inadmissibility based on public charge grounds as well as the total population that would be subject to public charge review. DHS notes that the population estimates are based on immigrants present in the United States who are applying for adjustment of status, rather than immigrants outside the United States who must apply for an immigrant visa through consular processing at DOS consulate abroad.

ii. Exemptions From the Requirement To Submit an Affidavit of Support

In addition to the exemptions from inadmissibility based on public charge, certain classes of admission are exempt from the requirement to submit an affidavit of support for applicants for admission, adjustment of status, or registry. Certain applicants applying for adjustment of status are required to submit an affidavit of support from a sponsor or otherwise be found inadmissible as likely to become a public charge. When an affidavit of support is submitted, a contract is established between the sponsor and the U.S. Government to establish a legally enforceable obligation to support the applicant financially.

Table 41 shows the estimated total population of individuals seeking adjustment of status who were exempt from the requirement to submit an affidavit of support from a sponsor over the period fiscal year 2012 to fiscal year 2016.[709] The table also shows the total estimated population that was required to submit an affidavit of support showing evidence of having adequate means of financial support so that an applicant would not be found inadmissible as likely to become a public charge for failure to submit a sufficient affidavit of support. Further discussion of these exempt classes of admission can be found in the preamble. The estimated annual average population of individuals seeking to adjust status who were required to submit a public charge affidavit of support from a sponsor over the 5-year period was 257,610. Over this 5-year period, the estimated population of individuals required to submit a public charge affidavit of support from a sponsor ranged from a low of 247,011 in fiscal year 2015 to a high of 272,451 in fiscal year 2016.

[709] Data on the population of individuals who are applying for adjustment of status and the class of admission come from U.S. Department of Homeland Security, Yearbook of Immigration Statistics for years 2012 to 2016. *See* U.S. Department of Homeland Security. Yearbook of Immigration Statistics. Office of Immigration Statistics. Available at *https://www.dhs.gov/immigration-statistics/yearbook/* (accessed Jan. 24, 2018).

Table 41. Total Estimated Population of Individuals Seeking Adjustment of Status Who Are Exempt from the Requirement to Submit Public Charge Affidavit of Support.

Fiscal Year	Total Population Exempt from Submitting Affidavit of Support	Total Population Required to Submit a Public Charge Affidavit of Support
2012	288,951	258,608
2013	272,222	258,580
2014	283,726	251,400
2015	295,304	247,011
2016	292,976	272,451
Total	**1,433,179**	**1,288,050**
5-year average	**286,636**	**257,610**

Source: USCIS analysis of United States Department of Homeland Security, Yearbook of Immigration Statistics for years 2012 to 2016. Available at https://www.dhs.gov/immigration-statistics/yearbook. Accessed Jan. 24, 2018. For example, *see* United States Department of Homeland Security. Yearbook of Immigration Statistics: 2016, Table 7. Washington, D.C., U.S. Department of Homeland Security, Office of Immigration Statistics, 2017.

DHS estimates the projected annual average total population that would be subject to the requirement to submit an affidavit of support from a sponsor is 257,610. This estimate is based on the 5-year average of the annual estimated total population of applicants applying for adjustment of status that would be subject to the requirement to submit an affidavit of support from a sponsor from fiscal year 2012 to fiscal year 2016. Over this 5-year period, the estimated population of such individuals applying for adjustment of status ranged from a low of 247,011 in fiscal year 2015 to a high of 272,451 in fiscal year 2016.

DHS welcomes any public comments on our estimates of the total population of individuals seeking adjustment of status who were exempt from the requirement to submit an affidavit of support as well as the total population that was required to submit an affidavit of support showing evidence of having adequate means of financial support so that an applicant would not be found inadmissible as likely become a public charge for failure to submit a sufficient affidavit of support. DHS notes that the population estimates are based on immigrants present in the United States who are applying for adjustment of status, rather than immigrants outside the United States who must apply for an immigrant visa through consular processing at a U.S. Department of State consulate abroad.

(b) Population Seeking Extension of Stay or Change of Status

Nonimmigrants in the United States may apply for an extension of stay or change of status by having Form I–129 filed by an employer on his or her behalf. An employer uses Form I–129 to petition USCIS for a beneficiary to enter the United States temporarily as a nonimmigrant to perform services or labor, or to receive training. The Form I–129 can also be used to request an extension or change in status. In addition, an employer may use Form I–129CW to petition USCIS for a foreign national who is ineligible for another employment-based nonimmigrant classification to work as a nonimmigrant in the Commonwealth of the Northern Mariana Islands (CNMI) temporarily as a CW–1, CNMI-Only Transitional Worker. Moreover, an employer may also use Form I–129CW to request an extension of stay or change of status for a CNMI-Only Transitional Worker.

A nonimmigrant may file Form I–539 so long as the nonimmigrant is currently in an eligible nonimmigrant category. A nonimmigrant generally must submit an application for extension of stay or change of status before his or her current authorized stay expires. In addition to determining inadmissibility based on public charge for individuals seeking adjustment of status, DHS is proposing to conduct reviews of nonimmigrants who apply for extension of stay or change of status to determine whether the applicant has demonstrated that he or she has not received, is not receiving, nor is likely to receive, public benefits, as defined in the proposed rule.[710] However, DHS proposes that such determinations would not require applicants seeking extension of stay or change of status to file Form I–944. Instead, USCIS officers would be able to exercise discretion regarding whether it would be necessary to issue a RFE whereby an applicant would then have to submit Form I–944.

Table 42 shows the total estimated population of beneficiaries seeking extension of stay or change of status through an employer petition using Form I–129 for fiscal years 2012 to 2016. DHS estimated this population based on receipts of Form I–129 in each fiscal year. Over this 5-year period, the estimated population of individuals who would be subject to a determination of inadmissibility on public charge grounds ranged from a low of 282,225 in fiscal year 2013 to a high of 377,221 in fiscal year 2012. The estimated average population of individuals seeking extension of stay or change of status over the five-year period fiscal year 2012 to 2016 was 336,335. DHS estimates that 336,335 is the average annual projected population of beneficiaries seeking extension of stay or change of status through an employer petition using Form I–129 and

[710] Past or current receipt of public benefits, alone, would not justify a finding of inadmissibility on public charge grounds.

therefore subject to the discretionary RFEs for public charge determination.

Table 42. Total Estimated Population of Beneficiaries Seeking Extension of Stay or Change of Status through an Employer Petition Using Form I-129, Fiscal Year 2012 – 2016.

Fiscal Year	Receipts	Approvals	Denials
2012	377,221	249,172	127,555
2013	282,225	221,229	60,413
2014	306,159	242,513	63,087
2015	340,338	277,010	62,175
2016	375,733	321,783	52,430
Total	**1,681,676**	**1,311,707**	**365,660**
5-year average	**336,335**	**262,341**	**73,132**

Source: USCIS analysis of data provided by USCIS, Office of Performance & Quality.
Notes: Denials include the number of applications that were denied, terminated, revoked, or withdrawn during the reporting period. Cases may have been adjudicated in a later year than the one in which they were received.

Table 43 shows the total estimated population of beneficiaries seeking extension of stay or change of status through an employer petition using Form I–129CW for fiscal years 2012 to 2016. DHS estimated this population based on receipts of Form I–129CW in each fiscal year. Over this 5-year period, the estimated population of individuals who would be subject to a determination of inadmissibility on public charge grounds ranged from a low of 5,249 in fiscal year 2013 to a high of 8,273 in fiscal year 2016. The estimated average population of individuals seeking extension of stay or change of status through Form I–129CW over the five-year period fiscal year 2012 to 2016 was 6,307. DHS estimates that 6,307 is the average annual projected population of beneficiaries seeking extension of stay or change of status through an employer petition using Form I–129CW and therefore subject to discretionary RFEs for public charge determination.

Table 43. Total Estimated Population of Beneficiaries Seeking Extension of Stay or Change of Status through an Employer Petition Using Form I-129CW, Fiscal Year 2012 – 2016.

Fiscal Year	Receipts	Approvals	Denials
2012	5,973	4,083	238
2013	5,249	5,053	521
2014	6,700	5,554	535
2015	5,339	4,906	340
2016	8,273	7,580	540
Total	**31,534**	**27,176**	**2,174**
5-year average	**6,307**	**5,435**	**435**

Source: USCIS analysis of data provided by USCIS, Office of Performance & Quality.
Notes: Denials include the number of applications that were denied, terminated, revoked, or withdrawn during the reporting period. Cases may have been adjudicated in a later year than the one in which they were received.

Table 44 shows the total estimated population of individuals seeking extension of stay or change of status using Form I–539 for fiscal years 2012 to 2016. DHS estimated this population based on receipts of Form I–539 in each fiscal year. Over this 5-year period, the estimated population of individuals who would be subject to a determination of inadmissibility on public charge grounds ranged from a low of 149,583 in fiscal year 2013 to a high of 203,695 in fiscal year 2016. The estimated average population of individuals seeking extension of stay or change of status over the 5-year period from fiscal year 2012 to 2016 was 174,866. DHS estimates that 174,866 is the average annual projected population of individuals who would seek an extension of stay and change of status using Form I–539 and therefore would be subject to the discretionary RFEs for public charge determination.

Table 44. Total Estimated Population of Individuals Seeking Extension of Stay or Change of Status Using Form I-539, Fiscal Year 2012 – 2016.

Fiscal Year	Receipts	Approvals	Denials
2012	154,309	135,379	18,781
2013	149,583	130,600	18,826
2014	185,515	136,298	22,053
2015	181,226	154,184	26,162
2016	203,695	138,870	17,492
Total	**874,328**	**695,331**	**103,314**
5-year average	**174,866**	**139,066**	**20,663**

Source: USCIS analysis of data provided by USCIS, Office of Performance & Quality.
Notes: Denials include the number of applications that were denied, terminated, revoked, or withdrawn during the reporting period. Cases may have been adjudicated in a later year than the one in which they were received.

DHS welcomes any public comments on our estimates of the total population of employers filing on behalf of individuals seeking extension of stay or change of status using Form I–129 or Form I–129CW as well as the total of individuals seeking extension of stay or change of status using Form I–539, where DHS proposes that the total population using each of these forms would be subject to review on a discretionary basis for determination of inadmissibility based on public charge grounds. DHS notes that the population estimates are based on nonimmigrants present in the United States who are applying for extension of stay or a change of status, rather than individuals outside the United States who must apply for a nonimmigrant visa through consular processing at a DOS consulate abroad.

4. Cost-Benefit Analysis

DHS expects this proposed rule to produce costs and benefits associated with the procedures for examining individuals seeking entry into the United States for inadmissibility based on public charge.

For this proposed rule, DHS generally uses the federal minimum wage plus weighted average benefits of $10.66 per hour ($7.25 federal minimum wage base plus $3.41 weighted average benefits) as a reasonable proxy of time valuation to estimate the opportunity costs of time for individuals who are applying for adjustment of status and must be reviewed for determination of inadmissibility based on public charge grounds.[711] DHS also uses $10.66 per hour to estimate the opportunity cost of time for individuals who cannot or choose not to participate in the labor market as these individuals incur opportunity costs and/or assign valuation in deciding how to allocate their time. This analysis uses the federal minimum wage rate since approximately 80 percent of the total number of individuals who obtained lawful permanent resident status were in a class of admission under family-sponsored preferences and other non-employment-based classifications such as diversity, refugees and asylees, and parolees.[712] Therefore, DHS assumes many of these applicants hold positions in occupations that are likely to pay around the federal minimum wage.

The federal minimum wage of $7.25 is an unweighted hourly wage that does not account for worker benefits. DHS accounts for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier using the most recent Department of Labor, BLS report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS estimates that the benefits-to-wage multiplier is 1.47 and, therefore, is able to estimate the full opportunity cost per applicant, including employee wages and salaries and the full cost of benefits such as paid leave, insurance, and retirement.[713]

[711] *See* 29 U.S.C. 206—Minimum wage, *available at https://www.gpo.gov/fdsys/pkg/USCODE-2011-title29/html/USCODE-2011-title29-chap8-sec206.htm* (accessed Jan. 24, 2018).

[712] *See* United States Department of Homeland Security. Yearbook of Immigration Statistics: 2016, Table 7. Washington, DC, U.S. Department of Homeland Security, Office of Immigration Statistics, 2017. Available at *https://www.dhs.gov/immigration-statistics/yearbook/2016* (accessed Jan. 24, 2018).

[713] The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour)/(Wages and Salaries per hour) = $36.32/$24.77 = 1.466 = 1.47 (rounded). *See* Economic News Release, *Employer Cost for Employee Compensation (March 2018),* U.S. Dept. of Labor, BLS, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group. June 8, 2018,

DHS notes that there is no requirement that an individual be employed in order to file Form I–485 and many applicants may not be employed. Therefore, in this proposed rule, DHS calculates the total rate of compensation for individuals applying for adjustment of status as $10.66 per hour in this proposed rule using the benefits-to-wage multiplier, where the mean hourly wage is $7.25 per hour worked and average benefits are $3.41 per hour.[714]

However, DHS uses the unweighted mean hourly wage of $24.34 per hour for all occupations to estimate the opportunity cost of time for some populations in this economic analysis, such as those submitting an affidavit of support for an immigrant seeking to adjust status and those requesting extension of stay or change of status. For populations such as this, DHS assumes that individuals are dispersed throughout the various occupational groups and industry sectors of the U.S. economy. For the population submitting an affidavit of support, therefore, DHS calculates the average total rate of compensation as $35.78 per hour, where the mean hourly wage is $24.34 per hour worked and average benefits are $11.46 per hour.[715] [716]

DHS welcomes public comments on its use of $10.66 per hour as the opportunity cost of time for most populations of this analysis (individuals in a class of admission under family-sponsored preferences and other non-employment-based preferences) and $35.78 per hour as the opportunity cost of time for other populations, such as those submitting an affidavit of support for an immigrant seeking to adjust status.

(a) Baseline Estimate of Current Costs

The baseline estimate of current costs is the best assessment of costs and benefits absent the proposed action. For this proposed rule, DHS estimates the baseline according to current operations and requirements and to that compares the estimated costs and benefits of the provisions set forth in the proposed rule. Therefore, DHS defines the baseline by assuming ''no change'' to DHS regulations to establish an appropriate basis for evaluating the provisions of the proposed rule. DHS notes that costs detailed as part of the baseline include all current costs associated with completing and filing Form I–485, including required biometrics collection and medical examination (Form I–693) as well as any affidavits of support (Forms I–864, I–864A, I–864EZ, and I–864W) or requested fee waivers (Form I–912). As noted previously in the background section, the source of additional costs imposed by this proposed rule would come from the proposed requirements to submit Form I–944 detailing information about an applicant regarding factors such as age, health, family status, finances, and education and skills. These costs are analyzed later in this economic analysis.

Table 45 shows the estimated population and annual costs of filing for adjustment of status and requesting an extension of stay or change of status for the proposed rule. These costs primarily result from the process of applying for adjustment of status, including filing Form I–485 and Form I–693 as well as, if necessary, an affidavit of support and/or Form I–912. The costs are derived from the process of applying for extension of stay or change of status, including filing Form I–129, Form I–129CW, or Form I–539.

BILLING CODE 4410–10–P

available at https://www.bls.gov/news.release/archives/ecec_06082018.pdf (viewed June 20, 2018).

[714] The calculation of the weighted federal minimum hourly wage for applicants: $7.25 per hour * 1.47 benefits-to-wage multiplier = $10.658 = $10.66 (rounded) per hour.

[715] The national mean hourly wage across all occupations is reported to be $24.34. *See* Occupational Employment and Wage Estimates United States. May 2017. Department of Labor, BLS, Occupational Employment Statistics program; *available at https://www.bls.gov/oes/2017/may/oes_nat.htm.*

[716] The calculation of the weighted mean hourly wage for applicants: $24.34 per hour * 1.47 = $35.779 = $35.78 (rounded) per hour.

Table 45. Total Average Annual Baseline (Current) Costs.

Form	Estimated Average Annual Population	Total Annual Cost
I-485, Application to Register Permanent Residence or Adjust Status	**382,264**	**$519,114,512**
Filing Fee		$435,780,960
Opportunity Cost of Time (OCT)		$25,470,250
Biometrics Services Fee		$32,492,440
Biometrics Services OCT		$14,954,168
Biometrics Services Travel Costs		$10,416,694
I-693, Report of Medical Examination and Vaccination Record	**382,264**	**$198,930,186**
Medical Exam Cost		$187,309,360
Opportunity Cost of Time (OCT)		$10,187,336
Postage Costs		$1,433,490
I-912, Request for Fee Waiver	**58,558**	**$949,811**
Opportunity Cost of Time (OCT)		$730,218
Postage Costs		$219,593
Affidavit of Support Forms (I-864, I-864A, I-864EZ, I-864W)	**257,610**	**$55,303,715**
Opportunity Cost of Time (OCT)		$55,303,715
I-129, Petition for a Nonimmigrant Worker	**336,335**	**$184,136,686**
Filing Fee		$154,714,100
Opportunity Cost of Time (OCT)		$28,161,330
Postage Costs		$1,261,256
I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker	**6,307**	**$5,154,963**
Filing Fee		$4,477,970
Opportunity Cost of Time (OCT)		$676,993
I-539, Application to Extend/Change Nonimmigrant Status	**174,866**	**$76,463,656**
Filing Fee		$64,700,420
Opportunity Cost of Time (OCT)		$11,763,236
Total Baseline Costs		**$1,040,053,529**

Source: USCIS analysis.

BILLING CODE 4410–10–C

i. Determination of Inadmissibility Based on Public Charge Grounds

a. Form I–485, Application To Register Permanent Residence or Adjust Status

The basis of the quantitative costs estimated for this proposed rule is the cost of filing for adjustment of status using Form I–485, the opportunity cost of time for completing this form, any other required forms, and any other incidental costs (*e.g.,* travel costs) an individual must bear that are required in the filing process. DHS reiterates that costs examined in this section are not additional costs that would be imposed by the proposed rule, but costs that applicants currently incur as part of the application process to adjust status. The current filing fee for Form I–485 is $1,140. The fee is set at a level to recover the processing costs to DHS. As previously discussed in the population section, the estimated average annual population of individuals who apply for adjustment of status using Form I–485 is 382,264. Therefore, DHS estimates that the annual filing cost associated for Form I–485 is approximately $435,780,960.[717]

DHS estimates the time burden of completing Form I–485 is 6.25 hours per response, including the time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching necessary documentation, and submitting the application.[718] Using the total rate of compensation for minimum wage of $10.66 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I–485 would be $66.63 per applicant.[719] Therefore, using the total population estimate of 382,264 annual filings for Form I–485, DHS estimates the total opportunity cost of time associated with completing Form I–485 is approximately $25,470,250 annually.[720]

USCIS requires applicants who file Form I–485 to submit biometric information (fingerprints and signature) by attending a biometrics services appointment at a designated USCIS Application Support Center (ASC). The biometrics services processing fee is $85.00 per applicant. Therefore, DHS estimates that the annual cost associated with biometrics services processing for the estimated average annual population of 382,264 individuals applying for adjustment of status is approximately $32,492,440.[721]

In addition to the biometrics services fee, the applicant would incur the costs to comply with the biometrics submission requirement as well as the opportunity cost of time for traveling to an ASC, the mileage cost of traveling to an ASC, and the opportunity cost of time for submitting his or her biometrics. While travel times and distances vary, DHS estimates that an applicant's average roundtrip distance to an ASC is 50 miles and takes 2.5 hours on average to complete the trip.[722] Furthermore, DHS estimates that an applicant waits an average of 1.17 hours for service and to have his or her biometrics collected at an ASC, adding up to a total biometrics-related time burden of 3.67 hours.[723] Using the total rate of compensation of minimum wage of $10.66 per hour, DHS estimates the opportunity cost of time for completing the biometrics collection requirements for Form I–485 is $39.12 per applicant.[724] Therefore, using the total population estimate of 382,264 annual filings for Form I–485, DHS estimates the total opportunity cost of time associated with completing the biometrics collection requirements for Form I–485 is approximately $14,954,168 annually.[725]

In addition to the opportunity cost of providing biometrics, applicants would incur travel costs related to biometrics collection. The cost of travel related to biometrics collection would equal $27.25 per trip, based on the 50-mile roundtrip distance to an ASC and the General Services Administration's (GSA) travel rate of $0.545 per mile.[726] DHS assumes that each applicant would travel independently to an ASC to submit his or her biometrics, meaning that this rule would impose a travel cost on each of these applicants. Therefore, DHS estimates that the total annual cost associated with travel related to biometrics collection for the estimated average annual population of 382,264 individuals applying for adjustment of status is approximately $10,416,694.[727]

In sum, DHS estimates the total current annual cost for filing Form I–485 is $519,114,512. The total current annual costs include Form I–485 filing fees, biometrics services fees, opportunity cost of time for completing Form I–485 and submitting biometrics information, and travel cost associated with biometrics collection.[728] DHS notes that a medical examination is generally required as part of the application process to adjust status. Costs associated with the medical examination are detailed in the next section. Moreover, costs associated with submitting an affidavit of support and requesting a fee waiver are also detailed in subsequent sections since such costs are not required for every individual applying for an adjustment of status.

b. Form I–693, Report of Medical Examination and Vaccination Record

USCIS requires most applicants who file Form I–485 seeking adjustment of status to submit Form I–693 completed by a designated civil surgeon. Form I–693 is used to report results of a medical examination to USCIS. For this analysis, DHS assumes that all individuals who apply for adjustment of status using Form I–485 are required to submit Form I–693. DHS reiterates that costs examined in this section are not

[717] Calculation: Form I–485 filing fee ($1,140) * Estimated annual population filing Form I–485 (382,264) = $435,780,960 annual cost for filing Form I–485.

[718] Source: Paperwork Reduction Act (PRA) Supporting Statement for Form I–485 (OMB control number 1615–0023). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201706-1615-001.*

[719] Calculation for opportunity cost of time for filing Form I–485: ($10.66 per hour * 6.25 hours) = $66.625 = $66.63 (rounded) per applicant.

[720] Calculation: Form I–485 estimated opportunity cost of time ($66.63) * Estimated annual population filing Form I–485 (382,264) = $25,470,250.13 = $25,470,250 (rounded) annual opportunity cost of time for filing Form I–485.

[721] Calculation: Biometrics services processing fee ($85) * Estimated annual population filing Form I–485 (382,264) = $32,492,440 annual cost for associated with Form I–485 biometrics services processing.

[722] *See* ''Employment Authorization for Certain H–4 Dependent Spouses; Final rule,'' 80 FR 10284 (25 Feb. 2015); and ''Provisional and Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives; Final Rule,'' 78 FR 536, 572 (3 Jan. 2013).

[723] Source for biometric time burden estimate: Paperwork Reduction Act (PRA) Supporting Statement for Form I–485 (OMB control number 1615–0023). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201706-1615-001.*

[724] Calculation for opportunity cost of time to comply with biometrics submission for Form I–485: ($10.66 per hour * 3.67 hours) = $39.12 (rounded) per applicant.

[725] Calculation: Estimated opportunity cost of time to comply with biometrics submission for Form I–485 ($39.12) * Estimated annual population filing Form I–485 (382,264) = $14,954,167.68 = $14,954,168 (rounded) annual opportunity cost of time for filing Form I–485.

[726] *See* U.S. General Services Administration website for Privately Owned Vehicle (POV) Mileage Reimbursement Rates, *https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates-etc/privately-owned-vehicle-pov-mileage-reimbursement-rates* (accessed January 7, 2018).

[727] Calculation: (Biometrics collection travel costs) * (Estimated annual population filing Form I–485) = $27.25 * 382,264 = $10,416,694 annual travel costs related to biometrics collection for Form I–485.

[728] Calculation: $435,780,960 (Annual filing fees for Form I–485) + $25,470,250 (Opportunity cost of time for filing Form I–485) + $32,492,440 (Biometrics services fees) + $14,954,168 (Opportunity cost of time for biometrics collection requirements) + $10,416,694 (Travel costs for biometrics collection) = $519,114,512 total current annual cost for filing Form I–485.

additional costs that would be imposed by the proposed rule, but costs that applicants currently incur as part of the application process to adjust status. The medical examination is required to establish that an applicant is not inadmissible to the United States on health-related grounds. While there is no filing fee associated with Form I–693, the applicant is responsible for paying all costs of the medical examination, including the cost of any follow-up tests or treatment that is required, and must make payments directly to the civil surgeon or other health care provider. In addition, applicants bear the opportunity cost of time for completing the medical exam form as well as sitting for the medical exam and the time waiting to be examined.

USCIS does not regulate the fees charged by civil surgeons for the completion of a medical examination. In addition, medical examination fees vary by physician. DHS notes that the cost of the medical examinations may vary widely, from as little as $20 to as much as $1,000 per respondent (including vaccinations to additional medical evaluations and testing that may be required based on the medical conditions of the applicant).[729] DHS estimates that the average cost for these activities is $490 and that all applicants would incur this cost.[730] Since DHS assumes that all applicants who apply for adjustment of status using Form I–485 must also submit Form I–693, DHS estimates that based on the estimated average annual population of 382,264 the annual cost associated with filing Form I–693 is $187,309,360.[731]

DHS estimates the time burden associated with filing Form I–693 is 2.5 hours per applicant, which includes understanding and completing the form, setting an appointment with a civil surgeon for a medical exam, sitting for the medical exam, learning about and understanding the results of medical tests, allowing the civil surgeon to report the results of the medical exam on the form, and submitting the medical exam report to USCIS.[732] DHS estimates the opportunity cost of time for completing and submitting Form I–693 is $26.65 per applicant based on the total rate of compensation of minimum wage of $10.66 per hour.[733] Therefore, using the total population estimate of 382,264 annual filings for Form I–485, DHS estimates the total opportunity cost of time associated with completing and submitting Form I–693 is approximately $10,187,336 annually.[734]

In addition to the cost of a medical exam and the opportunity cost of time associated with completing and submitted Form I–693, applicants must bear the cost of postage for sending the Form I–693 package to USCIS. DHS estimates that each applicant will incur an estimated average cost of $3.75 in postage to submit the completed package to USCIS.[735] DHS estimates the total annual cost in postage based on the total population estimate of 382,264 annual filings for Form I–693 is $1,433,490.[736]

In sum, DHS estimates the total current annual cost for filing Form I–693 is $198,930,186. The total current annual costs include medical exam costs, the opportunity cost of time for completing Form I–693, and cost of postage to mail the Form I–693 package to USCIS.[737]

c. Form I–912, Request for Fee Waiver

Some applicants seeking an adjustment of status may be eligible for a fee waiver when filing Form I–485. An applicant who is unable to pay the filing fees or biometric services fees for an application or petition may be eligible for a fee waiver by filing Form I–912. If an applicant's Form I–912 is approved, USCIS, as a component of DHS, will waive both the filing fee and biometric services fee. Therefore, DHS assumes for the purposes of this economic analysis that the filing fees and biometric services fees required for Form I–485 are waived if an approved Form I–912 accompanies the application. Filing Form I–912 is not required for applications and petitions that do not have a filing fee. DHS also notes that costs examined in this section are not additional costs that would be imposed by the proposed rule, but costs that applicants currently could incur as part of the application process to adjust status.

Table 46 shows the estimated population of individuals that requested a fee waiver (Form I–912), based on receipts, when applying for adjustment of status in fiscal years 2012 to 2016, as well as the number of requests that were approved or denied each fiscal year. During this period, the number of individuals who requested a fee waiver when applying for adjustment of status ranged from a low of 42,126 in fiscal year 2012 to a high of 76,616 in fiscal year 2016. In addition, the estimated average population of individuals applying to adjust status who requested a fee waiver for Form I–485 over the 5-year period fiscal year 2012 to 2016 was 58,558. DHS estimates that 58,558 is the average annual projected population of individuals who would request a fee waiver using Form I–912 when filing Form I–485 to apply for an adjustment of status.[738]

[729] Source for medical exam cost range: Paperwork Reduction Act (PRA) Report of Medical Examination and Vaccination Record (Form I–693) (OMB control number 1615–0033). The PRA Supporting Statement can be found at Question 13 on Reginfo.gov at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-004.*

[730] Source for medical exam cost estimate: Paperwork Reduction Act (PRA) Report of Medical Examination and Vaccination Record (Form I–693) (OMB control number 1615–0033). The PRA Supporting Statement can be found at Question 13 on Reginfo.gov at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-004.*

[731] Calculation: (Estimated medical exam cost for Form I–693) * (Estimated annual population filing Form I–485) = $490 * 382,264 = $187,309,360 annual estimated medical exam costs for Form I–693.

[732] Source for medical exam time burden estimate: Paperwork Reduction Act (PRA) Report of Medical Examination and Vaccination Record (Form I–693) (OMB control number 1615–0033). The PRA Supporting Statement can be found at Question 12 on Reginfo.gov at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-004.*

[733] Calculation for medical exam opportunity cost of time: ($10.66 per hour * 2.5 hours) = $26.65 per applicant.

[734] Calculation: (Estimated medical exam opportunity cost of time for Form I–693) * (Estimated annual population filing Form I–485) = $26.65 * 382,264 = $10,187,335.60 = $10,187,336 (rounded) annual opportunity cost of time for filing Form I–485.

[735] Source for medical exam form package postage cost estimate: Paperwork Reduction Act (PRA) Report of Medical Examination and Vaccination Record (Form I–693) (OMB control number 1615–0033). The PRA Supporting Statement can be found at Question 13 on Reginfo.gov at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-004.*

[736] Calculation: (Form I–693 estimated cost of postage) * (Estimated annual population filing Form I–693) = $3.75 * 382,264 = $1,433,490 annual cost in postage for filing Form I–693.

[737] Calculation: $187,309,360 (Medical exam costs) + $10,187,336 (Opportunity cost of time for Form I–693) + $1,433,490 (Postage costs for biometrics collection) = $198,930,186 total current annual cost for filing Form I–693.

[738] DHS notes that the estimated population of individuals who would request a fee waiver for filing Form I–485 includes all visa classifications for those applying for adjustment of status. We are unable to determine the number of fee waiver requests for filing Form I–485 that are associated with specific visa classifications that are subject to public charge review.

Table 46. Total Population Requesting A Fee Waiver (Form I-912) when Filing Form I-485, Adjustment of Status.

Fiscal Year	Receipts	Approvals	Denials
2012	42,126	34,890	7,236
2013	52,453	41,615	10,838
2014	58,534	47,629	10,905
2015	63,059	53,615	9,444
2016	76,616	68,641	7,975
Total	**292,788**	**246,390**	**46,398**
5-yr average	**58,558**	**49,278**	**9,280**

Source: USCIS analysis.

To provide a reasonable proxy of time valuation for applicants, as described previously, DHS assumes that applicants requesting a fee waiver for Form I–485 earn the total rate of compensation for individuals applying for adjustment of status as $10.66 per hour, where the value of $10.66 per hour represents the federal minimum wage with an upward adjustment for benefits. The analysis uses this wage rate because DHS expects that applicants who request a fee waiver are asserting that they are unable to afford to pay the USCIS filing fee. As a result, DHS expects such applicants to hold positions in occupations that have a wage below the mean hourly wage across all occupations. DHS also notes that this proposed rule may reduce the number of fee waiver requests received, but, at this time, we cannot determine the extent to which this will occur.

DHS estimates the time burden associated with filing Form I–912 is 1 hour and 10 minutes per applicant (1.17 hours), including the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.[739] Therefore, using $10.66 per hour as the total rate of compensation, DHS estimates the opportunity cost of time for completing and submitting Form I–912 is $12.47 per applicant.[740] Using the total population estimate of 58,558 requests for a fee waiver for Form I–485, DHS estimates the total opportunity cost of time associated with completing and submitting Form I–912 is approximately $730,218 annually.[741]

In addition to the opportunity cost of time associated with completing and submitting Form I–912, applicants must bear the cost of postage for sending the Form I–912 package to USCIS. DHS estimates that each applicant will incur an estimated average cost of $3.75 in postage to submit the completed package to USCIS.[742] DHS estimates the annual cost in postage based on the total population estimate of 58,558 annual approved requests for a fee waiver for Form I–485 is $219,593.[743]

In sum, DHS estimates the total current annual cost for filing a fee waiver request (Form I–912) for Form I–485 is $949,811. The total current annual costs include the opportunity cost of time for completing Form I–912 and cost of postage to mail the Form I–912 package to USCIS.[744]

d. Affidavit of Support Forms

As previously discussed, submitting an affidavit of support using Form I–864 is required for most family-based immigrants and some employment-based immigrants to show that they have adequate means of financial support and are not likely to become a public charge. Additionally, Form I–864 includes attachment Form I–864A which may be filed when a sponsor's income and assets do not meet the income requirements of Form I–864 and the qualifying household member chooses to combine his or her resources with the income and/or assets of a sponsor to meet those requirements. Some sponsors for intending immigrants may be able to file an affidavit of support using Form I–864EZ, provided certain criteria are met. Moreover, certain classes of immigrants currently are exempt from the requirement to file Form I–864 or Form I–864EZ and therefore must file Form I–864W, Request for Exemption for Intending Immigrant's Affidavit of Support. However, DHS proposes to eliminate Form I–864W, and instead individuals would be required to provide the information previously requested on the Form I–864W using Form I–485. Based on the information provided in the Form I–485, an officer can verify whether an immigrant is statutorily required to file an affidavit of support.

There is no filing fee associated with filing Form I–864 with USCIS. However, DHS estimates the time burden associated with a sponsor filing Form I–864 is 6 hours per petitioner, including the time for reviewing instructions, gathering the required documentation and information, completing the affidavit, preparing statements, attaching necessary documentation, and

[739] Source for fee waiver time burden estimate: Paperwork Reduction Act (PRA) Request for Fee Waiver (Form I–912) (OMB control number 1615–0116). The PRA Supporting Statement can be found at Question 12 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201506-1615-006.*

[740] Calculation for fee waiver opportunity cost of time: ($10.66 per hour * 1.17 hours) = $12.47.

[741] Calculation: (Estimated opportunity cost of time for Form I–912) * (Estimated annual population of approved Form I–912) = $12.47 * 58,558 = $730,218.26 = $730,218 (rounded) annual opportunity cost of time for filing Form I–944 that are approved.

[742] Source for fee waiver postage cost estimate: Paperwork Reduction Act (PRA) Request for Fee Waiver (Form I–912) (OMB control number 1615–0116). The PRA Supporting Statement can be found at Question 13 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201506-1615-006.*

[743] Calculation: (Form I–912 estimated cost of postage) * (Estimated annual population of approved Form I–912) = $3.75 * 58,558 = $219,592.50 = $219,593 (rounded) annual cost in postage for filing Form I–912 that is approved.

[744] Calculation: $730,218 (Opportunity cost of time for Form I–912) + $219,593 (Postage costs for biometrics collection) = $949,811 total current annual cost for filing Form I–912.

submitting the affidavit.[745] Therefore, using the average total rate of compensation of $35.78 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I–864 would be $214.68 per petitioner.[746] DHS assumes that the average rate of total compensation used to calculate the opportunity cost of time for Form I–864 is appropriate since the sponsor of an immigrant, who is agreeing to provide financial and material support, is instructed to complete and submit the form. Using the estimated annual total population of 257,610 individuals seeking to adjust status who are required to submit an affidavit of support using Form I–864, DHS estimates the opportunity cost of time associated with completing and submitting Form I–864 is $55,303,715 annually.[747] DHS estimates this amount as the total current annual cost for filing Form I–864, as required when applying to adjust status.

There is also no filing fee associated with filing Form I–864A with USCIS. However, DHS estimates the time burden associated with filing Form I–864A is 1 hour and 45 minutes (1.75 hours) per petitioner, including the time for reviewing instructions, gathering the required documentation and information, completing the contract, preparing statements, attaching necessary documentation, and submitting the contract.[748] Therefore, using the average total rate of compensation of $35.78 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I–864A will be $62.62 per petitioner.[749] DHS assumes the average total rate of compensation used for calculating the opportunity cost of time for Form I–864 since both the sponsor and another household member agree to provide financial support to an immigrant seeking to adjust status. However, the household member also may be the intending immigrant. While Form I–864A must be filed with Form I–864, DHS notes that we are unable to determine the number filings of Form I–864A since not all individuals filing I–864 need to file Form I–864A with a household member.

As with Form I–864, there is no filing fee associated with filing Form I–864EZ with USCIS. However, DHS estimates the time burden associated with filing Form I–864EZ is 2 hours and 30 minutes (2.5 hours) per petitioner, including the time for reviewing instructions, gathering the required documentation and information, completing the affidavit, preparing statements, attaching necessary documentation, and submitting the affidavit.[750] Therefore, using the average total rate of compensation of $35.78 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I–864EZ will be $89.45 per petitioner.[751] However, DHS notes that we are unable to determine the number filings of Form I–864EZ and, therefore, rely on the annual cost estimate developed for Form I–864.

There is also no filing fee associated with filing Form I–864W with USCIS. However, DHS estimates the time burden associated with filing this form is 60 minutes (1 hour) per petitioner, including the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.[752] Therefore, using the average total rate of compensation of $35.78 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I–864EZ will be $35.78 per petitioner.[753] However, DHS notes that we are unable to determine the number filings of Form I–864W and, therefore, rely on the annual cost estimate developed for Form I–864. Moreover, the proposed rule would eliminate Form I–864W as a form for use in filing an affidavit of support. Filers who would have been required to file Form I–864W instead would be instructed to provide the information previously requested on the Form I–864W using Form I–485, as amended by this proposed rule. Based on the information provided in the Form I–485, an officer could verify whether an immigrant is statutorily required to file an affidavit of support.

DHS is also proposing to amend the HHS Poverty Guidelines for Affidavit of Support (Form I–864P), by removing certain language describing means-tested public benefits. Form I–864P is used to determine the minimum level of income required to sponsor most family-based immigrants and some employment-based immigrants. These income requirements are to show that a sponsor has adequate means of financial support and is not likely to rely on the government for financial support. Form I–864P is for informational purposes and used for completing Form I–864. DHS does not anticipate additional costs or benefits as a result of any proposed changes to Form I–864P.

ii. Consideration of Receipt, or Likelihood of Receipt of Public Benefits Defined in Proposed 212.21(b) for Applicants Requesting Extension of Stay or Change of Status

Nonimmigrants in the United States may apply for extension of stay or change of status by either having an employer file Form I–129 or Form I–129CW, as applicable, on his or her behalf, or by filing Form I–539, so long as the nonimmigrant is currently in an eligible nonimmigrant category. This proposed rule seeks to require nonimmigrants who are seeking extension of stay or change of status to demonstrate that they have not previously received, are not currently receiving, nor are likely to receive public benefits in the future, as defined in this rule in 8 CFR 212.21(b. DHS also notes that costs examined in this section are not additional costs that would be imposed by the proposed rule, but costs that petitioners and applicants currently would incur as part of the application

[745] Source for I–864 time burden estimate: Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the INA (Forms I–864, I–864A, I–864EZ, I–864W) (OMB control number 1615–0075). The PRA Supporting Statement can be found at Question 12 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004.*

[746] Calculation opportunity cost of time for completing and submitting Form I–864, Affidavit of Support Under Section 213A of the INA: ($35.78 per hour * 6.0 hours) = $214.68 per applicant.

[747] Calculation: (Form I–864 estimated opportunity cost of time) * (Estimated annual population filing Form I–864) = $214.68 * 257,610 = $55,303,714.80 = $55,303,715 (rounded) total annual opportunity cost of time for filing Form I–864.

[748] Source for I–864A time burden estimate: Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the INA (Forms I–864, I–864A, I–864EZ, I–864W) (OMB control number 1615–0075). The PRA Supporting Statement can be found at Question 12 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004.*

[749] Calculation opportunity cost of time for completing and submitting Form I–864A, Contract Between Sponsor and Household Member: ($35.78 per hour * 1.75 hours) = $62.615 = $62.62 (rounded) per petitioner.

[750] Source for I–864EZ time burden estimate: Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the INA (Forms I–864, I–864A, I–864EZ, I–864W) (OMB control number 1615–0075). The PRA Supporting Statement can be found at Question 12 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004.*

[751] Calculation opportunity cost of time for completing and submitting Form I–864EZ, Affidavit of Support Under Section 213A of the INA: ($35.78 per hour * 2.5 hours) = $89.45.

[752] Source for I–864W time burden estimate: Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the INA (Forms I–864, I–864A, I–864EZ, I–864W) (OMB control number 1615–0075). The PRA Supporting Statement can be found at Question 12 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004.*

[753] Calculation opportunity cost of time for completing and submitting Form I–864W: ($35.78 per hour * 1.0 hours) = $35.78.

process to request an extension of stay or change of status.

a. Form I–129, Petition for a Nonimmigrant Worker

The current filing fee for Form I–129 is $460.00. The fee is set at a level to recover the processing costs to DHS. As previously discussed, the estimated average annual population of employers filing on behalf of nonimmigrant workers seeking EOS/COS using Form I–129 is 336,335. Therefore, DHS estimates that the annual cost associated with filing Form I–129 is approximately $154,714,100.[754]

DHS estimates the time burden for completing Form I–129 is 2 hours and 20 minutes (2.34 hours), including the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.[755] Using the average total rate of compensation of $35.78 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I–129 will be $83.73 per petitioner.[756] Therefore, using the total population estimate of 336,335 annual filings for Form I–129, DHS estimates the total opportunity cost of time associated with completing and submitting Form I–129 is approximately $28,161,330 annually.[757]

In addition to the filing fee and the opportunity cost of time associated with completing and submitting Form I–129, applicants must bear the cost of postage for sending the Form I–129 package to USCIS. DHS estimates that each applicant will incur an estimated average cost of $3.75 in postage to submit the completed package to USCIS.[758] DHS estimates the total annual cost in postage based on the total population estimate of 336,335 annual filings for Form I–129 is approximately $1,261,256.[759]

In sum, DHS estimates the total current annual cost for filing Form I–129 is $184,136,686. The total current annual costs include Form I–129 filing fees, opportunity cost of time for completing Form I–129, and cost of postage to mail the Form I–129 package to USCIS.[760]

b. Form I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker

The current filing fee for Form I–129CW is $460.00. The fee is set at a level to recover the processing costs to DHS. In addition, an employer filing Form I–129CW for a CNMI-Only Nonimmigrant Transitional Worker must submit an additional $200 for a supplemental CNMI education fee per beneficiary, per year and a $50 fee for fraud prevention and detection with each petition. Thus, the total fees associated with filing Form I–129CW is $710 per beneficiary.[761] As previously discussed, the estimated average annual population of employers filing on behalf of nonimmigrant workers seeking EOS/COS using Form I–129CW is 6,307. Therefore, DHS estimates that the annual cost associated with filing Form I–129 is approximately $4,477,970.[762]

DHS estimates the time burden for completing Form I–129CW is 3 hours (3.0 hours), including the time for reviewing instructions, gathering the required documentation and information, completing the petition, preparing statements, attaching necessary documentation, and submitting the request.[763] Using the average total rate of compensation of $35.78 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I–129CW will be $107.34 per petitioner.[764] Therefore, using the total population estimate of 6,307 annual filings for Form I–129CW, DHS estimates the total opportunity cost of time associated with completing and submitting Form I–129CW is approximately $676,993 annually.[765]

In sum, DHS estimates the total current annual cost for filing Form I–129CW is $5,154,963. The total current annual costs include Form I–129CW filing fees and opportunity cost of time for completing Form I–129.[766]

c. Form I–539, Application To Extend/Change Nonimmigrant Status

The current filing fee for Form I–539 is $370 per application.[767] The fee is set at a level to recover the processing costs to DHS. As previously discussed, the estimated average annual population seeking EOS/COS using Form I–539 is 174,866. Therefore, DHS estimates that the annual cost associated with filing Form I–539 is approximately $64,700,420.[768]

DHS estimates the time burden for completing Form I–539 is 1 hour and 53 minutes (1.88 hours), including the time necessary to read all instructions for the form, gather all documents required to complete the collection of information, obtain translated documents if necessary, obtain the services of a preparer if necessary, and complete the

[754] Calculation: (Form I–129 filing fee) * (Estimated annual population filing Form I–129) = $460 * 336,335 = $154,714,100 annual estimated cost for filing Form I–129 seeking an extension of stay or change of status.

[755] Source for petition for nonimmigrant workers time burden estimate: Paperwork Reduction Act (PRA) Petition for Nonimmigrant Worker (Form I–129) (OMB control number 1615–0009). The PRA Supporting Statement can be found at Question 12 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201610-1615-001.*

[756] Calculation for estimated opportunity cost of time for completing Form I–129: ($35.78 per hour * 2.34 hours) = $83.725 = $83.73 (rounded) per applicant.

[757] Calculation: (Form I–129 estimated opportunity cost of time) * (Estimated annual population filing Form I–129) = $83.73 * 336,335 = $28,161,329.55 = $28,161,330 (rounded) annual estimated opportunity cost of time for filing Form I–129.

[758] Source for petition for nonimmigrant workers form package postage cost estimate: Paperwork Reduction Act (PRA) Petition for Nonimmigrant Worker (Form I–129) (OMB control number 1615–0009). The PRA Supporting Statement can be found at Question 12 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201610-1615-001.*

[759] Calculation: (Form I–129 estimated cost of postage) * (Estimated annual population filing Form I–129) = $3.75 * 336,335 = $1,261,256.25 = $1,261,256 (rounded) annual cost in postage for filing Form I–129.

[760] Calculation: $154,714,100 (Filing fees for Form I–129) + $28,161,330 (Opportunity cost of time for Form I–129) + $1,261,256 (Postage costs for Form I–129) = $184,136,686 total current estimated annual cost for filing Form I–129.

[761] This economic analysis assumes that each Form I–129CW filed will also be required to include the additional $200 supplemental CNMI education fee and the $50 fraud prevention and detection fee.

[762] Calculation: (Form I–129CW filing fee) * (Estimated annual population filing Form I–129CW) = $710 * 6,307 = $4,477,970 annual estimated cost for filing Form I–129 seeking an extension of stay or change of status.

[763] Source for petition for nonimmigrant workers time burden estimate: Paperwork Reduction Act (PRA) Petition for CNMI-Only Nonimmigrant Transition Worker (Form I–129CW) (OMB control number 1615–0111). The PRA Supporting Statement can be found at Question 12 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201803-1615-006.*

[764] Calculation for estimated opportunity cost of time for completing Form I–129: ($35.78 per hour * 3.0 hours) = $107.34 per petitioner.

[765] Calculation: (Form I–129CW estimated opportunity cost of time) * (Estimated annual population filing Form I–129CW) = $107.34 * 6,307 = $676,993.38 = $676,993 (rounded) annual estimated opportunity cost of time for filing Form I–129CW.

[766] Calculation: $4,477,970 (Filing fees for Form I–129CW) + $676,993 (Opportunity cost of time for Form I–129CW) = $5,154,963 total current estimated annual cost for filing Form I–129CW.

[767] Source for petition for nonimmigrant workers time burden estimate: Paperwork Reduction Act (PRA) Application to Extend/Change Nonimmigrant Status (Form I–539) (OMB control number 1615–0003). The PRA Supporting Statement can be found at Question 13 on Reginfo.gov at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201610-1615-006.* DHS notes that certain A and G nonimmigrants are not required to pay a filing fee for Form I–539. In addition, a biometrics services fee of $85 is required for V nonimmigrants and for certain applicants in the CNMI applying for an initial grant of nonimmigrant status.

[768] Calculation: (Form I–539 filing fee) * (Estimated annual population filing Form I–539) = $370 * 176,866 = $64,700,420 annual cost for filing Form I–539.

form.[769] Using the average total rate of compensation of $35.78 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I–539 will be $67.27 per applicant.[770] Therefore, using the total population estimate of 174,866 annual filings for Form I–539, DHS estimates the total opportunity cost of time associate with completing and submitting Form I–539 is approximately $11,763,236 annually.[771]

In sum, DHS estimates the total current annual cost for filing Form I–539 is $76,463,656. The total current annual costs include Form I–539 filing fees and the opportunity cost of time for completing Form I–539.[772]

(b) Costs of Proposed Regulatory Changes

The primary source of quantified new costs for the proposed rule would be from the creation of Form I–944. This form would be used to collect information based on factors such as age; health; family status; assets, resources and financial status; and education and skills, so that USCIS could determine whether an applicant would be inadmissible to the United States based on public charge grounds. The proposed rule would require individuals who are applying for adjustment of status to complete and submit the form to establish that they are not likely to become a public charge. At the agency's discretion, Form I–129 and Form I–129CW beneficiaries, and Form I–539 applicants seeking an extension of stay or change of status may be required to submit Form I–944 to be reviewed for public charge determination.

The proposed rule would also add costs from an additional 10-minute increase in the time burden estimate to complete Form I–485. Additionally, the proposed rule would add costs from an additional time burden increase of 30 minutes for completing and filing Form I–129, Form I–129CW, and Form I–539.

The proposed rule would also impose new costs by establishing a public charge bond process. At the agency's discretion, certain aliens who are found likely to become a public charge may be provided the opportunity to post a public charge bond. As part of the proposed public charge bond process, an individual would have an obligor submit a public charge bond using a new Form I–945, Public Charge Bond, on the alien's behalf, and the alien or an acceptable surety (individual or a company) would use Form I–356, Request for Cancellation of Public Charge Bond, as part of a request to cancel a public charge bond. DHS notes that if the alien permanently departed the United States, as defined in proposed 8 CFR 213.1, and the loss of LPR status was voluntarily, we would also require a Form I–407 submission. If the request for cancellation is denied, DHS would notify the obligor and inform the obligor of the possibility to appeal the determination to the USCIS Administrative Appeals Office (AAO) using Form I–290B, Notice of Appeal or Motion.[773] In addition, upon learning of a breach of public charge bond, DHS would notify the obligor that the bond has been declared breached and inform the obligor of the possibility to appeal the determination to the USCIS Administrative Appeals Office (AAO) using Form I–290B, Notice of Appeal or Motion.[774]

The following costs are new costs that would be imposed on the population applying to adjust status using Form I–485 or on the population that would be seeking extension of stay or change of status using Forms I–129, I–129CW, or I–539. However, individuals seeking extension of stay or change of status would only be required to submit Form I–944 at the discretion of adjudication officers. Table 47 shows the estimated annual costs that the proposed rule would impose on individuals seeking to adjust status using Form I–485 who also would be required to file Form I–944. The table also presents the estimated new costs the proposed rule would impose associated with a 10-minute increase in the time burden estimate for completing Form I–485, from additional time burden increases of 30 minutes each for completing and filing Form I–129, Form I–129CW, and Form I–539. The table also shows the range of costs that Form I–129 and Form I–129CW beneficiaries, and Form I–539 filers would incur should they receive a RFE to file Form I–944 to determine inadmissibility based on public charge grounds under the provisions of this proposed rule. Finally, the table includes the estimated new cost associated with the proposed public charge bond process.

[769] Source for petition for nonimmigrant workers time burden estimate: Paperwork Reduction Act (PRA) Application to Extend/Change Nonimmigrant Status (Form I–539) (OMB control number 1615–0003). The PRA Supporting Statement can be found at Question 12 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201610-1615-006.*

[770] Calculation for the opportunity cost of time for completing Form I–539: ($35.78 per hour * 1.88 hours) = $67.266 = $67.27 (rounded) per applicant.

[771] Calculation: (Form I–539 estimated opportunity cost of time) * (Estimated annual population filing Form I–539) = $67.27 * 174,866 = $11,763,235.82 = $11,763,236 (rounded) annual estimated opportunity cost of time for filing Form I–539.

[772] Calculation: $64,700,420 (Filing fees for Form I–539) + $11,763,236 (Opportunity cost of time for Form I–539) = $76,463,656 total current annual cost for filing Form I–539.

[773] *See* proposed 8 CFR 213.1(g).

[774] *See* proposed 8 CFR 213.1(h).

Table 47. Total New Quantified Direct Costs of the Proposed Rule.

Form	Estimated Annual Population	Total Annual Cost[1]
Form I-944, Declaration of Self-Sufficiency	**382,264**	**$25,963,371**
Opportunity Cost of Time (OCT)		$18,337,204
Credit Report/Credit Score Costs		$7,626,167
Form I-485, Application to Register Permanent Residence or Adjust Status	**382,264**	**$691,898**
OCT – Additional to Baseline (Current) Costs		$691,898
Form I-129, Petition for a Nonimmigrant Worker – To Request Extension of Stay/Change of Status	**336,335**	**$12,103,351 to $66,880,214**
OCT – Additional to Baseline (Current) Costs		$6,017,033
Costs to beneficiaries who receive a RFE to complete and submit Form I-944, including OCT and credit report/credit score costs.		$6,086,318 to $60,863,181
Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker – To Request Extension of Stay/Change of Status	**6,307**	**$227,015 to $1,254,198**
OCT – Additional to Baseline (Current) Costs		$112,883
Costs to beneficiaries who receive a RFE to complete and submit Form I-944, including OCT and credit report/credit score costs.		$114,132 to $1,141,315
Form I-539, Application to Extend/Change Nonimmigrant Status	**174,866**	**$6,292,728 to $34,772,105**
OCT – Additional to Baseline (Current) Costs		$3,128,353
Costs to beneficiaries who receive a RFE to complete and submit Form I-944, including OCT and credit report/credit score costs.		$3,164,375 to $31,643,752
Form I-945, Public Charge Bond	**960**	**$34,234**
Filing Fee		$24,000
OCT		$10,234
Form I-356, Request for Cancellation of Public Charge Bond	**25**	**$825**
Filing Fee		$625
OCT		$200

Total New Quantified Costs of the Proposed Rule	$45,313,422 to $129,596,845
Source: USCIS analysis. Notes: [1] Not all nonimmigrants who apply for extension of stay or change of status would be required to file Form I-944 to detail their financial, health, and education status. Instead, USCIS officers would be able to exercise discretion regarding whether it would be necessary to issue a RFE for the submission of Form I-944. DHS is unable to estimate the actual number of RFEs that adjudication officers may issue to Form I-129 and Form I-129CW beneficiaries, and Form I-539 filers to submit Form I-944 since such RFEs would be issued on a discretionary basis. However, DHS is able to present a range of RFEs that could be issued based on total population estimates and the estimated annual cost associated with such RFE. Therefore, the total annual cost for Form I-129, Form I-129CW, and Form I-539 is shown in the table as a range based on a RFE rate of 10 to 100 percent.	

i. Form I–944, Declaration of Self-Sufficiency and Form I–485, Application To Register Permanent Residence or Adjust Status

In this proposed rule, DHS is proposing to create a new form for collecting information from those applying for immigration benefits with USCIS, such as adjustment of status or extension of stay or change in status, to demonstrate that the applicant is not likely to become a public charge under section 212(a)(4) of the Act. Form I–944 would collect information based on factors such as age; health; family status; assets, resources, and financial status; and education and skills, so that USCIS could determine whether an applicant would be inadmissible to the United States based on public charge grounds. For the analysis of this proposed rule, DHS assumes that all individuals who apply for adjustment of status using Form I–485 are required to submit Form I–944, unless the individual is in a class of applicants that is exempt from review for determination of inadmissibility based on public charge at the time of adjustment of status according to statute or regulation.

There is currently no filing fee associated with Form I–944. However, DHS estimates the time burden associated with filing Form I–944 is 4 hours and 30 minutes (4.5 hours) per applicant, including the time for reviewing instructions, gathering the required documentation and information, completing the declaration, preparing statements, attaching necessary documentation, and submitting the declaration. Therefore, using the total rate of compensation of minimum wage of $10.66 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I–944 would be $47.97 per applicant.[775] Using the total population estimate of 382,264 annual filings for Form I–485, DHS estimates the total opportunity cost of time associated with completing and submitting Form I–944 is approximately $18,337,204 annually.[776]

In addition to the opportunity cost of time associated with completing and filing Form I–944, applicants must bear the cost of obtaining a credit report and credit score from any one of the three major credit bureaus in the United States to be submitted with the application.[777] Consumers may obtain a free credit report once a year from each of the three major consumer reporting agencies (*i.e.,* credit bureaus) under the Fair Credit Reporting Act (FCRA).[778] However, consumers are not necessarily entitled to a free credit score, for which consumer reporting agencies may charge a fair and reasonable fee.[779] DHS does not assume that all applicants are able to obtain a free credit report under FCRA specifically for fulfilling the requirements of filing Form I–944 and acknowledges that obtaining a credit score would be an additional cost. Therefore, DHS assumes that each applicant would bear the cost of obtaining a credit report and credit score from at least one of the three major credit bureaus. DHS estimates the cost of obtaining a credit report and credit score would be $19.95 per applicant, as this is the amount that two of the three major credit bureaus charge.[780] DHS notes that it would be required that all applicants who apply for adjustment of status using Form I–485 must also submit Form I–944 and comply with its requirements. Therefore, DHS estimates that based on the estimated average annual population of 382,264 the total annual cost associated with obtaining a credit report and credit score as part of the requirements for filing Form I–944 would be $7,626,167.[781]

In sum, DHS estimates that the total cost to complete and file Form I–944 would be $25,963,371. The total estimated annual costs include the opportunity cost of time to complete the form and the cost to obtain a credit report and credit score as required for the total population estimate of 382,264 annual filings for Form I–485.[782]

The proposed rule would include additional instructions for filing Form I–485 and, as a result, applicants would spend additional time reading the instructions increasing the estimated time to complete the form. The current estimated time to complete Form I–485 is 6 hours and 15 minutes (6.25 hours). For the proposed rule, DHS estimates that the time burden for completing

[775] Calculation for declaration of self-sufficiency opportunity cost of time: ($10.66 per hour * 4.5 hours) = $47.97 per applicant.

[776] Calculation: (Estimated opportunity cost of time for Form I–944) * (Estimated annual population filing Form I–485) = $47.97 * 382,264 = $18,337,204.08 = $18,337,204 (rounded) annual opportunity cost of time for filing Form I–944.

[777] The three major credit bureaus are Equifax, Experian, and TransUnion. Each of these bureaus is a publicly-traded, for-profit company that is not owned by the Federal Government. DHS notes that there may be differences in the information contained in the credit reports from each of the three major credit bureaus since one credit bureau may have unique information on a consumer that is not captured by the other credit bureaus.

[778] *See* FCRA, *Section 612, Charges for Certain Disclosures.* 15 U.S.C. 1681j. *Available at https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf* (accessed Jan. 26, 2018).

[779] *See* FCRA, *Section 609(f), Disclosures to Consumers, Disclosure of Credit Scores.* 15 U.S.C. 1681g. Available at *https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf* (accessed Jan. 26, 2018).

[780] Each of the three major credit charge the following prices for a credit report, including a credit score:

Experian—$19.95, *available at https://www.experian.com/consumer-products/compare-credit-report-and-score-products.html* (accessed Jan. 26, 2018);

Equifax—$19.95, *available at https://www.equifax.com/personal/products/credit/report-and-score* (accessed Jan. 26, 2018); and

TransUnion—$11.50, *available at https://disclosure.transunion.com/dc/disclosure/disclosure.jsp* (accessed Jan. 26, 2018).

[781] Calculation: (Estimated cost for credit score and credit report) * (Estimated annual population filing Form I–485) = $19.95 * 382,264 = $7,626,166.80 = $7,626,167 (rounded) annual estimated costs for obtaining a credit report and credit score as part of the requirements for filing Form I–944.

[782] Calculation: $18,337,204 (Opportunity cost of time to complete Form I–944) + $7,626,167 (Cost of credit report and credit score) = $25,963,371 total estimated cost to complete Form I–944.

Form I–485 would increase by 10 minutes. Therefore, in the proposed rule, the time burden to complete Form I–485 would be 6 hours and 25 minutes (6.42 hours).

The time burden includes the time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching necessary documentation, and submitting the application.[783] Using the total rate of compensation for minimum wage of $10.66 per hour, DHS currently estimates the opportunity cost of time for completing and filing Form I–485 would be $66.63 per applicant.[784] Therefore, using the total population estimate of 382,264 annual filings for Form I–485, DHS estimates the current total opportunity cost of time associated with completing Form I–485 is approximately $25,470,250 annually.[785]

For the proposed rule, DHS estimates that the time burden for completing Form I–485 is 6.42 hours per response. Using the total rate of compensation for minimum wage of $10.66 per hour, DHS estimates the opportunity cost of time for completing and filing Form I–485 would be $68.44 per applicant.[786] Therefore, using the total population estimate of 382,264 annual filings for Form I–485, DHS estimates the proposed total opportunity cost of time associated with completing Form I–485 is approximately $26,162,148 annually.[787]

The new costs imposed by this proposed rule would be the difference between the current estimated opportunity cost of time to complete Form I–485 and the proposed estimated opportunity cost of time due to the increased Form I–485 time burden estimate. As a result, DHS estimates that the proposed rule would impose additional new costs in the amount of $691,898 to Form I–485 applicants.[788]

ii. Extension of Stay/Change of Status Using Form I–129, Petition for a Nonimmigrant Worker; Form I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker; or Form I–539, Application To Extend/Change Nonimmigrant Status

The proposed rule would require petitioners to read additional instructions and provide additional information on Form I–129, which would increase the estimated time to complete the form. The current estimated time to complete Form I–129 is 2 hours and 20 minutes (2.34 hours). For the proposed rule, DHS estimates that the time burden for completing Form I–129 would increase by 30 minutes to account for the additional time petitioners would spend reading the form and providing additional information. Therefore, DHS proposes the time burden to complete Form I–129 to petitioners would be 2 hours and 50 minutes (2.84 hours).

The time burden for Form I–129 includes the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.[789] Using the average total rate of compensation of $35.78 per hour, DHS estimates the current opportunity cost of time for completing and filing Form I–129 is currently $83.73 per petitioner.[790] Therefore, using the total population estimate of 336,335 annual filings for Form I–129, DHS estimates the current total opportunity cost of time associated with completing and filing Form I–129 is approximately $28,161,330 annually.[791]

For the proposed rule, DHS estimates that the opportunity cost of time for completing and filing Form I–129 would be $101.62 per petitioner based on the 30-minute increase in the time burden estimate.[792] Therefore, using the total population estimate of 336,335 annual filings for Form I–129, DHS estimates the proposed total opportunity cost of time associated with completing and filing Form I–129 is approximately $34,178,363 annually.[793]

The new costs imposed by this proposed rule would be the difference between the current estimated opportunity cost of time to complete Form I–129 and the proposed estimated opportunity cost of time to complete the form due to the increased time burden estimate. As a result, DHS estimates that the proposed rule would impose additional new costs of $6,017,033 to Form I–129 applicants.[794]

The proposed rule would require petitioners to read additional instructions and provide additional information on Form I–129CW, which would increase the estimated time to complete the form. The current estimated time to complete Form I–129CW is 3 hours (3.0 hours). For the proposed rule, DHS estimates that the time burden for completing Form I–129CW would increase by 30 minutes to account for the additional time petitioners would spend reading the form and providing additional information. Therefore, DHS proposes the time burden to complete Form I–129CW to petitioners would be 3 hours and 30 minutes (3.5 hours).

The time burden for Form I–129CW includes the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.[795] Using the average total rate

[783] Source: Paperwork Reduction Act (PRA) Supporting Statement for Form I–485 (OMB control number 1615–0023). The PRA Supporting Statement can be found at Question 12 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201706-1615-001.*

[784] Calculation for opportunity cost of time for filing Form I–485: ($10.66 per hour * 6.25 hours) = $66.625 = $66.63 (rounded) per applicant.

[785] Calculation: Form I–485 estimated opportunity cost of time ($66.63) * Estimated annual population filing Form I–485 (382,264) = $25,470,250.32 = $25,470,250 (rounded) annual opportunity cost of time for filing Form I–485.

[786] Calculation for opportunity cost of time for filing Form I–485: ($10.66 per hour * 6.42 hours) = $68.437 = $68.44 (rounded) per applicant.

[787] Calculation: Form I–485 estimated opportunity cost of time ($68.44) * Estimated annual population filing Form I–485 (382,264) = $26,162,148.16 = $26,162,148 (rounded) annual opportunity cost of time for filing Form I–485.

[788] Calculation of estimated new costs for completing Form I–485: Proposed estimate of opportunity cost of time to complete Form I–485 ($26,162,148) – Current estimate of opportunity cost of time to complete Form I–485 ($25,470,250) = $691,898 estimated new costs of the proposed rule.

[789] Source for petition for nonimmigrant workers time burden estimate: Paperwork Reduction Act (PRA) Petition for Nonimmigrant Worker (Form I–129) (OMB control number 1615–0009). The PRA Supporting Statement can be found at Question 12 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201610-1615-001.*

[790] Calculation of estimated opportunity cost of time for completing Form I–129: ($35.78 per hour * 2.34 hours) = $83.725 = $83.73 (rounded) per applicant.

[791] Calculation: (Form I–129 estimated opportunity cost of time) * (Estimated annual population filing Form I–129) = $83.73 * 336,335 = $28,161,329.55 = $28,161,330 (rounded) annual estimated opportunity cost of time for completing Form I–129.

[792] Calculation of proposed opportunity cost of time for completing Form I–129: ($35.78 per hour * 2.84 hours) = $101.615 = $101.62 (rounded) per applicant.

[793] Calculation: (Proposed Form I–129 estimated opportunity cost of time) * (Estimated annual population filing Form I–129) = $101.62 * 336,335 = $34,178,362.70 = $34,178,363 (rounded) proposed annual estimated opportunity cost of time for filing Form I–129.

[794] Calculation of estimated new costs for completing Form I–129: Proposed estimate of opportunity cost of time to complete Form I–129 ($34,178,363) – Current estimate of opportunity cost of time to complete Form I–129 ($28,161,330) = $6,017,033 estimated new costs of the proposed rule.

[795] Source for petition for nonimmigrant workers time burden estimate: Paperwork Reduction Act (PRA) Petition for CNMI-Only Nonimmigrant Transition Worker (Form I–129CW) (OMB control number 1615–0111). The PRA Supporting Statement can be found at Question 12 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201803-1615-006.*

of compensation of $35.78 per hour, DHS estimates the current opportunity cost of time for completing and filing Form I–129CW is currently $107.34 per petitioner.[796] Therefore, using the total population estimate of 6,307 annual filings for Form I–129CW, DHS estimates the current total opportunity cost of time associated with completing and filing Form I–129CW is approximately $676,993 annually.[797]

For the proposed rule, DHS estimates that the opportunity cost of time for completing and filing Form I–129CW would be $125.23 per petitioner based on the 30-minute increase in the time burden estimate.[798] Therefore, using the total population estimate of 6,307 annual filings for Form I–129CW, DHS estimates the proposed total opportunity cost of time associated with completing and filing Form I–129CW is approximately $789,826 annually.[799]

The new costs imposed by this proposed rule would be the difference between the current estimated opportunity cost of time to complete Form I–129CW and the proposed estimated opportunity cost of time to complete the form due to the increased time burden estimate. As a result, DHS estimates that the proposed rule would impose additional new costs of $112,883 to Form I–129CW applicants.[800]

The proposed rule would also include additional instructions and collection of information for filing Form I–539, which would increase the estimated time to complete the form. Applicants, therefore, would spend additional time reading the form instructions and providing additional information about the request, use, or receipt of public benefits. The current estimated time to completing Form I–539 is 1 hour and 53 minutes (1.88 hours).[801] For the proposed rule, DHS estimates that the time burden for completing Form I–539 would increase by 30 minutes. Therefore, in the proposed rule, DHS proposes the time burden for completing Form I–539 would be 2 hours and 23 minutes (2.38 hours).

The time burden for Form I–539 includes the time necessary to read all instructions for the form, gather all documents required to complete the collection of information, obtain translated documents if necessary, obtain the services of a preparer if necessary, and complete the form.[802] Using the average total rate of compensation of $35.78 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I–539 is currently $67.27 per applicant.[803] Therefore, using the total population estimate of 174,866 annual filings for Form I–539, DHS estimates the current total opportunity cost of time associated with completing and filing Form I–539 is approximately $11,763,236 annually.[804]

For the proposed rule, DHS estimates that the opportunity cost of time for completing and filing Form I–539 would be $85.16 per applicant based on the 30-minute increase in the time burden estimate.[805] Therefore, using the total population estimate of 174,866 annual filings for Form I–539, DHS estimates the proposed total opportunity cost of time associated with completing and filing Form I–539 is approximately $14,891,589.[806]

The new costs imposed by this proposed rule would be the difference between the current estimated opportunity cost of time to complete Form I–539 and the proposed estimated opportunity cost of time to complete the form due to the increased time burden estimate. As a result, DHS estimates that the proposed rule would impose additional new costs in the amount of $3,128,353 to Form I–539 applicants.[807]

While individuals seeking adjustment of status would be reviewed to determine inadmissibility based on public charge grounds under the provisions of this proposed rule, DHS proposes to conduct reviews of nonimmigrants who apply for extension of stay or change of status to determine whether they have demonstrated that they have not received, are not receiving, or likely to receive public benefits. Not all nonimmigrants who apply for extension of stay or change of status would be required to file Form I–944 to detail their financial, health, and education status. Instead, USCIS officers would be able to exercise discretion regarding whether it would be necessary to issue a RFE for the submission of Form I–944.

As previously noted, there is currently no fee associated with filing Form I–944, but DHS estimates the costs for filing Form I–944 would include the opportunity cost of time (4.5 hours) and the cost to obtain credit report and credit score ($19.95 per beneficiary). In addition, DHS estimated that the average annual population that would request EOS/COS by filing Form I–129 is 336,335, Form I–129CW is 6,307, and Form I–539 is 174,866.

For Form I–129 petitioners who receive a RFE for a beneficiary to complete and submit Form I–944, DHS estimates the opportunity cost of time for completing Form I–129 would be $161.01 per beneficiary using the average total rate of compensation of $35.78 per hour.[808] In addition, DHS estimates the cost to obtain a credit report and credit score is $19.95 per beneficiary. DHS assumes that while a petitioner would receive the RFE to file Form I–944, the beneficiary would be the individual to complete the form and provide all required information. Therefore, based on the total population estimate of 336,335 annual filings for Form I–129, DHS estimates the total annual opportunity cost of time associated with completing Form I–944 would be approximately $54,153,298 annually and the total cost to obtain a credit report and credit score would be

[796] Calculation for estimated opportunity cost of time for completing Form I–129: ($35.78 per hour * 3.0 hours) = $107.34 per petitioner.

[797] Calculation: (Form I–129CW estimated opportunity cost of time) * (Estimated annual population filing Form I–129CW) = $107.34 * 6,307 = $676,993.38 = $676,993 (rounded) annual estimated opportunity cost of time for completing Form I–129.

[798] Calculation of proposed opportunity cost of time for completing Form I–129: ($35.78 per hour * 3.5 hours) = $125.23 per applicant.

[799] Calculation: (Proposed Form I–129 estimated opportunity cost of time) * (Estimated annual population filing Form I–129) = $125.23 * 6,307 = $789,825.61 = $789,826 (rounded) proposed annual estimated opportunity cost of time for filing Form I–129.

[800] Calculation of estimated new costs for completing Form I–129CW: Proposed estimate of opportunity cost of time to complete Form I–129CW ($789,826) – Current estimate of opportunity cost of time to complete Form I–129CW ($676,993) = $112,883 estimated new costs of the proposed rule.

[801] Source for petition for nonimmigrant workers time burden estimate: Paperwork Reduction Act (PRA) Application to Extend/Change Nonimmigrant Status (Form I–539) (OMB control number 1615–0003). The PRA Supporting Statement can be found at Question 12 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201610-1615-006.*

[802] *See id.*

[803] Calculation of opportunity cost of time for completing Form I–539: ($35.78 per hour * 1.88 hours) = $67.266 = $67.27 (rounded) per applicant.

[804] Calculation: (Form I–539 estimated opportunity cost of time) * (Estimated annual population filing Form I–539) = $67.27 * 174,866 = $11,763,235.82 = $11,763,236 (rounded) annual estimated opportunity cost of time for filing Form I–539.

[805] Calculation of proposed opportunity cost of time for completing Form I–539: ($35.78 per hour * 2.38 hours) = $85.156 = $85.16 (rounded) per applicant.

[806] Calculation: (Proposed Form I–539 estimated opportunity cost of time per applicant) * (Estimated annual population filing Form I–539) = $85.16 * 174,866 = $14,891,588.56 = $14,891,589 (rounded) proposed annual estimated opportunity cost of time for filing Form I–539.

[807] Calculation of estimated new costs for completing Form I–539: Proposed estimate of opportunity cost of time to complete Form I–539 ($14,891,589) – Current estimate of opportunity cost of time to complete Form I–539 ($11,763,236) = $3,128,353 estimated new costs of the proposed rule.

[808] Calculation for Form I–129 petition opportunity cost of time to complete Form I–944: ($35.78 per hour * 4.5 hours) = $161.01.

about $6,709,883.[809] In sum, DHS estimates that total cost for Form I–129 beneficiaries who receive a RFE to complete and submit Form I–944 would be approximately $60,863,181 annually.[810]

Similarly, for Form I–129CW petitioners who receive a RFE for a beneficiary to complete and submit Form I–944, DHS estimates the opportunity cost of time for completing Form I–129CW would be $161.01 per beneficiary using the average total rate of compensation of $35.78 per hour.[811] In addition, DHS estimates the cost to obtain a credit report and credit score is $19.95 per beneficiary. DHS assumes that while a petitioner would receive the RFE to file Form I–944, the beneficiary would be the individual to complete the form and provide all required information. Therefore, based on the total population estimate of 6,307 annual filings for Form I–129CW, DHS estimates the total annual opportunity cost of time associated with completing Form I–944 would be approximately $1,015,490 annually and the total cost to obtain a credit report and credit score would be about $125,825.[812] In sum, DHS estimates that total cost for Form I–129CW beneficiaries who receive a RFE to complete and submit Form I–944 would be approximately $1,141,315 annually.[813]

For filers of form I–539 who are required to complete and submit Form I–944, DHS estimates the opportunity cost of time for completing Form I–539 would also be $161.01 per filer using the average total rate of compensation of $35.78 per hour. In addition, DHS estimates the cost to obtain a credit report and credit score is $19.95 per applicant. DHS estimates the total opportunity cost of time associated with completing Form I–944 would be approximately $28,155,175 annually based on the total population estimate of 174,866 annual filings for Form I–539 and the total cost to obtain a credit report and credit score would be about $3,488,577.[814] In sum, DHS estimates that total cost for Form I–539 applicants who receive a RFE to complete and submit Form I–944 would be approximately $31,643,752 annually.[815]

DHS is unable to estimate the actual number of RFEs that adjudication officers may issue to Form I–129 beneficiaries, Form I–129CW beneficiaries, and Form I–539 filers to submit Form I–944 since such RFEs would be issued on a discretionary basis. However, we are able to present a range of RFEs that could be issued based on total population estimates and the estimated annual cost associated with such RFE. Table 48 presents a range of potential annual costs related to submission of Form I–944 based on the percentage of the maximum number of Form I–129 beneficiaries, Form I–129CW beneficiaries, and Form I–539 applicants who could be issued a RFE. DHS estimates the annual cost if all beneficiaries were issued a RFE for 100 percent of the total population estimate of 336,335 annual filings for Form I–129 would be about $60.1 million. For the total population estimate of 6,307 annual filings for Form I–129CW, DHS estimates the annual cost would be approximately $1.1 million if all beneficiaries were issued a RFE. Moreover, DHS estimates the annual cost if all applicants were issued a RFE for 100 percent of the total population estimate of 336,335 annual filings for Form I–539 would be about $31.6 million.

[809] Calculation: (Form I–944 estimated opportunity cost of time) * (Estimated annual population filing Form I–129) = $161.01 * 336,335 = $54,153,298.35 = $54,153,298 (rounded) annual opportunity cost of time for filing Form I–944. Calculation: (Cost to obtain a credit report and credit score) * (Estimated annual population filing Form I–129) = $19.95 * 336,335 = $6,709,883.25 = $6,709,883 (rounded) annual cost to obtain a credit report and credit score.

[810] Calculation: (Annual opportunity cost of time for filing Form I–944) + (Annual cost to obtain a credit report and credit score for Form I–944) = $54,153,298 + $6,709,883 = $60,863,181 annual total cost for Form I–129 beneficiaries who must file Form I–944.

[811] Calculation for Form I–129CW petition opportunity cost of time to complete Form I–944: ($35.78 per hour * 4.5 hours) = $161.01.

[812] Calculation: (Form I–944 estimated opportunity cost of time) * (Estimated annual population filing Form I–129CW) = $161.01 * 6,307 = $1,015,490.07 = $1,015,490 (rounded) annual opportunity cost of time for filing Form I–944. Calculation: (Cost to obtain a credit report and credit score) * (Estimated annual population filing Form I–129CW) = $19.95 * 6,307 = $125,824.65 = $125,825 (rounded) annual cost to obtain a credit report and credit score.

[813] Calculation: (Annual opportunity cost of time for filing Form I–944) + (Annual cost to obtain a credit report and credit score for Form I–944) = $1,015,490 + $125,825 = $1,141,315 annual total cost for Form I–129CW beneficiaries who must file Form I–944.

[814] Calculation: (Form I–944 estimated opportunity cost of time) * (Estimated annual population filing Form I–539) = $161.01 * 174,866 = $28,155,174.66 = $28,155,175 (rounded) annual opportunity cost of time for filing Form I–944. Calculation: (Cost to obtain a credit report and credit score) * (Estimated annual population filing Form I–539) = $19.95 * 174,866 = $3,488,576.70 = $3,488,577 (rounded) annual cost to obtain a credit report and credit score.

[815] Calculation: (Annual opportunity cost of time for filing Form I–944) + (Annual cost to obtain a credit report and credit score for Form I–944) = $28,155,175 + $3,488,577 = $31,643,752 annual total cost for Form I–539 applicants who must file Form I–944.

Table 48. Estimated Annual Costs for Requests for Evidence (RFE) Issued to Submit Form I-944 with Form I-129 and Form I-539.

	Percentage of Applicants Issued Request for Evidence (RFE) to Submit Form I-944	Estimated Annual Population	Estimated Annual Cost
Form I-129	100%	336,335	$60,863,181
	90%	302,702	$54,776,863
	75%	252,251	$45,647,386
	50%	168,168	$30,431,591
	25%	84,084	$15,215,795
	10%	33,634	$6,086,318
Form I-129CW	100%	6,307	$1,141,315
	90%	5,676	$1,027,184
	75%	4,730	$855,986
	50%	3,154	$570,658
	25%	1,577	$285,329
	10%	631	$114,132
Form I-539	100%	174,866	$31,643,752
	90%	157,379	$28,479,377
	75%	131,149	$23,732,814
	50%	87,433	$15,821,876
	25%	43,716	$7,910,938
	10%	17,487	$3,164,375

Source: USCIS analysis.
Notes: The analysis assumes the average total rate of compensation of $35.78 per hour for filers of Forms I-129, I-129CW, and I-539.

iii. Public Charge Bond

DHS does not currently have a process or procedure in place to accept public charge bonds, though it has the authority to do so. DHS is proposing to amend its regulations and establish a bond process for those seeking adjustment of status to that of a permanent resident who have been deemed likely to become a public charge. A public charge bond may generally be secured by cash or cash equivalents such as cashier's checks or money orders in the full amount of the bond, or may be underwritten by a surety company certified by the Department of Treasury under 31 U.S.C. 9304–9308.[816] DHS approval of the public charge bond and DHS determination of whether the bond has been breached would be based on whether the alien has received public benefits as defined in the proposed rule or whether the alien has breached any other condition imposed as part of the public charge bond.

As discussed elsewhere in the preamble, DHS has the broad authority to prescribe forms of bonds as is deemed necessary for carrying out the Secretary's authority under the provisions of the Act.[817] Additionally, an alien whom DHS has determined to be inadmissible based on public charge grounds may, if otherwise admissible, be admitted at the discretion of the Secretary upon giving a suitable and proper bond.[818] The purpose of issuing a public charge bond is to better ensure that the alien will not become a public charge in the future. If an alien receives public benefits, as defined in proposed 8 CFR 212.21(b), after the alien's adjustment of status to that of a lawful permanent resident, DHS would declare the bond breached. A bond may also be breached if the conditions that are otherwise imposed as part of the public charge bond are breached.[819]

DHS is proposing that public charge bonds would be issued at the Secretary's discretion when an alien seeking adjustment of status has been found to be inadmissible based on public charge grounds. DHS may require an alien to submit a surety bond or cash or cash equivalent, such as a cashier's check or money order, to secure a bond.[820] DHS would notify the alien if he or she is permitted to post a public charge bond and of the type of bond that may be submitted. If DHS accepts a surety bond

[816] *See generally* 8 CFR 103.6. However, USCIS plans to initially allow for only surety bonds only.

[817] *See* INA section 103(a)(3), 8 U.S.C. 1103(a)(3).

[818] *See* INA section 213, 8 U.S.C. 1183.

[819] *See* 8 CFR 213.1(h).

[820] USCIS plans to initially allow surety bonds.

as a public charge bond, DHS would accept only a bond underwritten by surety companies certified by the Department of the Treasury, as outlined in proposed 8 CFR 103.6(b).[821] DHS proposes that the amount of a public charge bond cannot be less than $10,000 annually adjusted for inflation and rounded up to the nearest dollar, but the amount of the bond required would otherwise be determined at the discretion of the adjudication officer. After reviewing an alien's circumstances and finding of inadmissibility based on public charge grounds, an adjudication officer would notify the alien through the issuance of a RFE or a Notice of Intent to Deny (NOID) that a surety bond may be submitted to USCIS.

An individual or entity would submit a public charge bond on behalf of the alien by using the new Public Charge Bond form (Form I–945), and related forms. DHS proposes that it would use Form I–356, Request for Cancellation of Public Charge Bond, as part of a request to cancel a public charge bond.

The proposed rule would require that an alien must complete and submit Form I–407 when the alien or obligor/co-obligor seeks to cancel the public charge bond on account of the alien's permanent departure from the United States. Form I–407 records an alien's abandonment of status as a LPR. When filing Form I–407, an alien abandoning their LPR status is informed of the right to a hearing before an immigration judge who would decide whether the alien lost his or her lawful permanent resident status due to abandonment and that the alien has knowingly, willingly, and affirmatively waived that right. Form I–407 is used by lawful permanent resident aliens who are outside the United States or at a Port of Entry who want to abandon LPR status.

A public charge bond would be considered breached if the alien receives any public benefits, as defined in proposed 8 CFR 212.21, after DHS accepts a public charge bond submitted on that alien's behalf. The bond would also be breached if the alien does not comply with the conditions that are otherwise imposed with the public charge bond.[822] Upon learning of a breach of public charge bond, DHS would notify the obligor that the bond has been declared breached and inform the obligor of the possibility to appeal the determination to the USCIS Administrative Appeals Office (AAO).[823] Notice of Appeal or Motion (Form I–290B) is used to file an appeal or motion to reopen or reconsider certain decisions.

Finally, a public charge bond must be canceled when an alien with a bond dies, departs the United States permanently, or is naturalized or otherwise obtains U.S. citizenship, provided the individual has not received public benefits, as defined in proposed 8 CFR 212.21(c) prior to death, departure, or naturalization (or otherwise obtaining U.S. citizenship), and a request for cancellation has been filed.[824] DHS must also cancel the bond following the fifth anniversary of the admission of the lawful permanent resident provided that he or she files a request for cancellation of the public charge bond and provided that the alien has not received any public benefits, as defined in 8 CFR 212.21, after the alien's adjustment of status to that of a lawful permanent resident. Additionally, the public charge bond must be cancelled if the alien obtains an immigration status that is exempt from public charge inadmissibility after the initial grant of lawful permanent resident status, provided that a request for cancellation of the public charge bond has been filed and provided that the alien did not breach the bond conditions.[825] To have the public charge bond cancelled, an obligor (individual or entity) would request the cancellation of the public charge and as part of the request, submit Form I–356. If DHS determines that the bond cannot be cancelled, the bond remains in place; the obligor may appeal the denial to the AAO by filing Form I–290B.[826] Additionally, a public charge bond may be cancelled by DHS after a suitable substitute has been submitted for an unlimited bond or a bond of limited duration that bears an expiration date. For this type of cancellation, no request to cancel the bond must be filed to allow substitution of another bond, as outlined in proposed 8 CFR 213.[827]

When posting a surety bond, an individual generally pays between 1 percent to 15 percent of the bond amount for a surety company to post a bond.[828] The percentage that an individual must pay may be dependent on the individual's credit score where those with higher credit scores would be required to pay a lower percentage of the bond to be posted. DHS notes that an individual as another possible option for securing a public charge bond may be allowed to submit cash or cash equivalent, such as a cashier's check or money order and agreement.

With the creation of Form I–945, DHS proposes to charge a filing fee of $25.00 to submit a public charge surety bond, which would cover administrative costs of processing the form. DHS estimates the time burden associated with filing Form I–945 is 60 minutes (1.0 hour) per obligor, including the time for reviewing instructions, gathering the required documentation and information, completing the form, preparing statements, attaching necessary documentation, and submitting the form.[829] Therefore, using the total rate of compensation of minimum wage of $10.66 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I–945 would be $10.66 per applicant.[830]

In addition to the opportunity cost of time associated with completing Form I–945, aliens who may be permitted to have a public charge bond posted on their behalf, must secure a surety bond through a surety bond company that is certified by the Department of Treasury, Bureau of Fiscal Service. DHS notes that the public charge bond amount required would be determined at the discretion of an adjudication officer, so long as it is over the minimum amount. However, DHS estimates the cost per obligor would be $35.66 per obligor at minimum, including $25.00 to file Form I–945 and $10.66 per obligor for the opportunity cost of time for completing the form. In addition, each alien posting a public charge bond through a surety company would be required to pay any fees required by the surety company to secure a public charge bond. While the proposed public charge bond process would be new and historical data are

[821] *See* 31 U.S.C. 9304–9308. *See also* Bureau of the Fiscal Service, U.S. Department of Treasury, available at *https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm. See also* proposed 8 CFR 103.6(b)(1) as proposed by ICE, *Procedures and Standards for Declining Surety Immigration Bonds and Administrative Appeal Requirement for Breaches,* 83 FR 25951 (June 5, 2018).

[822] See proposed 8 CFR 213.1(h).

[823] See proposed 8 CFR 213.1(h).

[824] *See* INA section 213, 8 U.S.C. 1183; *see* 8 CFR 103.6(c).

[825] *See* proposed 8 CFR 213.1(d)[Conditions of the bond] and proposed 8 CFR 213.1(h)[Breach].

[826] *See* proposed 8 CFR 213.1(g).

[827] *See* proposed 8 CFR 213.1(f)[Substitution]. Because USCIS does not examine whether the bond could be breached, the substitution does not have to be accompanied with a filing of Form I–356.

[828] For example, see *https://suretybondauthority.com/frequently-asked-questions/* and *https://suretybondauthority.com/learn-more/*. DHS notes that the company cited is for informational purposes only.

[829] Source for immigration bond time burden estimate: Supporting Statement, Immigration Bond, ICE Form I–352, (OMB control number 1653–0022). The PRA Supporting Statement can be found at Question 12 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1653-001.*

[830] Calculation for public charge surety bond opportunity cost of time: ($10.66 per hour * 1.0 hour) = $10.66 per applicant.

not available, DHS estimates that approximately 960 aliens would be eligible to file for a public charge bond annually. Therefore, in sum, DHS estimates the total cost to file Form I–945 would be at minimum about $34,234 annually.[831]

As noted previously, an obligor (individual or a company) or the alien would file Form I–356 as part of a request to cancel a public charge bond. With the creation of Form I–356, DHS proposes to charge a filing fee of $25.00 to request cancellation of a public charge bond, which would cover administrative costs of processing the form. DHS estimates the time burden associated with filing Form I–356 is 45 minutes (0.75 hours) per obligor or alien requesting cancellation of a public charge bond, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the required information. Using the total rate of compensation of minimum wage of $10.66 per hour, DHS estimates the opportunity cost of time for completing and submitting Form I–356 would be $8.00 per filer.[832] Therefore, DHS estimates the cost per filer would be $33.00, including $25.00 to file Form I–356 and $8.00 per obligor or alien for the opportunity cost of time for completing the form. While the proposed public charge bond process would be new and historical data are not available, DHS estimates that approximately 25 aliens would request to cancel a public charge bond annually. Therefore, in sum, DHS estimates the total cost to file Form I–356 would be approximately $825 annually.[833]

The filing fee for Form I–290B is $675 per obligor wishing to file an appeal to challenge the denial of a request to cancel the public charge bond or the breach determination. The fee is set at a level to recover the processing costs to DHS. However, the fee for Form I–290B may be waived using Form I–912 if the party appealing the adverse decision can provide evidence of an inability to pay.[834] In addition, DHS estimates the time burden associated with filing Form I–290B is 1 hour and 30 minutes (1.5 hours) per obligor, including the time for reviewing instructions, gathering the required documentation and information, completing the form, preparing statements, attaching necessary documentation, and submitting the form.[835] Therefore, using the total rate of compensation of minimum wage of $10.66 per hour, DHS estimates the opportunity cost of time for completing Form I–290B would be $15.99 per obligor.[836]

In addition to the filing fee and the opportunity cost of time associated with completing Form I–290B, obligors must bear the cost of postage for sending the Form I–290B package to USCIS. DHS estimates that each obligor will incur an estimated average cost of $3.75 in postage to submit the completed package to USCIS.[837]

Additionally, the proposed public charge bond process would be new and historical data are not available to predict future estimates. Therefore, DHS also is not able to estimate the total annual cost of the proposed public charge bond process. However, DHS estimates the total cost per applicant submitting a bond would be $693.74 for completing and filing Form I–290B, excluding the cost of obtaining a bond.[838]

Finally, the new DHS requirement in this proposed rule that an alien must complete and submit Form I–407 when seeking to cancel the public charge bond upon permanent departure from the United States. However, this proposed rule would not impose additional new costs to Form I–407 filers.

(c) Transfer Payments and Indirect Impacts of Proposed Regulatory Changes

DHS estimates the direct costs of the proposed rule, but also estimates the reduction in transfer payments from the federal and state government to certain individuals who receive public benefits and also discusses certain indirect impacts that would likely occur as a result of the proposed regulatory changes. These indirect impacts are borne by entities that are not specifically regulated by this rule, but may incur costs due to changes in behavior caused by this rule. The primary sources of the reduction in transfer payments from the federal government of this proposed rule would be the disenrollment or foregone enrollment of individuals in public benefits programs. The primary sources of the consequences and indirect impacts of the proposed rule would be costs to various entities that the rule does not directly regulate, such as hospital systems, state agencies, and other organizations that provide public assistance to aliens and their households. Indirect costs associated with this rule include familiarization with the rule for those entities that are not directly regulated but still want to understand the changes in federal and state transfer payments due to this rule.

Moreover, this rule, if finalized, could lead to an additional reduction in transfer payments because some aliens outside the United States who are likely to become a public charge in the United States would not be admitted and therefore would not receive public benefits in the United States. For example, CBP could find that an alien arriving at a port of entry seeking admission, either pursuant to a previously issued visa or as a traveler for whom visa requirements have been waived, is likely to become a public charge if he or she is admitted. However, DHS is not able to quantify the number of aliens who would possibly be denied admission based on a public charge determination pursuant to this proposed rule, but is qualitatively acknowledging this potential impact.

Under the proposed rule, DHS would consider past or current receipt of public benefits, defined in 212.21(b), as identified a heavily weighed factor for purposes of public charge determination. Earlier in the preamble, DHS provides a list and description of public benefits programs the proposed rule identifies for consideration of public charge inadmissibility. Should an individual be found to have received or is currently receiving certain public benefits identified in the proposed rule, he or she may be found likely to become a public charge. Individuals who might choose to disenroll from or forego future enrollment in a public benefits program include foreign-born non-citizens as well as U.S. citizens who are members of mixed-status households.

Table 49 shows the estimated population of public benefits recipients who are members of households that

[831] Calculation: $35.66 (cost per obligor to file Form I–945) * 960 (estimated annual population who would file Form I–945) = $34,233.60 = $34,234 (rounded) annual total cost to file Form I–945.

[832] Calculation for opportunity cost of time for completing Form I–356: ($10.66 per hour * 0.75 hours) = $7.995 = $8.00 (rounded) per applicant.

[833] Calculation: $33.00 (cost per obligor to file Form I–356) * 25 (estimated annual population who would file Form I–356) = $825.00 annual total cost to file Form I–356.

[834] *See* 8 CFR 103.7(c).

[835] Source for notice for appeal or motion time burden estimate: Supporting Statement for Notice of Appeal or Motion (Form I–290B) (OMB control number 1615–0095). The PRA Supporting Statement can be found at Question 12 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-002.*

[836] Calculation for appeal or motion opportunity cost of time: ($10.66 per hour * 1.5 hours) = $15.99 per applicant.

[837] Source for notice for appeal or motion time burden estimate: Supporting Statement for Notice of Appeal or Motion (Form I–290B) (OMB control number 1615–0095). The PRA Supporting Statement can be found at Question 13 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201609-1615-002.*

[838] Calculation: $674 filing fee + $15.99 opportunity cost of time + $3.75 postage cost = $693.74 per applicant.

include foreign-born non-citizens. The table also shows estimates of the number of households with at least 1 foreign-born non-citizen family member that may have received public benefits.[839,840] Based on the number of households with foreign-born non-citizen family members, DHS estimated the number of public benefits recipients who are members of households that include foreign-born non-citizens that may have received benefits using the U.S. Census Bureau's estimated average household size for foreign-born households.[841 842]

[839] *See* U.S. Census Bureau. *American Community Survey 2016 Subject Definitions.* Available at *https://www2.census.gov/programs-surveys/acs/tech_docs/subject_definitions/2016_ACSSubjectDefinitions.pdf.* Accessed June 18, 2018. The foreign-born population includes anyone who was not a U.S. citizen or a U.S. national at birth, which includes respondents who indicated they were a U.S. citizen by naturalization or not a U.S. citizen. The ACS questionnaires do not ask about immigration status, but uses responses to determine the U.S. citizen and non-U.S. citizen populations as well as to determine the native and foreign-born populations. The population surveyed includes all people who indicated that the United States was their usual place of residence on the survey date. The foreign-born population includes naturalized U.S. citizens, lawful permanent residents (*i.e.* immigrants), temporary migrants (*e.g.,* foreign students), humanitarian migrants (*e.g.,* refugees), and unauthorized migrants (*i.e.* people illegally present in the United States.

[840] To estimate the number of households with at least 1 foreign-born non-citizen family member that have received public benefits, DHS calculated the overall percentage of total U.S. households that are foreign-born non-citizen as 6.97 percent. Calculation: [22,214,947 (Foreign-born non-citizens)/318,558,162 (Total U.S. population)] * 100 = 6.97 percent. *See* U.S. Census Bureau American FactFinder Database. ''S0501: Selected Characteristics of the Native and Foreign-born Populations 2012–2016 American Community Survey (ACS) 5-year Estimates.'' Available at *https://factfinder.census.gov/.* Accessed June 16, 2018.

[841] *See* U.S. Census Bureau American FactFinder Database. ''S0501: Selected Characteristics of the Native and Foreign-born Populations 2012–2016 American Community Survey (ACS) 5-year Estimates.'' Available at *https://factfinder.census.gov/.* Accessed June 16, 2018. The average foreign-born household size is reported as 3.35 persons. DHS multiplied this figure by the estimated number of households with at least 1 foreign-born non-citizen receiving benefits to estimate the population of foreign-born non-citizen receiving benefits.

[842] In this analysis, DHS uses the American Community Survey (ACS) to develop population estimates along with beneficiary data from each of the benefits program. DHS recognizes that in other places in this preamble, the SIPP data is used rather than the ACS data, which may cause differences in estimates. DHS notes that the ACS data was used for the purposes of this analysis because it provided a cross-sectional survey based on a random sample of the population each year including current immigration classifications. Both surveys reflect substantial reliance by aliens on the public benefits included in the proposed rule.

Table 49. Estimated Population of Public Benefits Recipients Who Are Members of Households that Include Foreign-Born Non-Citizens.

Public Benefits Program	Average Annual Total Number of Recipients[1]	Households that May Be Receiving Benefits[2]	Households with at Least 1 Foreign-Born Non-Citizen Who May Be Receiving Benefits[3]	Public Benefits Recipients Who Are Members of Households Including Foreign-Born Non-Citizens[4]
Medicaid[5]	64,281,954	24,349,225	1,697,141	5,685,422
Low Income Subsidy (LIS) for Medicare Part D Prescription Drug Coverage[6]	12,100,000	4,583,333	319,458	1,070,185
Supplemental Nutrition Assistance Program (SNAP)[7]	45,294,831	22,195,369	1,547,017	5,182,508
Temporary Assistance for Needy Families (TANF)[8]	3,449,124	1,306,486	91,062	305,058
Supplemental Security Income (SSI)[9]	8,302,356	3,144,832	219,195	734,303
Federal Rental Assistance[10]	*N/A*	5,051,000	352,055	*N/A*

Sources and Notes: USCIS analysis of data provided by the federal agencies that administer each of the listed public benefits program or research organizations.

[1] Figures for the average annual total number of recipients are based on 5-year averages, whenever possible, for the most recent 5-year period for which data are available. For more information, please see the document "Economic Analysis Supplemental Information for Analysis of Public Benefits Programs" in the online docket for the proposed rule.

[2] DHS estimated the number of households by dividing the number of people that received public benefits by the U.S. Census Bureau's estimated average household size of 2.64 for the U.S. total population. *See* U.S. Census Bureau American FactFinder Database. "S0501: Selected Characteristics of the Native and Foreign-born Populations 2012 – 2016 American Community Survey (ACS) 5-year Estimates." Available at https://factfinder.census.gov/. Accessed June 16, 2018. Note that HUD Rental Assistance and HUD Housing Choice Vouchers programs report data on the household level. Therefore, DHS did not use this calculation to estimate the average household size and instead used the data as reported.

[3] To estimate the number of households with at least 1 foreign-born non-citizen receiving benefits, DHS multiplied the estimated number of households receiving benefits in the United States by 6.97 percent, the foreign-born non-citizen population as a percentage of the U.S. total population using U.S. Census Bureau population estimates. *See* Ibid.

[4] To estimate the population of public benefits recipients who are members of households that include foreign-born non-citizens, DHS multiplied the estimated number of households with at least 1 foreign-born non-citizen receiving benefits by the average household size of 3.35 for those who are foreign-born using the U.S. Census Bureau's estimate. *See* Ibid.

[5] Medicaid – *See* U.S. Department of Health and Human Services (HHS), Centers for Medicare & Medicaid (CMS). *Monthly Medicaid & CHIP Application, Eligibility Determination, and Enrollment Reports & Data.* Available at https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/monthly-reports/index.html. Accessed May 31, 2018. Note that each annual total was calculated by averaging the monthly enrollment population over each year. The numbers that were used for the average can be found in Table 1A: Medicaid and CHIP for each month, using the number listed as the "Total Across All States." Also, note that per enrollee Medicaid costs vary by eligibility group and State.

[6] LIS – *See* U.S. Department of Health and Human Services (HHS), Centers for Medicare & Medicaid (CMS). *2018 Annual*

Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds. Table IV.B9.—Incurred Reimbursement Amounts per Enrollee for Part D Expenditures, p.145. Available at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/Downloads/TR2018.pdf. Accessed July 31, 2018. The LIS number of recipients receiving benefits includes LIS in Medicare Advantage Prescription Drug (MAPD-LIS) and LIS in stand-alone Medicare Part D prescription drug plans (PDP-LIS). Note that spending on LIS beneficiaries varies by individual.

[7] SNAP – *See* U.S. Department of Agriculture, Food and Nutrition Service, Supplemental Nutrition Assistance Program. "Persons, Households, Benefits, and Average Monthly Benefit per Person & Household." Available at https://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap. Accessed May 31, 2018.

[8] TANF – *See* U.S. HHS, Office of Family Assistance. "TANF Caseload Data." Available at https://www.acf.hhs.gov/ofa/resource/tanf-caseload-data-2016. Accessed June 11, 2018. Note: The number of participants are listed for the fiscal year, not calendar year since the dollar amount of assistance received is only presented for fiscal years.

[9] SSI – *See* U.S. Social Security Administration, Office of Research, Statistics, & Policy Analysis. *Annual Report of the Supplemental Security Income Program, 2017.* Table IV.B9, p. 46. Available at: https://www.ssa.gov/oact/ssir/SSI17/ssi2017.pdf. Accessed July 31, 2018.; *See also* U.S. Social Security Administration, Office of Research, Statistics, & Policy Analysis. "SSI Monthly Statistics, January 2018." Available at https://www.ssa.gov/policy/docs/statcomps/ssi_monthly/2018-01/table01.html. Accessed July 31, 2018.

[10] Federal Rental Assistance and HUD Housing Choice Vouchers – Data on annual total recipient households: *See* Center on Budget and Policy Priorities. National and State Housing Fact Sheets & Data. See Federal Rental Assistance, "Download the Data" and Housing Choice Voucher Program, "Download the Data." Available at https://www.cbpp.org/research/housing/national-and-state-housing-fact-sheets-data. Accessed Aug. 15, 2018. Note that "Federal Rental Assistance" includes HUD Section 8 Project-based Rental Assistance, HUD Section 8 Housing Choice Vouchers, HUD Public Housing, HUD Section 202/811, and USDA Section 521.

Consistent data are not available on the number of individuals receiving public benefits who are members of households that include foreign-born non-citizens. In order to estimate the economic impact of the proposed rule, it is necessary to estimate the size of this population. To arrive at the population estimates as shown in table 49, DHS first calculated the average annual number of people who received benefits over a 5-year period whenever possible as reported by the benefits granting agencies.[843] However, data for public benefits programs do not identify the nativity status of benefits recipients, *i.e.,* foreign-born or U.S. native. Therefore, DHS estimated the foreign-born non-citizen population by converting the average annual number of benefits recipients using the U.S. Census Bureau's American Community Survey (ACS) estimates. First, DHS estimated the number of households receiving benefits. Then, DHS estimated the number of households with at least one foreign-born non-citizen receiving benefits based on the percentage of foreign-born non-citizens compared to the total U.S. population. Finally, the number of public benefits recipients who are members of households that include foreign-born non-citizens receiving benefits was estimated based on the average household size of households with at least one foreign-born individual.

For each of the public benefits programs analyzed, DHS estimated the number of households by dividing the number of people that received public benefits by the U.S. Census Bureau's estimated average household size of 2.64 for the U.S. total population.[844] According to the U.S. Census Bureau population estimates, the foreign-born non-citizen population is 6.97 percent of the U.S. total population.[845] While there may be some variation in the percentage of foreign-born non-citizens who receive public benefits, including depending on which public benefits program one considers, DHS assumes in this economic analysis that the percentage holds across the populations of the various public benefits programs. Therefore, to estimate the number of households with at least one foreign-born non-citizen who receives public benefits, DHS multiplied the estimated number of households for each public benefits program by 6.97 percent. This step may introduce uncertainty into the estimate because the percentage of households with at least one foreign-born non-citizen may be greater or less than the percentage of foreign-born non-citizens in the population. However, if foreign-born non-citizens tend to be grouped together in households, then an overestimation of households that include at least one FBNC is more likely. DHS then estimated the number of foreign-born non-citizens who received benefits by multiplying the estimated number of households with at least one foreign-born non-citizen who receives public benefits by the U.S. Census Bureau's estimated average household size of 3.35 for those who are foreign-born.[846]

In this analysis, DHS uses the American Community Survey (ACS) to develop population estimates along with beneficiary data from each of the benefits program. DHS recognizes that in other places in this preamble, the SIPP data is used rather than the ACS data, which may cause differences in estimates. DHS notes that the ACS data was used for the purposes of this analysis because it provided a cross-sectional survey based on a random sample of the population each year including current immigration classifications. Both surveys reflect

[843] DHS estimated the annual average number of people who receive public benefits based on 5-year averages generally over the period fiscal year 2013–2017, including LIS, SNAP, and SSI. DHS calculated 5-year averages over the period fiscal year 2012–2016 for Medicaid and TANF.

[844] U.S. Census Bureau American FactFinder Database. "S0501: Selected Characteristics of the Native and Foreign-born Populations 2012–2016 American Community Survey (ACS) 5-year Estimates." Available at *https://factfinder.census.gov/*. Accessed June 16, 2018.

[845] Ibid. Calculation: [22,214,947 (Foreign-born non-citizens)/318,558,162 (Total U.S. population)] * 100 = 6.97 percent.

[846] U.S. Census Bureau American FactFinder Database. "S0501: Selected Characteristics of the Native and Foreign-born Populations 2012–2016 American Community Survey (ACS) 5-year Estimates." Available at *https://factfinder.census.gov/*. Accessed June 16, 2018.

substantial reliance by aliens on the public benefits included in the proposed rule. DHS welcomes comments on the use of data from the American Community Survey (ACS) to develop our estimates, and comments on whether other data sources would be useful in these calculations.

In the following analysis, the population estimate will be adjusted to reflect the percentage of aliens intending to apply for adjustment of status, but not to reflect the possibility that less than 100 percent of their household members will be sufficiently concerned about potential consequences of the policies proposed in this rule to disenroll or forgo enrollment in public benefits. The resulting transfer estimates will therefore have a tendency toward overestimation. DHS welcomes comment, especially concerning data or other evidence, that would allow for refinement of the estimate of the percentage of household members who would be dissuaded from public benefits participation.

DHS anticipates that a number of individuals would be likely to disenroll or forego enrollment in a public benefits program as a result of the proposed rule, which would result in a reduction of transfer payments from the federal government to such individuals. However, to estimate the economic impact of disenrollment or foregone enrollment from public benefits programs, it is necessary to estimate the average annual amount of public benefits a person receives for each public benefits program included in this economic analysis. Therefore, DHS estimated the average annual benefit received per person for each public benefit program in table 50. The average benefit per person is calculated for each public benefit program by dividing the average annual program payments for on public benefits by the average annual total number of recipients.[847] To the extent that data are available, these estimates are based on 5-year averages.

[847] DHS notes that the amounts presented may not account for overhead costs associated with administering each of these public benefits programs. The costs presented are based on amounts recipients have received in benefits as reported by benefits-granting agencies.

Table 50. Estimated Average Annual Benefit per Person, by Public Benefit Program

Public Benefits Program	Average Annual Total Number of Recipients	Average Annual Public Benefits Payments	Average Annual Benefit per Person or Household[1]
Medicaid[2]	64,281,954	$477,395,691,240	$7,426.59
Low Income Subsidy (LIS) for Medicare Part D Prescription Drug Coverage[3]	12,100,000	$25,400,000,000	$2,099.17
Supplemental Nutrition Assistance Program (SNAP)[4]	45,294,831	$69,192,042,274	$1,527.59
Temporary Assistance for Needy Families (TANF)[5]	3,449,124	$4,389,219,525	$1,272.56
Supplemental Security Income (SSI)[6]	8,302,356	$54,743,370,400	$6,593.72
Federal Rental Assistance[7]	5,051,000	$41,020,000,000	$8,121.16

Sources and notes: USCIS analysis of data provided by the federal agencies that administer each of the listed public benefits program or research organizations.

Note that figures for the average annual total number of recipients and the annual total public benefits payments are based on 5-year averages, whenever possible, for the most recent 5-year period for which data are available. For more information, please see the document "Economic Analysis Supplemental Information for Analysis of Public Benefits Programs" in the online docket for the proposed rule.

[1] Calculation: Average Annual Benefit per Person = (Average Annual Public Benefits Payments) / (Average Annual Total Number of Recipients). Note: Calculations may not be exact due to rounding.

[2] Medicaid – Data on annual program expenditure on public benefits: *See* U.S. Department of Health and Human Services (HHS), Centers for Medicare & Medicaid (CMS). *Expenditure Reports From MBES/CBES*. Available at https://www.medicaid.gov/medicaid/finance/state-expenditure-reporting/expenditure-reports/index.html. Accessed Aug. 2, 2018. Note that per enrollee Medicaid costs vary by eligibility group and State.

[3] LIS – Data on annual program expenditure on public benefits: *See* Ibid. Table IV.B10— Aggregate Part D Reimbursement Amounts on an Incurred Basis, p.145. Available at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/Downloads/TR2018.pdf. Accessed July 31, 2018. Note that spending on LIS beneficiaries varies by individual.

[4] SNAP – Data on the annual program expenditure on public benefits: *See* U.S. Department of Agriculture, Food and Nutrition Service, Supplemental Nutrition Assistance Program. "Persons, Households, Benefits, and Average Monthly Benefit per Person & Household." Available at https://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap. Accessed May 31, 2018.

[5] TANF – Data on annual program expenditure on public benefits: *See* U.S. HHS, Office of Family Assistance. "TANF Financial Data - FY 2016." See Table A.1.: Federal TANF and State MOE Expenditures Summary by ACF-196 Spending Category, Federal Funds for Basic Assistance. Available at https://www.acf.hhs.gov/ofa/resource/tanf-financial-data-fy-2016. Accessed June 11, 2018. Note that the link shows fiscal year 2016 TANF financial data, but links to financial data for other fiscal years can also be accessed.

[6] SSI – Data on the annual program expenditure on public benefits: *See* U.S. Social Security Administration, Office of Research, Statistics, & Policy Analysis. *Annual Report of the Supplemental Security Income Program, 2017*. Table IV.B9—SSI Recipients with Federally Administered Payments in Current-Payment

Status, p. 46 (recipients) and Table IV.C1.—SSI Federal Payments, p. 47. Available at: https://www.ssa.gov/oact/ssir/SSI17/ssi2017.pdf. Accessed July 31, 2018.; *See also* U.S. Social Security Administration, Office of Research, Statistics, & Policy Analysis. "SSI Monthly Statistics, January 2018." Available at https://www.ssa.gov/policy/docs/statcomps/ssi_monthly/2018-01/table01.html. Accessed July 31, 2018.

[7] Federal Rental Assistance and HUD Housing Choice Vouchers – Data on annual total expenditure on public benefits: *See* Center on Budget and Policy Priorities. *National and State Housing Fact Sheets & Data.* Federal Rental Assistance, "Download the Data" and Housing Choice Voucher Program, "Download the Data." Available at https://www.cbpp.org/research/housing/national-and-state-housing-fact-sheets-data. Accessed Aug. 15, 2018.

Research shows that when eligibility rules change for public benefits programs there is evidence of a ''chilling effect'' that discourages immigrants from using public benefits programs for which they are still eligible. For example, the U.S. Department of Agriculture (USDA) published a study shortly after the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA) took effect and found that the number of people receiving food stamps fell by over 5.9 million between summer 1994 and summer 1997.[848] The study notes that enrollment in the food stamps program was falling during this period, possibly due to strong economic growth, but the decline in enrollment was steepest among legal immigrants. Under PRWORA, legal immigrants were facing significantly stronger restrictions through which most would become ineligible to receive food stamps. The study also found that enrollment of legal immigrants in the food stamps program fell by 54 percent. Moreover, another study found evidence of a ''chilling effect'' due to enactment of PRWORA where non-citizen enrollment in public benefits programs declined more steeply than U.S. citizen enrollment over the period 1994 to 1997.[849] Overall, the study found that welfare enrollment in households headed by foreign-born individuals fell by about 21 percent.

To estimate the total transfer payments, DHS calculated the number of individuals who are likely to disenroll from or forego enrollment in a public benefit program equal to 2.5 percent of the number of foreign-born non-citizens previously estimated. While previous studies examining the effect of PRWORA in 1996 showed a reduction in enrollment from 21 to 54 percent, it is unclear how many individuals would actually disenroll from or forego enrollment in public benefits programs due to the proposed rule. The previous studies had the benefit of retrospectively analyzing the chilling effect of PRWORA using actual enrollment data, instead of being limited to prospectively estimating the number of individuals who may disenroll or forego enrollment in the affected public benefits programs. This economic analysis must rely on the latter. Moreover, PRWORA was directly changing eligibility requirements, whereas this proposed rule, if finalized, would change enrollment incentives. Therefore, DHS estimates this annual rate based on the number of foreign-born immigrants seeking to adjust status as a percentage of the foreign-born non-citizen population in the United States, under the assumption that the population likely to disenroll from or forego enrollment in public benefits programs would be individuals intending to apply for adjustment of status or individuals who have adjusted status within the past five years. DHS notes that this is likely an overestimate since it is unknown how many foreign-born non-citizens adjusting status are actually using public benefits. For the 5-fiscal year period 2012–2016, the foreign-born non-citizen population was estimated to be 22,214,947.[850] During the same 5-fiscal year period, 544,246 immigrants adjusted status annually in the United States on average.[851] [852] Therefore, DHS assumes a 2.5 percent rate of disenrollment or foregone enrollment across each of the public benefits programs since the individuals intending to adjust status are most likely to disenroll from or forego enrollment in public benefits programs in order to preserve their chances of adjusting status.[853] Table 51 shows the estimated population that would be likely to disenroll or forego enrollment in a public benefits program as a result of this proposed rule.

[848] *See* Genser, J. (1999). *Who is leaving the Food Stamps Program: An analysis of Caseload Changes from 1994 to 1997.* Washington, DC: U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition, and Evaluation. Available at *https://www.fns.usda.gov/snap/who-leaving-food-stamp-program-analysis-caseload-changes-1994-1997.* (Accessed June 17, 2018).

[849] *See* Fix, M.E., and Passel, J.S. (1999). *Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994–1997.* Washington, DC: The Urban Institute. Available at *https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform.* (Accessed June 17, 2018).

[850] U.S. Census Bureau American FactFinder Database. ''S0501: Selected Characteristics of the Native and Foreign-born Populations 2012–2016 American Community Survey (ACS) 5-year Estimates. Available at *https://factfinder.census.gov/.* Accessed June 16, 2018.

[851] See United States Department of Homeland Security. Yearbook of Immigration Statistics: 2016, Table 7. Washington, DC, U.S. Department of Homeland Security, Office of Immigration Statistics, 2017. Available at *https://www.dhs.gov/immigration-statistics/yearbook/2016* (accessed Jan. 24, 2018).

[852] Note that the population seeking extension of stay or change of status were not included in the calculation due to the nature of the populations involved, namely people employed in jobs and their dependents. DHS assumes that these individuals generally do not receive public benefits and have means of supporting themselves and their dependents.

[853] Calculation, based on 5-year averages over the period fiscal year 2012–2016: (544,246 adjustments of status/22,214,947 estimated foreign-born non-citizen population) * 100 = 2.45 = 2.5% (rounded).

Table 51. Estimated Population of Members of Households Including Foreign-Born Non-Citizens that May Be Receiving Public Benefits and Likely to Disenroll or Forego Enrollment in a Public Benefits Program.

Public Benefits Program	Public Benefits Recipients Who Are Members of Households Including Foreign-Born Non-Citizens	Households with At Least 1 Foreign-Born Non-Citizen Receiving Benefits	Members of Households Including Foreign-Born Non-Citizens Who May Be Receiving Benefits Based On A 2.5% Rate of Disenrollment or Foregone Enrollment[1]	Households with At Least 1 Foreign-Born Non-Citizen Who May Be Receiving Benefits Based On A 2.5% Rate of Disenrollment or Foregone Enrollment[1]
Medicaid[2]	5,685,422		142,136	
Low Income Subsidy (LIS) for Medicare Part D Prescription Drug Coverage[3]	1,070,185		26,755	
Supplemental Nutrition Assistance Program (SNAP)	5,182,508		129,563	
Temporary Assistance for Needy Families (TANF)	305,058		7,626	
Supplemental Security Income (SSI)	734,303		18,358	
Federal Rental Assistance		352,055		8,801
Totals	**12,977,476**	**352,055**	**324,438**	**8,801**

Source : USCIS analysis.
Notes:
[1] DHS estimates the rate of disenrollment/foregone enrollment based on the number of foreign-born immigrants seeking to adjust status as a percentage of the foreign-born non-citizen population in the United States. Calculation: (Individuals adjusting status / Estimated foreign-born non-citizen population) *100 = Rate of disenrollment/foregone enrollment. To estimate the population that could choose to disenroll/forego enrollment, DHS multiplied the population of public benefits recipients who are members of households including foreign-born non-citizens receiving benefits or the number of households with at least 1 foreign-born non-citizen by 2.5 percent.
[2] Per enrollee Medicaid costs vary by eligibility group and State.
[3] Spending on LIS beneficiaries varies by individual.

Table 52 shows the estimated population that would be likely to disenroll from or forego enrollment in public benefits programs due to the provisions of the proposed rule and the total reduction in transfer payments paid by the federal government to this population. The table also presents the previously estimated average annual benefit per person who received benefits for each of the public benefits programs.[854] This proposed rule would result in a reduction of transfer payments from the federal government to those foreign-born non-citizens and associated household members who choose to disenroll from or forego future enrollment in a public benefits program. Transfer payments are payments from one group to another that do not directly affect total resources available to society.[855] DHS estimates the total annual reduction in transfer payments paid by the federal government to individuals who may choose to disenroll from or forego enrollment in public benefits programs is approximately $1.51 billion for an estimated 324,438 individuals and 14,532 households across the public benefits programs examined.

[854] As previously noted, the average annual benefits per person amounts presented may not account for overhead costs associated with administering each of these public benefits programs since they are based on amounts recipients have received in benefits as reported by benefits-granting agencies. Therefore, the costs presented may underestimate the total amount of transfer payments to the federal government.

[855] *See* Office of Management and Budget (OMB). *Circular A–4.* September 17, 2003. Available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

Table 52. Total Estimated Reduction in Transfer Payments Paid By the Federal Government Due to Disenrollment or Foregone Enrollment in Public Benefits Programs.

Public Benefits Program	Public Benefits Recipients Who Are Members of Households Including Foreign-Born Non-Citizens Based On A 2.5% Rate of Disenrollment or Foregone Enrollment	Households Receiving Benefits with At Least 1 Foreign-Born Non-Citizen Based On A 2.5% Rate of Disenrollment or Foregone Enrollment	Average Annual Benefit per Person or Household	Estimated Reduction in Transfer Payments Based On A 2.5% Rate of Disenrollment or Foregone Enrollment
Medicaid[1]	142,136		$7,426.59	$1,055,585,796
Low Income Subsidy (LIS) for Medicare Part D Prescription Drug Coverage[2]	26,755		$2,099.17	$56,163,388
Supplemental Nutrition Assistance Program (SNAP)	129,563		$1,527.59	$197,919,143
Temporary Assistance for Needy Families (TANF)	7,626		$1,272.56	$9,704,543
Supplemental Security Income (SSI)	18,358		$6,593.72	$121,047,512
Federal Rental Assistance		8,801	$8,121.16	$1,055,585,796
Totals	**324,438**	**8,801**	*N/A*	**$1,511,894,711**

Source: USCIS analysis.
Notes:
[1] Neither HHS nor DHS are able to disaggregate emergency and non-emergency Medicaid expenditures. Therefore, this rule considers overall Medicaid expenditures. Note that per enrollee Medicaid costs vary by eligibility group and State.
[2] Note that spending on LIS beneficiaries varies by individual.

Based on the rate of disenrollment or foregone enrollment calculated, DHS estimated the annual reduction in the amount of transfer payments paid by the federal government to foreign-born non-citizens and members of their households by multiplying the average annual benefits per person by the population of foreign-born non-citizens who are likely to disenroll from or forego enrollment in a public benefit program.[856]

However, DHS notes there may be additional reductions in transfer payments that we are unable to quantify. As these estimates reflect only federal financial participation in programs where states may share costs, there may also be additional reductions in transfer payments from states to individuals who may choose to disenroll from or forego enrollment in a public benefits program. Because state participation in these programs may vary depending on the type of benefit provided, DHS was unable to quantify the impact of state transfers. For example, the federal government funds all SNAP food expenses, but only 50 percent of allowable administrative costs for regular operating expenses.[857] Similarly, Federal Medical Assistance Percentages (FMAP) in some HHS programs like Medicaid can vary from between 50 percent to an enhanced rate of 100 percent in some cases. However, assuming that the state share of federal financial participation (FFP) is 50 percent, then the 10-year discounted amount of state transfer payments of this proposed policy would be approximately $9.95 billion at a 3 percent discount rate and about $8.2 billion at a 7 percent discount rate. Finally, DHS recognizes that reductions in federal and state transfers under federal benefit programs may have downstream and upstream impacts on state and local economies, large and small businesses, and individuals. For example, the rule might result in reduced revenues for healthcare providers participating in Medicaid, pharmacies that provide prescriptions to participants in the Medicare Part D low-

[856] DHS analyzes federal funds only as we are not readily able to track down and identify the state funds.

[857] Per section 16(a) of the Food and Nutrition Act of 2008. *See also* USDA, FNS Handbook 901, p. 41 available at: *https://fns-prod.azureedge.net/sites/default/files/apd/FNS_HB901_v2.2_internet_Ready_Format.pdf*.

income subsidy (LIS) program, companies that manufacture medical supplies or pharmaceuticals, grocery retailers participating in SNAP, agricultural producers who grow foods that are eligible for purchase using SNAP benefits, or landlords participating in federally funded housing programs.

However, the rate of disenrollment or foregone enrollment may result in an underestimate, to the extent that covered aliens may choose to disenroll from or forego enrollment in public benefits programs sooner than in the same year that the alien applies for adjustment of status. For instance, because DHS would consider past receipt of public benefits within at least 36 months as a heavily weighed factor under the proposed rule, prospective adjustment applicants may choose to disenroll or forego enrollment at least 36 months in advance of such application. Some aliens and members of their households may adjust their behavior in anticipation of eventually applying for adjustment of status, but not know exactly when they will submit such applications. In addition, because the proposed rule also affects inadmissibility determinations in contexts aside from adjustment of status, some percentage of the alien population is likely to disenroll from or forego enrollment in covered programs, for such non-adjustment-related purposes as well.

On the other hand, the 2.5 percent rate of disenrollment or foregone enrollment estimate may result in an overestimate, insofar as it does not correct for those categories of aliens (such as asylees and refugees) that are exempt from the public charge ground of inadmissibility and assumes 100% are using public benefits which may not be true. DHS expects that the rule's effects on public benefit program enrollment and disenrollment by such categories of aliens and their households would be less pronounced. Additionally, some prospective adjustment applicants and associated household members may not choose to disenroll or forego public benefits because they may have other factors that counterbalance acceptance of public benefits when looked at in the totality of circumstances. DHS welcomes comments on the appropriate methodology for estimating the rate of disenrollment or foregone enrollment, including ways to improve upon the DHS methodology. DHS welcomes public comments on the estimation of the disenrollment or foregone enrollment rate used in this analysis.

However, in order to examine the impact if prospective adjustment applicants chose to disenroll or forego enrollment in public benefits at least 36 months in advance, DHS conducted a sensitivity analysis based on this issue of the proximity of time to a review of public charge inadmissibility. In such cases, DHS would consider past receipt of public benefits within at least 36 months (3 years) as a heavily weighed negative factor under the proposed rule and that a prospective adjustment applicant may choose to disenroll or forego enrollment for at least 36 months in advance of such application. Table 53 presents the potential range of the population who may disenroll from or forego enrollment in public benefits programs as well as the potential total reduction in transfer payments paid by the federal government to this population. DHS estimates that the population range of foreign-born non-citizens who may disenroll from or forego enrollment in public benefits programs would range from approximately 333,239 to 999,717. In addition, the estimated reduction in transfer payments paid by the federal government to this population ranges from about $1.51 billion to $4.53 billion. For this economic analysis, the primary estimate upon which DHS bases its analysis is the 1-year estimate, as shown below in the table. However, DHS welcomes the public to comment on DHS's use of the 1-year estimate as its primary estimate as well as whether using the 3-years estimate is a more appropriate estimate to use as the primary estimate.

Table 53. Estimated Annual Range of the Foreign-born Non-citizen Population Who May Disenroll from or Forego Enrollment in Public Benefits Programs and the Reduction in Transfer Payments.

Years Prior to Application	Households or Public Benefits-Receiving Members of Households with At Least 1 Foreign-Born Non-Citizen Based On A 2.5% Rate of Disenrollment or Foregone Enrollment	Estimated Reduction in Transfer Payments to Based On A 2.5% Rate of Disenrollment or Foregone Enrollment
1 Year	333,239	$1,511,894,711
2 Years	666,478	$3,023,789,422
3 Years	999,717	$4,535,684,133

Source: USCIS analysis.

DHS presents this range since it is possible that the number of people who may disenroll from or forego enrollment in public benefits programs in one year could be as many as the combined three-year total of people who may disenroll or forego enrollment. Because DHS plans to heavily weigh the receipt of public benefits within the past 36 months as a negative factor, individuals may begin to disenroll or forego enrollment in public benefits programs as early as three years prior to applying for adjustment of status. As a result, the annual reduction in transfer payments could range between the three estimates presented in table 53.

Another source of impacts of the proposed rule would be costs to various individuals and other entities associated with familiarization with the provisions

of the rule. Familiarization costs involve the time spent reading the details of a rule to understand its changes. A foreign-born non-citizen (such as those contemplating disenrollment or foregoing enrollment in a public benefits program) might review the rule to determine whether they are subject to the provisions of the proposed rule. To the extent an individual or entity that is directly regulated by the rule incurs familiarization costs, those familiarization costs are a direct cost of the rule. In addition to those being directly regulated by the rule, a wide variety of other entities would likely choose to read the rule and also incur familiarization costs. For example, immigration lawyers, immigration advocacy groups, health care providers of all types, non-profit organizations, non-governmental organizations, and religious organizations, among others, may want to become familiar with the provisions of this proposed rule. DHS believes such non-profit organizations and other advocacy groups might choose to read the rule in order to provide information to those foreign-born non-citizens and associated households that might be impacted by a reduction in federal transfer payments. Familiarization costs incurred by those not directly regulated are indirect costs. DHS estimates the time that would be necessary to read the rule would be approximately 8 to 10 hours per person, resulting in opportunity costs of time. An entity, such as a non-profit or advocacy group, may have more than one person who reads the rule.

In addition, the proposed rule may impose costs that DHS is unable to quantify. Many federal agencies, such as USDA in administering the SNAP program, may need to update and re-write guidance documents or would need to update forms used. Moreover, there may be additional unquantified costs that state and local government may incur associated with similar activities. At each level of government, it will also be necessary to prepare training materials and retrain staff. Such changes will require staff time and have associated costs.

There are a number of consequences that could occur because of follow-on effects of the reduction in transfer payments identified in the proposed rule. DHS is providing a listing of the primary non-monetized potential consequences of the proposed rule below. Disenrollment or foregoing enrollment in public benefits program by aliens otherwise eligible for these programs could lead to:

- Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence;
- Increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment;
- Increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated;
- Increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient; and
- Increased rates of poverty and housing instability; and
- Reduced productivity and educational attainment.

DHS notes that the proposed rule is likely to produce various other unanticipated consequences and indirect costs. For example, community based organizations, including small organizations, may provide charitable assistance, such as food or housing assistance, for individuals who forego enrollment in public benefit programs. DHS requests comments on other possible consequences of the rule and appropriate methodologies for quantifying these non-monetized potential impacts.

(d) Discounted Direct Costs and Reduced Transfer Payments

To compare costs over time, DHS applied a 3 percent and a 7 percent discount rate to the total estimated costs associated with the proposed rule. Table 54 presents a summary of the quantified direct costs and reduced transfer payments from the federal government included in the proposed rule. The summary table presents costs in undiscounted dollars as well as dollars discounted at 3 percent and 7 percent rates over a 10-year period.

Table 54. Summary of Estimated Direct Costs and Reduced Transfer Payments of the Proposed Rule.

	Direct Costs		Reduced Transfer Payments[1]	
	Annual Cost	Costs over 10-year Period	Annual Transfers	Transfers over 10-year Period
Total Undiscounted Costs	$45,313,422 to $129,596,845	$453,134,220 to $1,295,968,450	$2,267,842,067	$22,678,420,670
Total Costs at 3 Percent Discount Rate		$386,532,679 to $1,105,487,375		$19,345,152,833
Total Costs at 7 Percent Discount Rate		$318,262,513 to $910,234,008		$15,928,373,680

Source: USCIS analysis.

Note:

[1] The amount of transfer payments presented includes the estimated amounts of transfer payments to the federal government and to state governments from foreign-born non-citizens and their households who may disenroll or forego enrollment in public benefits programs. DHS assumes that the state governments' share of the total amount of transfer payments is 50 percent of the estimated total transfer payments to the federal government. For a breakout of the estimated total federal and state transfer payment amounts, see the summary table above at the beginning of this economic analysis (Table 36, Summary of Major Provisions and Economic Impacts of the Proposed Rule).

i. Discounted Direct Costs

DHS presents the total estimated costs for filing Form I–944 as part of the review for determination of inadmissibility based on public charge when applying for adjustment of status and the opportunity cost of time associated with the increased time burden estimate for completing Forms I–485, I–129, I–129CW, and I–539. See table 55. The total estimated costs are presented in undiscounted dollars, at a 3 percent discount rate, and at a 7 percent discount rate.

Table 55. Total Estimated Direct Costs of the Proposed Rule with Total Estimated Direct Costs Discounted at 3 Percent and 7 Percent.

Form	Source of Cost	Total Estimated Annual Cost (Undiscounted)	Total Estimated Costs Over 10-year Period
Form I-944, Declaration of Self-Sufficiency	Opportunity cost of time (OCT) for completing form	$25,963,371	$259,633,710
Form I-485, Application to Register Permanent Residence or Adjust Status	OCT associated with the increased time burden for completing form	$691,898	$6,918,980
Form I-129, Petition for a Nonimmigrant Worker	OCT associated with the increased time burden for completing form Costs to beneficiaries who receive a RFE to complete and submit Form I-944, including OCT and credit report/credit score costs.	$12,103,351 to $66,880,214	$121,033,510 to $668,802,140
Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker	OCT associated with the increased time burden for completing form Costs to beneficiaries who receive a RFE to complete and submit Form I-944, including OCT and credit report/credit score costs.	$227,015 to $1,254,198	$2,270,150 to $12,541,980
Form I-539, Application To Extend/Change Nonimmigrant Status	OCT associated with the increased time burden for completing form Costs to beneficiaries who receive a RFE to complete and submit Form I-944, including OCT and credit report/credit score costs.	$6,292,728 to $34,772,105	$62,927,280 to $347,721,050
Form I-945, Public Charge Bond	Filing fee OCT for completing form	$34,234	$342,340

Form I-356, Request for Cancellation of Public Charge Bond	Filing fee OCT for completing form	$825	$8,250
Total Undiscounted Costs		**$45,313,422 to $129,596,845**	**$453,134,220 to $1,295,968,450**
Total Costs at 3 Percent Discount Rate			**$386,532,679 to $1,105,487,375**
Total Costs at 7 Percent Discount Rate			**$318,262,513 to $910,234,008**
Source: USCIS analysis.			

Over the first 10 years of implementation, DHS estimates the quantified direct costs of the proposed rule would range from about $453,134,220 to $1,295,968,450 (undiscounted). In addition, DHS estimates that the 10-year discounted cost of this proposed rule to individuals applying to adjust status who would be required to undergo review for determination of inadmissibility based on public charge would range from about $386,532,679 to $1,105,487,375 at a 3 percent discount rate and about $318,262,513 to $910,234,008 at a 7 percent discount rate.

This economic analysis presents the quantified costs of this proposed rule based on the estimated population applying to adjust status subject to review for public charge determination and the opportunity cost of time associated with the increased time burden estimates for completing Forms I–485, I–129, I–129CW, and I–539. The economic analysis also presents the quantified costs associated with the proposed public charge bond process, including costs associated with completing and filing Forms I–945 and I–356. DHS reiterates we are unable to estimate the actual number of Form I–129 or Form I–129CW petitioners and Form I–539 filers that adjudication officers would require through a RFE to submit Form I–944 since such RFE would be issued on a discretionary basis as outlined in the proposed rule. However, previously in this economic analysis, DHS presented a more detailed range of RFEs that could be issued based on total population estimates and the estimated annual cost associated with such RFEs. DHS welcomes any public comments on the discounted costs presented in this proposed rule.

ii. Discounted Reduction in Transfer Payments

DHS presents the total estimated quantified reduction in transfer payments from the federal government of the proposed rule in table 56. The total estimated costs are presented in undiscounted dollars, at a 3 percent discount rate, and at a 7 percent discount rate.

Table 56. Total Estimated Reduction in Transfer Payments from the Federal Government to Foreign-Born Non-Citizens Who May Be Receiving of Public Benefits (Estimates Discounted at 3 Percent and 7 Percent).

Source of Costs	Total Estimated Annual Reduction in Transfer Payments (Undiscounted)[1]	Total Estimated Reduction in Transfer Payments Over 10-year Period
Estimated reduced transfer payments due to disenrollment / foregone enrollment from public benefits programs	$2,267,842,067	$22,678,420,670
Total Undiscounted Transfer Reductions	**$2,267,842,067**	**$22,678,420,670**
Total Transfers Reductions at 3 Percent Discount Rate		**$19,345,152,833**
Total Transfer reductions at 7 Percent Discount Rate		**$15,928,373,680**

Source: USCIS analysis.

Note:

[1] The amount of transfer payments presented includes the estimated amounts of transfer payments to the federal government and to state governments from foreign-born non-citizens and their households who may disenroll or forego enrollment in public benefits programs. DHS assumes that the state governments' share of the total amount of transfer payments is 50 percent of the estimated total transfer payments to the federal government. For a breakout of the estimated total federal and state transfer payment amounts, see the summary table above at the beginning of this economic analysis (Table 36, Summary of Major Provisions and Economic Impacts of the Proposed Rule).

Over the first 10 years of implementation, DHS estimates the total quantified reduction in transfer payments from the federal government to foreign-born non-citizens and their households would be about $22.7 billion (undiscounted). In addition, DHS estimates that the 10-year discounted costs of this proposed rule would be approximately $19.3 billion at a 3 percent discount rate and about $15.9 billion at a 7 percent discount rate due to disenrollment or foregone enrollment in various federal public benefits programs. In addition, DHS assumes that the state share of federal financial participation (FFP) is 50 percent and therefore the 10-year discounted amount of the state-level share of transfer payments of this proposed rule would be approximately $9.65 billion at a 3 percent discount rate and about $7.95 billion at a 7 percent discount rate. Disenrollment or foregone enrollment in public benefits programs could occur whether or not such immigrants are directly affected by the provisions of the proposed rule, however, USCIS was unable to determine the exact percentage of individuals who would disenroll or forego enrollment. DHS notes that there may be a number of additional sources of transfer payments that could result from the proposed rule that DHS is not able to estimate and quantify at this time. Therefore, DHS welcomes public comments on additional sources of transfer payments that could result from the proposed rule.

(e) Costs to the Federal Government

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including administrative costs and services provided without charge to certain applicants and petitioners. *See* INA section 286(m), 8 U.S.C. 1356(m). DHS notes that USCIS establishes its fees by assigning costs to an adjudication based on its relative adjudication burden and use of USCIS resources. Fees are established at an amount that is necessary to recover these assigned costs such as clerical, officers, and managerial salaries and benefits, plus an amount to recover unassigned overhead (*e.g.,* facility rent, IT equipment and systems among other expenses) and immigration benefits provided without a fee charge. Consequently, since USCIS immigration fees are based on resource expenditures related to the benefit in question, USCIS uses the fee associated with an information collection as a reasonable measure of the collection's costs to USCIS. Therefore, DHS has established the fee for the adjudication of Form I–485, Application to Register Permanent Residence or Adjust Status; Form I–129, Petition for a Nonimmigrant Worker; Form I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker; and Form I–539, Application to Extend/Change Nonimmigrant Status in accordance with this requirement. Other forms affected by this proposed rule do not currently charge a filing fee, including Form I–693, Medical Examination and Vaccination Record; Affidavit of Support forms (Form I–864, Form I–864A, Form I–864EZ, and I–864W); Form I–912, Request for Fee Waiver, and Form I–407, Record of Abandonment of Lawful Permanent Resident Status. DHS notes that the time necessary for USCIS to review the information submitted with each of these forms includes the time to adjudicate the underlying benefit request. While each of these forms does not charge a fee, the cost to USCIS is captured in the fee for the underlying benefit request form. DHS welcomes public comments on costs to the government from this proposed rule.

(f) Benefits of Proposed Regulatory Changes

The primary benefit of the proposed rule would be to better ensure that aliens who are admitted to the United States or apply for adjustment of status would not receive one or more public benefits as defined in the proposed 212.21(b) and instead, will rely on their financial resource, and those of family members, sponsors, and private organizations. As a result, DHS is establishing a more formal review process and improving the current review process to standardize the determination of inadmissibility based on public charge grounds. The proposed process would also help clarify to applicants the specific criteria that would be considered as inadmissible under public charge determinations.

DHS anticipates that the proposed rule would produce some benefits from the elimination of Form I–864W for use in filing an affidavit of support. The information previously requested on the Form I–864W would now be captured using Form I–485. Applicants, therefore, would not be required to file a form separate from the Form I–485. As noted previously, there is no filing fee associated with filing Form I–864W, but DHS estimates the time burden associated with filing this form is 60 minutes (1 hour) per petitioner.[858] Therefore, using the average total rate of compensation of $35.78 per hour, DHS estimates the amount of benefits that would accrue from eliminating Form I–864W would be $35.78 per petitioner, which equals the opportunity cost of time for completing Form I–864W.[859] However, DHS notes that we are unable to determine the annual number filings of Form I–864W since we do not currently have information of how many of these filings are based on public charge determinations.

In addition, a benefit of establishing and modifying the public charge bond process, despite the costs associated with this process, would potentially allow an immigrant the opportunity to be admitted although he or she was deemed likely to become a public charge. DHS welcomes any public comments on the benefits of this proposed rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, or governmental jurisdictions with populations of less than 50,000.[860] This proposed rule would require an individual applying for a visa, seeking admission at the port of entry, or adjusting status to establish that he or she is not likely at any time to become a public charge. Most of this rule's proposed changes do not fall under the RFA because they directly regulate individuals who are not, for purposes of the RFA, within the definition of small entities established by 5 U.S.C. 601(6). However, DHS recognizes that there may be some provisions of this proposed rule that would directly regulate small entities, and, therefore,

[858] Source for I–864W time burden estimate: Paperwork Reduction Act (PRA) Affidavit of Support Under Section 213A of the INA (Forms I–864, I–864A, I–864EZ, I–864W) (OMB control number 1615–0075). The PRA Supporting Statement can be found at Question 12 on *Reginfo.gov* at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201705-1615-004.*

[859] Calculation opportunity cost of time for completing and submitting Form I–864W: ($35.78 per hour * 1.0 hours) = $35.78.

[860] A small business is defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632.

DHS has examined the impact of this proposed rule on small entities.

This proposed rule would increase the time burden by an additional 30 minutes on petitioners who file Form I–129 or Form I–129CW on behalf of a beneficiary requesting an extension of stay or change of status, which would impose direct costs on these petitioners. Additionally, the proposed provisions to establish a public charge bond process included in this proposed rule would allow for either an alien or an obligor (individual or an entity) to request a cancellation of a public bond. As a result, this proposed rule could have direct impacts on small entities that are obligors. DHS also recognizes that a Form I–129 or Form I–129CW beneficiary, for whom a Form I–129 or Form I–129CW petitioner (*i.e.,* the employer) sought either an extension of stay or a change of status, may have to leave the U.S. if the employer's request was denied. In these cases, the petitioner may lose the beneficiary as an employee and may incur labor turnover costs. DHS presents this Initial Regulatory Flexibility Analysis (IRFA) to examine these impacts.

Initial Regulatory Flexibility Analysis

The small entities that could be impacted by this proposed rule are petitioners who file Form I–129 or Form I–129CW on behalf of beneficiaries requesting an extension of stay or change of status as well as obligors that would request a cancellation of a public bond.

1. *A description of the reasons why the action by the agency is being considered.*

DHS seeks to better ensure that applicants for admission to the United States and applicants for adjustment of status to lawful permanent resident who are subject to the public charge ground of inadmissibility are self-sufficient, *i.e.,* they will rely on their own financial resources as well as the financial resources of their family, sponsors, and private organizations as necessary.[861] Under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), an alien is inadmissible if, at the time of an application for a visa, admission, or adjustment of status, he or she is likely at any time to become a public charge. The statute requires DHS to consider the following minimum factors that reflect the likelihood that an alien will become a public charge: The alien's age; health; family status; assets, resources, and financial status; and education and skills. In addition, DHS may consider any affidavit of support submitted by the alien's sponsor and any other factors relevant to the likelihood of the alien becoming a public charge.

2. *A succinct statement of the objectives of, and legal basis for, the proposed rule.*

DHS objectives and legal authority for this proposed rule are discussed in the preamble of the proposed rule.

3. *A description and, where feasible, an estimate of the number of small entities to which the proposed changes would apply.*

This proposed rule would increase the time burden by an additional 30 minutes on petitioners who file Form I–129 or Form I–129CW on behalf of a beneficiary requesting an extension of stay or change of status, which would impose direct costs on these petitioners and entities.[862] As previously discussed in the E.O. 12866 section of this NPRM, DHS estimates an annual population of 336,335 beneficiaries seeking extension of stay or change of status through a petitioning employer using Form I–129. In addition, DHS estimates an annual population of 6,307 beneficiaries seeking extension of stay or change of status through a petitioning employer using Form I–129CW. DHS estimates that the 30-minute increase in the estimated time burden for these populations would increase the opportunity cost of time for completing and filing Form I–129 and Form I–129CW and would result in about $184 million and about $5 million in costs, respectively. For this population, DHS is unable to estimate the actual number of requests for evidence (RFEs) that adjudication officers may issue to Form I–129 beneficiaries to complete Form I–944 to provide evidence that they are not likely to become a public charge when they are extending stay or changing status. Therefore, DHS cannot determine the number of small entities that might be impacted by potential requests to complete the Form I–944 as part of an RFE.

The proposed provisions on the bond process included in this rule would allow a surety company to become an obligor on a public charge bond (proposed Form I–945) and, later, to request a cancellation of such a bond (proposed Form I–356). Therefore, this proposed rule could have some impacts to surety companies, some of which are small entities. A request for cancellation of a public bond using Form I–356 includes a time burden of 15 minutes per request and a fee to DHS of $25.00. It is not known the number of surety bond companies that might complete and file Forms I–945 and I–356 due to a lack of historical data and uncertainty in the number individuals that may be granted the opportunity to post for public charge bond. However, DHS estimates that the filing volume for Form I–945 might be about 960 and the filing volume for Form I–356 might be approximately 25. While DHS cannot predict the exact number of surety companies that might be impacted by this proposed rule, nine out of 273 Treasury-certified surety companies in fiscal year 2015 posted new immigration bonds with DHS ICE.[863] DHS found that of the nine surety companies, four entities were considered ''small'' based on the number of employees or revenue being less than their respective Small Business Administration size standard.[864] Assuming these nine surety companies post public charge bonds with USCIS, we can assume that four surety companies may be considered as small entities. However, USCIS cannot predict the exact impact to these small entities at this time. We expect that obligors would be able to pass along the costs of this rulemaking to the aliens. DHS welcomes any public comments or data on the number of small entities that would be surety companies likely to post public charge bonds and any direct impacts on those small surety companies.

4. *A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.*

In addition to time burden costs discussed in Section C of this IFRA, DHS recognizes that a Form I–129 or Form I–129CW beneficiary, for whom a Form I–129 or Form I–129CW petitioner (*i.e.,* the employer) sought either an extension of stay or a change of status, may have to leave the U.S. if the employer's request was denied. In these cases, the petitioner may lose the beneficiary as an employee and may incur labor turnover costs. A 2012 report published by the Center for American Progress surveyed several

[861] *See* 8 U.S.C. 1601(2).

[862] In the context of Form I–129, a petitioner is typically an employer or the representative of an employer who files on behalf of a nonimmigrant worker (or beneficiary) to come to the United States temporarily to perform services or labor, or to receive training. See *https://www.uscis.gov/i-129.*

[863] *See* DHS, Procedures and Standards for Declining Surety Immigration Bonds and Administrative Appeal Requirement for Breaches NPRM, 83 FR 25951, 25962–25965 (June 5, 2018).

[864] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System (NAICS) Codes, February 26, 2016. *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

dozen studies that considered both direct and indirect costs and determined that turnover costs per employee ranged from 10 to 30 percent of the salary for most salaried workers.[865] An employer paid an average of about 20 percent of the worker's salary in total labor turnover costs. Specifically, for workers earning $50,000 or less, and for workers earning $75,000 or less, the average turnover cost was about 20 percent for both earning levels. According to the study, these earning levels corresponded to the 75th and 90th percentiles of typical earnings, respectively. Assuming Form I–129 and Form I–129CW beneficiaries are employed, DHS believes it is reasonable to assume an annual mean wage of $50,620 across all occupations.[866] Assuming an average labor turnover cost of 20 percent of $50,620, on average, an employer could incur costs of approximately $10,124 per beneficiary that would be separated from employment as a result of a denied request for an extension of stay or change of status. However, DHS does not know the number of small entities within this population of petitioners that might incur labor turnover costs.

Additionally, DHS also recognizes that a Form I–129 or Form I–129CW beneficiary, for whom a Form I–129 or Form I–129CW petitioner (*i.e.,* the employer) sought either an extension of stay or a change of status and the request was denied, may still be able to get a visa and return to the U.S., including pursuant to other means. DHS welcomes any public comments or data on the impact to the petitioners or employers of Form I–129 or Form I–129CW beneficiaries who are denied an extension of stay or change of status due to public charge inadmissibility.

DHS does not believe that it would be necessary for Form I–129 or Form I–129CW petitioners, or for surety bond companies (obligors) to acquire additional types of professional skills as a result of this proposed rule. These petitioners and obligors should already possess the expertise to fill out the associated forms for this proposed rule. Additionally, these petitioners and obligors would be familiar with the proposed rule and such familiarization costs are accounted for the in the E.O. 12866 sections.

5. An identification of all relevant Federal rules, to the extent practical, that may duplicate, overlap, or conflict with the proposed rule.

DHS is unaware of any duplicative, overlapping, or conflicting Federal rules, but invites any public comment and information regarding any such rules. Elsewhere in the preamble to the proposed rule, DHS addresses the relationship between this proposed rule and the standards governing alien eligibility for public benefits, as outlined in PRWORA.

6. Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.

DHS considered a range of potential alternatives to the proposed rule. First, under a ''no action'' alternative, DHS would continue administering the public charge ground of inadmissibility under the 1999 Guidance. For reasons explained more fully elsewhere in the preamble to the proposed rule, DHS determined that this alternative would not adequately ensure the self-sufficiency of aliens subject to the public charge ground of inadmissibility. Second, DHS considered including a more expansive definition of ''public benefit,'' potentially to include a range of non-cash benefit programs falling in specific categories (such as programs that provide assistance for basic food and nutrition, housing, and medical care). For reasons explained more fully elsewhere in the preamble to the proposed rule, DHS chose the approach contained in this proposed rule—a more limited list of high-expenditure non-cash benefits. DHS expects that, as compared to the broader alternative, the proposed approach may reduce the overall effect of the rule on transfers, but enhance its administrability and predictability. Employers filing Form I–129 and surety companies would have a better understanding of the types of non-cash benefits that may be covered under this proposed rule than they would under the broader alternative, and may realize cost savings as a result. In addition, certain indirect effects of the rule may be different as a result of the decision to reject this alternative.

C. Congressional Review Act

This proposed rule is a major rule as defined by 5 U.S.C. 804, also known as the ''Congressional Review Act,'' as enacted in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 847, 868 *et seq.* Accordingly, this rule, if enacted as a final rule, would be effective at least 60 days after the date on which Congress receives a report submitted by DHS under the Congressional Review Act, or 60 days after the final rule's publication, whichever is later.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may directly result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. The inflation-adjusted value of $100 million in 1995 is approximately $161 million in 2017 based on the Consumer Price Index for All Urban Consumers.[867]

This proposed rule does not contain such a mandate. The requirements of Title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

E. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. DHS does not expect that this proposed rule would impose substantial direct compliance costs on State and local governments, or preempt State law. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications under Executive

[865] *See* ''There Are Significant Business Costs to Replacing Employees,'' by Heather Boushey and Sarah Jane Glynn (2012), Center for American Progress, *available: https://www.americanprogress.org/issues/economy/reports/2012/11/16/44464/there-are-significant-business-costs-to-replacing-employees/.*

[866] Bureau of Labor Statistics, May 2017 National Occupational Employment and Wage Estimates, All Occupations, *https://www.bls.gov/oes/2017/may/oes_nat.htm.*

[867] U.S. Bureau of Labor Statistics, *Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. City Average, All Items, available at https://www.bls.gov/cpi/tables/historical-cpi-u-201712.pdf* (last visited Jan. 31, 2018).

Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

H. Family Assessment

DHS has reviewed this proposed rule in line with the requirements of section 654 of the Treasury General Appropriations Act, 1999, Public Law 105–277. With respect to the criteria specified in section 654(c)(1), DHS has determined that the proposed rule may decrease disposable income and increase the poverty of certain families and children, including U.S. citizen children. For the reasons stated elsewhere in this preamble, however, DHS has determined that the benefits of the action justify the financial impact on the family. Further, the proposed action would expand the list of public benefits that DHS may consider for purposes of inadmissibility under section 212(a)(4) of the Act. As a result, the proposed regulatory action, if finalized, may increase the number of aliens found inadmissible under section 212(a)(4) of the Act. As described under the **SUPPLEMENTARY INFORMATION** section of this rule, DHS has compelling legal and policy reasons for the proposed regulatory action, including, but not limited to, better ensuring the self-sufficiency of aliens admitted or immigrating to the United States, and minimizing the financial burden of aliens on the U.S. social safety net.

I. National Environmental Policy Act

DHS analyzes actions to determine whether NEPA applies to them and if so what degree of analysis is required. DHS Directive (Dir) 023–01 Rev. 01 and Instruction (Inst.) 023–01–001 rev. 01 establish the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508. The CEQ regulations allow federal agencies to establish, with CEQ review and concurrence, categories of actions (''categorical exclusions'') which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(1)(iii), 1508.4. DHS Instruction 023–01–001 Rev. 01 establishes such Categorical Exclusions that DHS has found to have no such effect. Inst. 023–01–001 Rev. 01 Appendix A Table 1. For an action to be categorically excluded, DHS Inst. 023–01–001 Rev. 01 requires the action to satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the Categorical Exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Inst. 023–01–001 Rev. 01 section V.B(1)–(3).

DHS analyzed this action and has concluded that NEPA does not apply due to the excessively speculative nature of any effort to conduct an impact analysis. Nevertheless, if NEPA did apply to this action, the action clearly would come within our categorical exclusion A.3(d) as set forth in DHS Inst. 023–01–001 Rev. 01, Appendix A, Table 1.

This proposed rule applies to applicants for admission or adjustment of status, as long as the individual is applying for an immigration status that is subject to the public charge ground of inadmissibility. In addition, the proposed rule would potentially affect individuals applying for an extension of stay or change of status because these individuals would have to demonstrate that they are neither receiving, nor likely to receive, public benefits as defined in the proposed rule. As discussed in detail above, this rule proposes to establish a definition of public charge and expand the types of public benefits that DHS would consider as part of its public charge inadmissibility determinations. The rule also proposes to establish a regulatory framework based on the statutory factors that must be considered in public charge determinations, including enhanced evidentiary requirements for public charge inadmissibility determinations by USCIS. Finally, the rule proposes to revise the public charge bond process. Overall, the proposed regulatory changes, if finalized, would require a more in-depth adjudication of public charge issues and have the potential to result in more findings of inadmissibility, ineligibility for adjustment of status, or denials of requests for extension of stay or change of status, on public charge grounds.

Historically, there is a high demand for both immigrant and nonimmigrant visas. Even if larger numbers of aliens were now found to be inadmissible on public charge grounds as a result of this rule, there may be some replacement effect from others who would, in turn, be considered for the existing visas. Therefore, DHS cannot estimate with any degree of certainty to what extent the potential for increased findings of inadmissibility on public charge grounds would result in fewer individuals being admitted to the United States. DHS is also unable to estimate with any degree of certainty whether the proposed rule would result in increased denial of applications for extension of stay or change of status. DHS does not, however, anticipate that this proposed rule will cause an increase in the number of individuals found to be admissible, or eligible for an extension of stay, or adjustment or change of status. Even if DHS could estimate these numerical effects, any assessment of derivative environmental effect at the national level would remain unduly speculative.

This rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, if NEPA were determined to apply, this rule would be categorically excluded from further NEPA review.

J. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. Table 57 shows the summary of forms that are part of this rulemaking.

Table 57. Summary of Forms

Form	Form Name	New or Updated Form	General Purpose of Form	General Categories Filing	Applicability to Public Charge
I-129	Petition for Nonim migrant Worker	Update – adds questions and instructions about receipt of public benefits	This form is used by an employer to petition USCIS for an alien beneficiary to come temporarily to the United States as a nonimmigrant to perform services or labor, or to receive training. This form is also used by certain nonimmigrants to apply for EOS or COS.	E-2 CNMI -- treaty investor exclusively in the Commonwealth of the Northern Mariana Islands (CNMI). H-1B -- specialty occupation worker; an alien coming to perform services of an exceptional nature that relate to a U.S. Department of Defense-administered project; or a fashion model of distinguished merit and ability. H-2A -- temporary agricultural worker. H-2B -- temporary nonagricultural worker. H-3 -- trainee. L-1 -- intracompany transferee. O-1 -- alien of extraordinary ability in arts, science, education, business, or athletics. O-2 -- accompanying alien who is coming to the United States to assist in the artistic or athletic performance of an O-1 artist or athlete. P-1 -- major league sports. P-1 -- internationally recognized athlete/entertainment group. P-1S -- essential support personnel for a P-1. P-2 -- artist/entertainer in reciprocal exchange program. P-2S -- essential support personnel for a P-2. P-3 -- artist/entertainer coming to the United States to perform, teach, or coach under a program that is culturally unique. P-3S -- essential support personnel for a P-3.	Non-receipt of public benefits and being unlikely to receive public benefits in the future is a condition of USCIS, at its discretion may request the applicant to file a Form I-944 to determine likelihood of receipt of public benefits in the future.

Table 57. Summary of Forms					
Form	**Form Name**	**New or Updated Form**	**General Purpose of Form**	**General Categories Filing**	**Applicability to Public Charge**
				Q-1 -- alien coming temporarily to participate in an international cultural exchange program. Extension of Status E-1 -- treaty trader. E-2 -- treaty investor (not including E-2 CNMI treaty investors). E-3 -- Free Trade Agreement professionals from Australia. Free Trade Nonimmigrants -- H-1B1 specialty occupation workers from Chile or Singapore and TN professionals from Canada or Mexico. R-1 -- religious worker.	

Table 57. Summary of Forms					
Form	**Form Name**	**New or Updated Form**	**General Purpose of Form**	**General Categories Filing**	**Applicability to Public Charge**
I-129CW	Petition for a CNMI-Only Nonimmigrant Transitional Worker	Update – adds questions and instructions about receipt of public benefits		This form is used by an employer to request an extension of stay or change of status for a Commonwealth of the Northern Mariana Islands (CNMI) temporarily to perform services or labor as a CW-1, CNMI-Only Transitional Worker.	Non-receipt of public benefits and being unlikely to receive public benefits in the future is a condition of EOS/COS. EOS/COS applicants will be required to USCIS, at its discretion may request the applicant to file a Form I-944 to determine likelihood of receipt of public benefits in the future.
I-356	Request for Cancellation of a Public Charge Bond	Update – Previously discontinued	This form is used to request cancellation of the bond that was submitted on Form I-945, Public Charge Bond, on behalf of an alien.	An obligor who had posted an I-945 of the alien's behalf or an alien has had a Form I-945 posted on his or her behalf, and who seeks to cancel the bond (Form I-945) because the alien has either has permanently departed the United States, naturalized, or died, or the obligor or the alien seeks cancellation of the bond following the alien's fifth anniversary of admission to the United States as a lawful permanent resident, or the alien, following the initial grant of lawful permanent resident status, obtains an immigration status that it exempt from the public charge ground of inadmissibility.	After an obligor has posted an I-945 on behalf of the alien, or an alien on whose behalf the I-945 was posted, may request that a bond to be cancelled because the alien either has permanently departed the United States, naturalized or died, or the obligor or the alien request cancellation following the fifth anniversary of the alien's

Table 57. Summary of Forms					
Form	**Form Name**	**New or Updated Form**	**General Purpose of Form**	**General Categories Filing**	**Applicability to Public Charge**
					admission as a lawful permanent resident in the United States.; or or the alien, following the initial grant of lawful permanent resident status, obtains an immigration status that it exempt from the public charge ground of inadmissibility. .
I-407	I-407, Record of Abandonment of Lawful Permanent Resident Status	No Changes	This form is used to record an alien's abandonment of status as a lawful permanent resident in of the United States.	A lawful permanent resident who voluntarily abandons his lawful permanent resident status in the United States.	If a bond has been posted on the alien's behalf, the obligor or the alien may request that the bond be cancelled because the alien permanently departed the United States. The alien shows this by filing Form I-407 and physically departing.
I-485	Application to Register Permanent Residence or Adjustment of Status	Update – clarifies what categories need to file Form I-944 and Form I-864	Foreign nationals present in the United States to obtain LPR status	o Immediate relatives (spouses, children and parents of U.S. citizens) o Family-based immigrants (principal beneficiaries and their dependents) o Employment-based immigrants (principal beneficiaries and their dependents)	Adjustment of status applicants generally must be admissible, including with regard to the public charge inadmissibility ground

Table 57. Summary of Forms

Form	Form Name	New or Updated Form	General Purpose of Form	General Categories Filing	Applicability to Public Charge
				o Those who entered as Ks (Fiancé(e)s or certain spouses of U.S. citizens, and their children) who are seeking LPR status based on the primary beneficiary's marriage to the U.S. citizen petitioner.	
I-539	Application To Extend/ Change Nonimmigrant Status	Update – adds questions and instructions about receipt of public benefits	This form is used by certain nonimmigrants to apply for an extension of stay or change of status. In certain circumstances this form may be used as an initial nonimmigrant status, or reinstatement of F1 or M1 status (students).	• CNMI residents applying for an initial grant of status; • Student (F) and vocational students (M) applying for reinstatement; and • Persons seeking V nonimmigrant status or an extension of stay as a V nonimmigrant (spouse or child of an LPR who filed a petition on or before December 21, 2000)	Non-receipt of public benefits and being unlikely to receive public benefits in the future is a condition of EOS/COS. USCIS, at its discretion may request the applicant to file a Form I-944 to determine likelihood of receipt of public benefits in the future.
I-693	Report of Medical Examination and Vaccination Record	No Changes	Form I-693 is used to report results of a medical examination to USCIS.	Generally, adjustment of status applicants are required to submit an I-693. Nonimmigrants seeking a change or extension of status are generally not required to submit an I-693, Nonimmigrants seeking a change of status to spouse of a legal permanent resident (V) status. See table in https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume8-PartB-Chapter3.html	The I-693 is used as part of the Health Factor to identify medical conditions.
I-864	Affidavit of Support Under Section 213A of the INA	Update – reference to Form I-864W, which is being discontinued, was removed	Statement/ contract provided by a sponsor to show that the sponsor has adequate financial resources to support the alien.	Generally most family-based immigrants and some employment-based immigrants. See additional tables for full list.	The Affidavit of Support when required is a factor in the public charge determination.

Table 57. Summary of Forms

Form	Form Name	New or Updated Form	General Purpose of Form	General Categories Filing	Applicability to Public Charge
I-864EZ	Affidavit of Support Under Section 213A of the Act	Update – reference for Form I-864W, which is being discontinued, was removed	Statement/ contract provided by a sponsor to show that the sponsor has adequate financial resources to support the alien. This is a simpler version of Form I-864.	1. The sponsor is the person who filed or is filing Form I-130, Petition for Alien Relative, for a relative being sponsored; 2. The relative the sponsor is sponsoring is the only person listed on Form I-130; and 3. The income the sponsor is using to qualify is based entirely on your salary or pension and is shown on one or more Internal Revenue Service (IRS) Form W-2s provided by your employers or former employers.	The Affidavit of Support when required is a factor in the public charge determination.
I-864W	Request for Exemption for Intending Immigrant's Affidavit of Support	Discontinued – information incorporated into Form I-485	Certain classes of immigrants are exempt from the Form I-864 or Form I-864EZ requirement and therefore must file Form I-864W instead.	Aliens who have earned 40 quarters of SSA coverage. Children who will become U.S. citizens upon entry or adjustment into the United States under INA 320. Self-Petitioning Widow(er) Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant; Self-Petitioning battered spouse or child.	Although some people may be exempt from the affidavit of support requirement, the person may still be subject to public charge.
I-912	Requests for Fee Waiver	Update – provides warning that a request for a fee waiver may be a factor in the public charge determination.	This form may be filed with any USCIS immigrant benefit form in order to request a fee waiver.	Adjustment of Status (I-485) - may be filed for eligible applicants, generally for those not subject to public charge and humanitarian programs. Petition for Nonimmigrant Worker (I-129) may be filed for an applicant for E-2 CNMI investor nonimmigrant status under 8 CFR 214.2(e)(23) is eligible to request. Application for Extension/Change of Status (I-539) INA section 245(l)(7) or an applicant for E-2 Commonwealth of the Northern Mariana Islands is eligible for a fee waiver.	Request of a Fee Waiver is a factor in the determination of Public Charge.

Table 57. Summary of Forms

Form	Form Name	New or Updated Form	General Purpose of Form	General Categories Filing	Applicability to Public Charge
I-944	Declaration of Self-Sufficiency	New	This form is used to demonstrate that an alien is not likely to become a public charge.	Anyone who is subject to public charge. See additional tables for full list.	This form is the primary basis of the public charge determination and asks questions about each one of the factors considered.
I-945	Public Charge Bond	New	This form is the bond contract between USCIS and the obligor	For aliens inadmissible solely based on public charge and who are permitted to have a bond posted on his or her behalf. The form is completed by the obligor who posts the bond on the alien's behalf.	If an alien is found inadmissible solely based on public charge, he or she may be admitted to the United States upon the posting of a suitable and proper a bond at the discretion of USCIS.

USCIS Form I–944

DHS invites comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–NEW in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

1. Evaluate 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;

2. Evaluate 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. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of information collection:

1. *Type of Information Collection:* New Collection.

2. *Title of the Form/Collection:* Declaration of Self-Sufficiency and Public Benefits Worksheet.

3. *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–944; USCIS.

4. *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS will require an individual applying to adjust status to lawful permanent residence (Form I–485) and who is subject to the public charge ground of inadmissibility to file Form I–944. On a case by case basis, USCIS may request that a nonimmigrant seeking to extend stay or change status (Form I–539 or Form I–129) and persons filing USCIS Form I–129CW to file Form I–944. The data collected on these forms will be used by USCIS to determine the likelihood of a declarant becoming a public charge based on the factors regarding health; family status; assets, resource, and financial status; and education and skills. The forms serve the purpose of standardizing public charge evaluation metrics and ensure that declarants provide all essential information required for USCIS to assess self-sufficiency and adjudicate the declaration. If USCIS determines that a declarant is likely to become a public charge, the declarant may need to provide additional resources or evidence to overcome this determination.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–944 is 382,264 and

the estimated hour burden per response is 4 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,720,188 hours.

7. *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $59,931,350.

USCIS Form I–485

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule.

DHS invites comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0023 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

1. Evaluate 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;

2. Evaluate 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. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

1. *Type of Information Collection:* Revision of a Currently Approved Collection.

2. *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status.

3. *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–485 and Supplements A and J; USCIS.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected is used to determine eligibility to adjust status under section 245 of the Immigration and Nationality Act.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–485 is 382,264 and the estimated hour burden per response is 6.42 hours; the estimated total number of respondents for information collection Supplement A is 36,000 respondents and the estimated hour burden per response is 1.25 hours; the estimated total number of respondents for information collection Supplement J is 28,309 respondents and the estimated hour burden per response is 1 hour; the estimated total number of respondents for information collection biometrics processing is 305,811 respondents and estimated hour burden is 1.17 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,885,242 hours.

7. *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $131,116,650.

USCIS Forms I–864; I–864A; I–864EZ

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule.

DHS invites comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed discontinuation of the USCIS Form I–864W information collection instrument. The instructions for Form I–864 and I–864EZ were modified to remove references to Form I–864W. There are no changes to the Form I–864A.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0075 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

1. Evaluate 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;

2. Evaluate 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. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

1. *Type of Information Collection:* Revision of a Currently Approved Collection.

2. *Title of the Form/Collection:* Affidavit of Support Under Section 213A of the INA; Contract Between Sponsor and Household Member; Affidavit of Support under Section 213 of the Act.

3. *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–864; I–864A; I–864EZ; USCIS.

4. *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Form I–864:* USCIS uses the data collected on Form I–864 to determine whether the sponsor has the ability to support the sponsored alien under section 213A of the Immigration and Nationality Act. This form standardizes evaluation of a sponsor's ability to support the sponsored alien and ensures that basic information required to assess eligibility is provided by petitioners.

Form I–864A: Form I–864A is a contract between the sponsor and the sponsor's household members. It is only required if the sponsor used income of his or her household members to reach the required 125 percent of the FPG. The contract holds these household members jointly and severally liable for the support of the sponsored immigrant.

The information collection required on Form I–864A is necessary for public benefit agencies to enforce the Affidavit of Support in the event the sponsor used income of his or her household members to reach the required income level and the public benefit agencies are requesting reimbursement from the sponsor.

Form I–864EZ: USCIS uses Form I–864EZ in exactly the same way as Form I–864; however, USCIS collects less information from the sponsors as less information is needed from those who qualify in order to make a thorough adjudication.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–864 is 453,345 and the estimated hour burden per response is 6 hours; the estimated total number of respondents for the information collection I–864A is 215,800 and the estimated hour burden per response is 1.75 hours; the estimated total number of respondents for the information collection I–864EZ is 100,000 and the estimated hour burden per response is 2.5 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,347,720 hours.

7. *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $135,569,525.

USCIS Form I–912

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. Although this rule does not impose any new reporting or recordkeeping requirements under the PRA, this rule will require non-substantive edits to USCIS Form I–912, Request for Fee Waiver. These edits make clear to those who request fee waivers that an approved fee waiver can negatively impact eligibility for an immigration benefit that is subject to the public charge inadmissibility determination. Accordingly, USCIS has submitted a Paperwork Reduction Act Change Worksheet, Form OMB 83–C, and amended information collection instruments to OMB for review and approval in accordance with the PRA.

USCIS Form I–945

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule.

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–NEW in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

1. Evaluate 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;

2. Evaluate 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. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

1. *Type of Information Collection:* New Collection; Revision of a Currently Approved Collection.

2. *Title of the Form/Collection:* Public Charge Bond.

3. *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–945; USCIS.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. In certain instances, a bond can be posted on behalf of the alien to guarantee a set of conditions set by the government concerning an alien, *i.e.* that the alien will not become a public charge as defined in proposed 8 CFR 212.21(a) because he or she will not receive public benefits, as defined in 8 CFR 213.21(b) after the alien's adjustment of status to that of a lawful permanent resident. An acceptable surety is generally any company listed on the Department of the Treasury's Listing of Approved Sureties (Department Circular 570) in effect on the date the bond is requested or an individual or an entity that deposits cash or a cash equivalent, such as a cashier's check or money order for the full value of the bond.[868]

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection (Enter form number) is 960 and the estimated hour burden per response is 1 hour.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 960 hours. (Multiply the burden for each submission by the number of respondents.)

7. *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0 as the company performing the bond service receives a fee.

USCIS Form I–356

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule.

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–NEW in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

[868] *See* 8 CFR 103.6(b).

1. Evaluate 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;

2. Evaluate 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. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

1. *Type of Information Collection:* New Collection.

2. *Title of the Form/Collection:* Request for Cancellation of Public Charge Bond.

3. *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–356; USCIS.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Aliens (on whose behalf a public charge bond has been posted) or the obligor (surety) (who is the obligor who posted a bond on the alien's behalf). The form is used to request cancellation of the public charge bond because of the alien's naturalization, permanent departure, or death. The form is also used by the alien or the obligor to request cancellation of the public charge bond upon the fifth anniversary of the alien's admission to the United States as a lawful permanent resident.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection (Enter form number) is 25 and the estimated hour burden per response is .75 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 18.75 hours.

7. *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $6,250.

USCIS Form I–129

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule.

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0009 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

1. Evaluate 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;

2. Evaluate 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. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

1. *Type of Information Collection:* Revision of a Currently Approved Collection.

2. *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

3. *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129; USCIS.

4. *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant petition and/or requests to extend or change nonimmigrant status. An employer (or agent, where applicable) uses this form to petition USCIS for an alien to temporarily enter as a nonimmigrant. An employer (or agent, where applicable) also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for nonimmigrant workers, and ensuring that basic information required for assessing eligibility is provided by the petitioner while requesting that beneficiaries be classified under certain nonimmigrant employment categories. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–129 is 552,000 and the estimated hour burden per response is 2.84 hours; the estimated total number of respondents for the information collection E–1/E–2 Classification Supplement to Form I–129 is 4,760 and the estimated hour burden per response is 0.67; the estimated total number of respondents for the information collection Trade Agreement Supplement to Form I–129 is 3,057 and the estimated hour burden per response is 0.67; the estimated total number of respondents for the information collection H Classification Supplement to Form I–129 is 255,872 and the estimated hour burden per response is 2; the estimated total number of respondents for the information collection H–1B and H–1B1 Data Collection and Filing Fee Exemption Supplement is 243,965 and the estimated hour burden per response is 1; the estimated total number of respondents for the information collection L Classification Supplement to Form I–129 is 37,831 and the estimated hour burden per response is 1.34; the estimated total number of respondents for the information collection O and P Classifications Supplement to Form I–129 is 22,710 and the estimated hour burden per response is 1; the estimated total number of respondents for the information collection Q–1 Classification Supplement to Form I–129 is 155 and the estimated hour burden per response is 0.34; the estimated total number of respondents for the information collection R–1 Classification Supplement to Form I–

129 is 6,635 and the estimated hour burden per response is 2.34.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,417,609 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $132,368,220.

USCIS Form I–129CW

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule.

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0009 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

1. Evaluate 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;

2. Evaluate 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. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

1. *Type of Information Collection:* Revision of a Currently Approved Collection.

2. *Title of the Form/Collection:* Form I–129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker.

3. *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–129CW; USCIS.

4. *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. USCIS uses the data collected on this form to determine eligibility for the requested immigration benefits. An employer uses this form to petition USCIS for an alien to temporarily enter as a nonimmigrant into the CNMI to perform services or labor as a CNMI-Only Transitional Worker (CW–1). An employer also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for these benefits, and ensuring that the basic information required to determine eligibility, is provided by the petitioners.

USCIS collects biometrics from aliens present in the CNMI at the time of requesting initial grant of CW–1 status. The information is used to verify the alien's identity, background information and ultimately adjudicate their request for CW–1 status.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–129CW is 3,749 and the estimated hour burden per response is 3.5 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 13,121.5 hours.

7. *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $459,253.

USCIS Form I–539

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule.

DHS invites comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0003 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

1. Evaluate 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;

2. Evaluate 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. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

1. *Type of Information Collection:* Revision of a Currently Approved Collection.

2. *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

3. *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–539 and Supplement A; USCIS.

4. *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form will be used for nonimmigrants to apply for an extension of stay, for a change to another nonimmigrant classification, or for obtaining V nonimmigrant classification.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–539 is 248,985 and the estimated hour burden per response is 2.38 hours; the estimated total number of respondents for the information collection Supplement A is 54,375 respondents and the estimated hour burden per response is .50 hours; the estimated total number of respondents for the information collection biometrics processing is

373,477 and the estimated hour burden is 1.17 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,056,740 hours.

7. *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $42,701,050.

USCIS Form I–407

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. This rule requires the use of USCIS Form I–407 but does not require any changes to the form or instructions and does not impact the number of respondents, time or cost burden. This form has previously been approved by OMB under the Paperwork Reduction Act. The OMB control number(s) for this information collection is 1615–0130.

List of Subjects and Regulatory Amendments

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 213

Immigration, Surety bonds.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

Accordingly, DHS proposes to amend chapter I of title 8 of the Code of Federal Regulations as follows:

PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p.166; 8 CFR part 2; Pub. L. 112–54.

■ 2. Section 103.6 is amended by:
■ a. Revising paragraphs (a)(1), (a)(2)(i), and (c)(1);
■ b. Adding paragraph (d)(3); and
■ c. Revising paragraph (e)

The revisions and additions read as follows:

§ 103.6 Surety bonds.

(a) * * *

(1) *Extension agreements; consent of surety; collateral security.* All surety bonds posted in immigration cases must be executed on the forms designated by DHS, a copy of which, and any rider attached thereto, must be furnished to the obligor. DHS is authorized to approve a bond, a formal agreement for the extension of liability of surety, a request for delivery of collateral security to a duly appointed and undischarged administrator or executor of the estate of a deceased depositor, and a power of attorney executed on the form designated by DHS, if any. All other matters relating to bonds, including a power of attorney not executed on the form designated by DHS and a request for delivery of collateral security to other than the depositor or his or her approved attorney in fact, will be forwarded to the appropriate office for approval.

(2) *Bond riders*—(i) *General.* A bond rider must be prepared on the form(s) designated by DHS, and submitted with the bond. If a condition to be included in a bond is not on the original bond, a rider containing the condition must be executed.

* * * * *

(c) * * *

(1) Public charge bonds. Special rules for the cancellation of public charge bonds are described in 8 CFR 213.1.

* * * * *

(d) * * *

(3) *Public charge bonds.* The threshold bond amount for public charge bonds is set forth in 8 CFR 213.1.

(e) *Breach of bond.* Breach of public charge bonds is governed by 8 CFR 213.1. For other immigration bonds, a bond is breached when there has been a substantial violation of the stipulated conditions. A final determination that a bond has been breached creates a claim in favor of the United States which may not be released by the officer. DHS will determine whether a bond has been breached. If DHS determines that a bond has been breached, it will notify the obligor of the decision, the reasons therefor, and inform the obligor of the right to appeal the decision in accordance with the provisions of this part.

* * * * *

■ 3. Section 103.7 is amended by adding paragraphs (b)(1)(i)(LLL) and (MMM) to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(LLL) Public Charge Bond, Form I–945. $25.

(MMM) Request for Cancellation of Public Charge Bond, Form I–356. $25.

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 4. The authority citation for part 212 continues to read as follows:

Authority: 6 U.S.C. 111, 202(4) and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1185 note (section 7209 of Pub. L. 108–458), 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 CFR part 2.

■ 5. Add §§ 212.20 through 212.24 to read as follows:

§ 212.20 Applicability of public charge inadmissibility.

8 CFR 212.20 through 212.24 address the public charge ground of inadmissibility under section 212(a)(4) of the Act. Unless the alien requesting the immigration benefit or classification has been exempted from section 212(a)(4) of the Act as listed in 8 CFR 212.23(a), the provisions of §§ 212.20 through 212.24 of this part apply to an applicant for admission or adjustment of status to lawful permanent resident.

§ 212.21 Definitions for public charge.

For the purposes of 8 CFR 212.20 through 212.24, the following definitions apply:

(a) *Public Charge.* Public charge means an alien who receives one or more public benefit, as defined in paragraph (b) of this section.

(b) *Public benefit.* Public benefit means:

(1) Any of the following monetizable benefits, where the cumulative value of one or more of the listed benefits exceeds 15 percent of the Federal

Poverty Guidelines (FPG) for a household of one within any period of 12 consecutive months, based on the per-month FPG for the months during which the benefits are received.

(i) Any Federal, State, local, or tribal cash assistance for income maintenance, including:

(A) Supplemental Security Income (SSI), 42 U.S.C. 1381 *et seq.;*

(B) Temporary Assistance for Needy Families (TANF), 42 U.S.C. 601 *et seq.;* or

(C) Federal, State or local cash benefit programs for income maintenance (often called ''General Assistance'' in the State context, but which may exist under other names); and

(ii) Non-cash benefits, monetized as set forth in 8 CFR 212.24:

(A) Supplemental Nutrition Assistance Program (SNAP, formerly called ''Food Stamps''), 7 U.S.C. 2011 to 2036c;

(B) Section 8 Housing Assistance under the Housing Choice Voucher Program, as administered by HUD under 24 CFR part 984; 42 U.S.C. 1437f and 1437u;

(C) Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation) under 24 CFR parts 5, 402, 880 through 884 and 886; and

(2) Any of one or more of the following non-monetizable benefits if received for more than 12 months in the aggregate within a 36 month period (such that, for instance, receipt of two non-monetizable benefits in one month counts as two months):

(i) Medicaid, 42 U.S.C. 1396 *et seq.,* except for:

(A) Benefits paid for an emergency medical condition as described in section 1903(v) of Title XIX of the Social Security Act, 42 U.S.C. 1396b(v), 42 CFR 440.255(c);

(B) Services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400 *et seq.;*

(C) School-based benefits provided to children who are at or below the oldest age of children eligible for secondary education as determined under State law;

(D) Medicaid benefits received by children of U.S. citizens whose lawful admission for permanent residence and subsequent residence in the legal and physical custody of their U.S. citizen parent will result automatically in the child's acquisition of citizenship or whose lawful admission for permanent residence will result automatically in the child's acquisition of citizenship upon finalization of adoption in the United States by the U.S. citizen parent(s) or, once meeting other eligibility criteria as required by the Child Citizenship Act of 2000, Public Law 106–395 (section 320(a)–(b) of the Act, 8 U.S.C. 1431(a)–(b)), in accordance with 8 CFR part 320;

(E) Medicaid benefits received by the children of U.S. citizens who are entering the United States for the primary purpose of attending an interview under the Child Citizenship Act of 2000, Public Law 106–395 (section 322 of the Act, 8 U.S.C. 1433), in accordance with 8 CFR part 322.

(ii) Any benefit provided for institutionalization for long-term care at government expense;

(iii) Premium and Cost Sharing Subsidies for Medicare Part D, 42 U.S.C. 1395w–114;

(iv) Subsidized Housing under the Housing Act of 1937, 42 U.S.C. 1437 *et seq.*

(3) The receipt of a combination of monetizable benefits under paragraph (b)(1) of this section where the cumulative value of such benefits is equal to or less than 15 percent of the Federal Poverty Guidelines for a household size of one within any period of 12 consecutive based on the per-month FPG for the months during which the benefits are received, together with one or more non-monetizable benefits under paragraph (b)(2) of this section if such non-monetizable benefits are received for more than 9 months in the aggregate within a 36 month period (such that, for instance, receipt of two non-monetizable benefits in one month counts as two months);

(4) DHS will not consider any benefits, as defined in paragraphs (b)(1) through (b)(3) of this section, received by an alien who, at the time of receipt, filing, or adjudication, is enlisted in the U.S. armed forces under the authority of 10 U.S.C. 504(b)(1)(B) or 10 U.S.C. 504(b)(2), serving in active duty or in the Ready Reserve component of the U.S. Armed Forces, or if received by such an individual's spouse or child as defined in section 101(b) of the Act, in the public charge inadmissibility determination.

(c) *Likely at any time to become a public charge.* Likely at any time to become a public charge means likely at any time in the future to receive one or more public benefit as defined in paragraph (b) of this section based on the totality of the alien's circumstances.

(d) *Alien's household.* For purposes of public charge inadmissibility determinations under section 212(a)(4) of the Act:

(1) If the alien is 21 years of age or older, or under the age of 21 and married, the alien's household includes:

(i) The alien;

(ii) The alien's spouse, if physically residing with the alien;

(iii) The alien's children, as defined in 101(b)(1) of the Act, physically residing with the alien;

(iv) The alien's other children, as defined in section 101(b)(1) of the Act, not physically residing with the alien for whom the alien provides or is required to provide at least 50 percent of the children's financial support, as evidenced by a child support order or agreement a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the alien;

(v) Any other individuals (including a spouse not physically residing with the alien) to whom the alien provides, or is required to provide, at least 50 percent of the individual's financial support or who are listed as dependents on the alien's federal income tax return; and

(vi) Any individual who provides to the alien at least 50 percent of the alien's financial support, or who lists the alien as a dependent on his or her federal income tax return.

(2) If the alien is a child as defined in section 101(b)(1) of the Act, the alien's household includes the following individuals:

(i) The alien;

(ii) The alien's children as defined in section 101(b)(1) of the Act physically residing with the alien;

(iii) The alien's other children as defined in section 101(b)(1) of the Act not physically residing with the alien for whom the alien provides or is required to provide at least 50 percent of the children's financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the alien;

(iv) The alien's parents, legal guardians, or any other individual providing or required to provide at least 50 percent of the alien's financial support to the alien as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided to the alien;

(v) The parents' or legal guardians' other children as defined in section 101(b)(1) of the Act physically residing with the alien;

(vi) The alien's parents' or legal guardians' other children as defined in section 101(b)(1) of the Act, not physically residing with the alien for whom the parent or legal guardian provides or is required to provide at least 50 percent of the other children's

financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the parents or legal guardians; and

(vii) Any other individuals to whom the alien's parents or legal guardians provide, or are required to provide at least 50 percent of the individuals' financial support or who are listed as a dependent on the parent's or legal guardian's federal income tax return.

§ 212.22 Public Charge inadmissibility determination.

This section relates to the public charge ground of inadmissibility under section 212(a)(4) of the Act.

(a) *Prospective determination based on the totality of circumstances.* The determination of an alien's likelihood of becoming a public charge must be based on the totality of the alien's circumstances by weighing all factors that make the alien more or less likely at any time in the future to become a public charge, as outlined in this section.

(b) *Minimum factors to consider.* A public charge inadmissibility determination must entail consideration of the alien's age; health; family status; education and skills; and assets, resources, and financial status, as follows:

(1) *The alien's age*—(i) *Standard.* When considering an alien's age, DHS will consider whether the alien is between the age of 18 and the minimum ''early retirement age'' for Social Security set forth in 42 U.S.C. 416(*l*)(2), and whether the alien's age otherwise makes the alien more or less likely to become a public charge, such as by impacting the alien's ability to work.

(ii) [Reserved]

(2) *The alien's health*—(i) *Standard.* DHS will consider whether the alien's health makes the alien more or less likely to become a public charge, including whether the alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide and care for him- or herself, to attend school, or to work upon admission or adjustment of status.

(ii) *Evidence.* USCIS' consideration includes but is not limited to the following:

(A) A report of an immigration medical examination performed by a civil surgeon or panel physician where such examination is required; or

(B) Evidence of a medical condition that is likely to require extensive medical treatment or institutionalization after arrival or that will interfere with the alien's ability to provide and care for him or herself, to attend school, or to work upon admission or adjustment of status.

(3) *The alien's family status*—(i) *Standard.* When considering an alien's family status, DHS will consider the alien's household size, as defined in 8 CFR 212.21(d), and whether the alien's household size makes the alien more or less likely to become a public charge.

(ii) [Reserved]

(4) *The alien's assets, resources and financial status*—(i) *Standard.* When considering an alien's assets, resources, and financial status, DHS will consider whether:

(A) The alien's household's annual gross income is at least 125 percent of the most recent Federal Poverty Guidelines based on the alien's household size as defined by § 212.21(d), or if the alien's household's annual gross income is under 125 percent of the recent Federal Poverty Guidelines, whether the total value of the alien's household assets and resources is at least 5 times the difference between the alien's household's gross annual income and the Federal Poverty Guideline for the alien's household size;

(B) The alien has sufficient household assets and resources to cover any reasonably foreseeable medical costs related to a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide care for him- or herself, to attend school, or to work; and

(C) The alien has any financial liabilities or past receipt of public benefits as defined in 8 CFR 212.21(b) that make the alien more or less likely to become a public charge.

(ii) *Evidence.* USCIS' consideration includes but is not limited to the following:

(A) The alien's annual gross household income excluding any income from public benefits as defined in 8 CFR 212.21(b);

(B) Any additional income from individuals not included in the alien's household who physically reside with the alien and whose income will be relied on by the alien to meet the standard at 8 CFR 212.22(b)(4)(i);

(C) Any additional income provided to the alien by another person or source not included in the alien's household on a continuing monthly or yearly basis for the most recent calendar year excluding any income from public benefits as defined in 8 CFR 212.21(b);

(D) The household's cash assets and resources, including as reflected in checking and savings account statements covering 12 months prior to filing the application;

(E) The household's non-cash assets and resources that can be converted into cash within 12 months, such as net cash value of real estate holdings minus the sum of all loans secured by a mortgage, trust deed, or other lien on the home; annuities; securities; retirement and educational accounts; and any other assets that can easily be converted into cash;

(F) Whether the alien has:

(*1*) Applied for or received any public benefit, as defined in 8 CFR 212.21(b), on or after [DATE 60 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE]; or

(*2*) Been certified or approved to receive public benefits, as defined in 8 CFR 212.21(b), on or after [DATE 60 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE];

(G) Whether the alien has applied for or has received a fee waiver for an immigration benefit request on or after [DATE 60 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE];

(H) The alien's credit history and credit score; and

(I) Whether the alien has private health insurance or the financial resources to pay for reasonably foreseeable medical costs related to a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide care for him- or herself, to attend school, or to work;

(5) *The alien's education and skills.* (i) *Standard.* When considering an alien's education and skills, DHS will consider whether the alien has adequate education and skills to either obtain or maintain employment sufficient to avoid becoming a public charge, if authorized for employment.

(ii) *Evidence.* USCIS' consideration includes but is not limited to the following:

(A) The alien's history of employment;

(B) Whether the alien has a high school degree (or its equivalent) or higher education;

(C) Whether the alien has any occupational skills, certifications, or licenses; and

(D) Whether the alien is proficient in English or proficient in other languages in addition to English.

(6) *The alien's prospective immigration status and expected period of admission.* (i) *Standard.* The immigration status that the alien seeks

and the expected period of admission as it relates to the alien's ability to financially support for himself or herself during the duration of their stay, including:

(A) Whether the alien is applying for adjustment of status or admission in a nonimmigrant or immigrant classification; and

(B) If the alien is seeking admission as a nonimmigrant, the nonimmigrant classification and the anticipated period of temporary stay.

(ii) [Reserved];

(7) *An affidavit of support, when required under section 212(a)(4) of the Act, that meets the requirements of section 213A of the Act and 8 CFR 213a*—(i) *Standard.* A sufficient affidavit of support must meet the sponsorship and income requirements of section 213A of the Act and comply with 8 CFR 213a.

(A) *Evidence.* USCIS' consideration includes but is not limited to the following:

(*1*) The sponsor's annual income, assets, and resources;

(*2*) The sponsor's relationship to the applicant; and

(*3*) The likelihood that the sponsor would actually provide the statutorily-required amount of financial support to the alien, and any other related considerations.

(c) *Heavily weighed factors.* The factors below will generally weigh heavily in a public charge inadmissibility determination. The mere presence of any one enumerated circumstance is not, alone, determinative.

(1) *Heavily weighed negative factors.* The following factors will generally weigh heavily in favor of a finding that an alien is likely to become a public charge:

(i) The alien is not a full-time student and is authorized to work, but is unable to demonstrate current employment, recent employment history or no reasonable prospect of future employment;

(ii) The alien is currently receiving or is currently certified or approved to receive one or more public benefit, as defined in 212.21(b);

(iii) The alien has received one or more public benefit, as defined in 212.21(b), within the 36 months immediately preceding the alien's application for a visa, admission, or adjustment of status;

(iv)(A) The alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide for him- or herself, attend school, or work; and

(B) The alien is uninsured and has neither the prospect of obtaining private health insurance, or the financial resources to pay for reasonably foreseeable medical costs related to a the medical condition; or

(v) The alien had previously been found inadmissible or deportable on public charge grounds.

(2) *Heavily weighed positive factors.* The following factors will generally weigh heavily in favor of a finding that an alien is not likely to become a public charge:

(i) The alien's household has financial assets, resources, and support of at least 250 percent of the Federal Poverty Guidelines for a household of the alien's household size; or

(ii) The alien is authorized to work and is currently employed with an annual income of at least 250 percent of the Federal Poverty Guidelines for a household of the alien's household size.

(d) *Benefits received before [DATE 60 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE].* For purposes of this regulation, DHS will consider as a negative factor any amount of cash assistance for income maintenance, including Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), State and local cash assistance programs that provide benefits for income maintenance (often called ''General Assistance'' programs), and programs (including Medicaid) supporting aliens who are institutionalized for long-term care, received, or certified for receipt, before [DATE 60 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE], as provided under the 1999 Interim Field Guidance*, also known as the 1999 Field Guidance on Deportability and Inadmissibility on Public Charge Grounds.* DHS does not consider any other public benefits received, or certified for receipt, before such date.

§ 212.23 Exemptions and waivers for public charge ground of inadmissibility.

(a) *Exemptions.* The public charge ground of inadmissibility does not apply, based on statutory or regulatory authority, to the following categories of aliens:

(1) Refugees at the time of admission under section 207 of the Act and at the time of adjustment of status to lawful permanent resident under section 209 of the Act;

(2) Asylees at the time of grant under section 208 of the Act and at the time of adjustment of status to lawful permanent resident under section 209 of the Act;

(3) Amerasian immigrants at the time of application for admission as described in sections 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, Public Law 100–202, 101 Stat. 1329–183, section 101(e) (Dec. 22, 1987), as amended, 8 U.S.C. 1101 note;

(4) Afghan and Iraqi Interpreter, or Afghan or Iraqi national employed by or on behalf of the U.S. Government as described in section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006 Public Law 109–163 (Jan. 6, 2006), as amended, and section 602(b) of the Afghan Allies Protection Act of 2009, Public Law 111–8, title VI (Mar. 11, 2009), as amended, 8 U.S.C. 1101 note, and section 1244(g) of the National Defense Authorization Act for Fiscal Year 2008, as amended Public Law 110–181 (Jan. 28, 2008);

(5) Cuban and Haitian entrants applying for adjustment of status under in section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, 100 Stat. 3359 (Nov. 6, 1986), as amended, 8 U.S.C. 1255a note;

(6) Aliens applying for adjustment of status under the Cuban Adjustment Act, Public Law 89–732 (Nov. 2, 1966), as amended, 8 U.S.C. 1255 note;

(7) Nicaraguans and other Central Americans applying for adjustment of status under sections 202(a) and section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105–100, 111 Stat. 2193 (Nov. 19, 1997), as amended, 8 U.S.C. 1255 note;

(8) Haitians applying for adjustment of status under section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Public Law 105–277, 112 Stat. 2681 (Oct. 21, 1998), as amended, 8 U.S.C. 1255 note;

(9) Lautenberg parolees as described in section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Public Law 101–167, 103 Stat. 1195, title V (Nov. 21, 1989), as amended, 8 U.S.C. 1255 note;

(10) Special immigrant juveniles as described in section 245(h) of the Act;

(11) Aliens who entered the United States prior to January 1, 1972 and who meet the other conditions for being granted lawful permanent residence under section 249 of the Act and 8 CFR part 249 (Registry);

(12) Aliens applying for or re-registering for Temporary Protected Status as described in section 244 of the Act under section 244(c)(2)(A)(ii) of the Act and 8 CFR 244.3(a);

(13) A nonimmigrant described in section 101(a)(15)(A)(i) and (A)(ii) of the

Act (Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family or Other Foreign Government Official or Employee, or Immediate Family), pursuant to section 102 of the Act, and 22 CFR 41.21(d);

(14) A nonimmigrant classifiable as C–2 (alien in transit to U.N. Headquarters) or C–3 (foreign government official), 22 CFR 41.21(d);

(15) A nonimmigrant described in section 101(a)(15)(G)(i), (G)(ii), (G)(iii), and (G)(iv), of the Act (Principal Resident Representative of Recognized Foreign Government to International Organization, and related categories), pursuant to section 102 of the Act pursuant to 22 CFR 41.21(d);

(16) A nonimmigrant classifiable as NATO–1, NATO–2, NATO–3, NATO–4 (NATO representatives), and NATO–6 pursuant to 22 CFR 41.21(d);

(17) A nonimmigrant classified under section 101(a)(15)(T) of the Act, in accordance with section 212(d)(13)(A) of the Act;

(18) An applicant for, or individual who is granted, nonimmigrant status under section 101(a)(15)(U) of the Act in accordance with section 212(a)(4)(E)(ii) of the Act;

(19) Nonimmigrants classified under section 101(a)(15)(U) of the Act applying for adjustment of status under section 245(m) of the Act and 8 CFR 245.24;

(20) An alien who is a VAWA self-petitioner under section 212(a)(4)(E)(i) of the Act;

(21) A qualified alien described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1641(c), under section 212(a)(4)(E)(iii) of the Act;

(22) Applicants adjusting status who qualify for a benefit under section 1703 of the National Defense Authorization Act, Public Law 108–136, 117 Stat. 1392 (Nov. 24, 2003), 8 U.S.C. 1151 note (posthumous benefits to surviving spouses, children, and parents);

(23) American Indians born in Canada determined to fall under section 289 of the Act;

(24) Texas Band of Kickapoo Indians of the Kickapoo Tribe of Oklahoma, Public Law 97–429 (Jan. 8, 1983);

(25) Nationals of Vietnam, Cambodia, and Laos applying for adjustment of status under section 586 of Public Law 106–429 under 8 CFR 245.21;

(26) Polish and Hungarian Parolees who were paroled into the United States from November 1, 1989 to December 31, 1991 under section 646(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, Div. C, Title VI, Subtitle D (Sept. 30, 1996), 8 U.S.C. 1255 note; and

(27) Any other categories of aliens exempt under any other law from the public charge ground of inadmissibility provisions under section 212(a)(4) of the Act.

(b) *Waiver.* A waiver for the public charge ground of inadmissibility may be authorized based on statutory or regulatory authority, for the following categories of aliens:

(1) Nonimmigrants who were admitted under section 101(a)(15)(T) of the Act applying for adjustment of status under section 245(l)(2)(A) of the Act;

(2) Applicants for admission as nonimmigrants under 101(a)(15)(S) of the Act;

(3) Nonimmigrants admitted under section 101(a)(15)(S) of the Act applying for adjustment of status under section 245(j) of the Act (witnesses or informants); and

(4) Any waiver of public charge inadmissibility that is authorized under law or regulation.

§ 212.24 Valuation of monetizable benefits.

In determining the cumulative value of one or more monetizable benefits listed in 8 CFR 212.21(b)(1)(ii) for purposes of a public charge inadmissibility determination under 8 CFR 212.22, DHS will rely on benefit-specific methodology as follows:

(a) With respect to the Supplemental Nutrition Assistance Program (SNAP, formerly called ''Food Stamps''), 7 U.S.C. 2011 to 2036c, DHS will calculate the value of the benefit attributable to the alien in proportion to the total number of people covered by the benefit, based on the amount(s) deposited within the applicable period of 12 consecutive months in which the benefits are received in the Electronic Benefits Transfer (EBT) card account;

(b) With respect to the Section 8 Housing Assistance under the Housing Choice Voucher Program, as administered by HUD under 24 CFR part 984; 42 U.S.C. 1437f and 1437u, DHS will calculate value of the voucher attributable to the alien in proportion to the total number of people covered by the benefit, based on the amount(s) within the applicable period of 12 consecutive months in which the benefits are received;

(c) With respect to Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation) under 24 CFR parts 5, 402, 880–884 and 886, DHS will calculate the value of the rental assistance attributable to the alien in proportion to the total number of people covered by the benefit, based on the amount(s) received within the applicable period of 12 consecutive months in which the benefits are received; and

(d) With respect to any cash benefit received by the alien on a household (rather than individual) basis, DHS will calculate the value of the benefit attributable to the alien in proportion to the total number of people covered by the benefit, based on the amount(s) received within the applicable period of 12 consecutive months in which the benefit is received.

PART 213—PUBLIC CHARGE BONDS

■ 6. The authority citation for part 213 is revised to read as follows:

Authority: 8 U.S.C. 1103; 1183; 8 CFR part 2.

■ 7. Revise the part heading to read as set forth above.

■ 8. Revise § 213.1 to read as follows:

§ 213.1 Adjustment of status of aliens on submission of a public charge bond.

(a) *Inadmissible aliens.* In accordance with section 213 of the Act, after an alien seeking adjustment of status has been found inadmissible as likely to become a public charge under section 212(a)(4) of the Act, DHS may allow the alien to submit a public charge bond, if the alien is otherwise admissible, in accordance with the requirements of 8 CFR 103.6 and this section. The public charge bond submitted on the alien's behalf must meet the conditions set forth in 8 CFR 103.6 and this section.

(b) *Discretion.* The decision to allow an alien inadmissible under section 212(a)(4) of the Act to submit a public charge bond is in DHS's discretion. If an alien has one or more heavily weighed negative factors as defined in 8 CFR 212.22 present in his or her case, DHS generally will not favorably exercise discretion to allow submission of a public charge bond.

(c) *Public Charge Bonds.* (1) *Types.* DHS may require an alien to submit a surety bond, or cash or any cash equivalent, as listed in 8 CFR 103.6, and agreement, to secure a bond. DHS will notify the alien of the type of bond that may be submitted. All bonds, and agreements covering cash or cash equivalents, as listed in 8 CFR 103.6, to secure a bond, must be executed on a form designated by DHS and in accordance with form instructions. When a surety bond is accepted, the bond must comply with requirements applicable to surety bonds in 8 CFR 103.6 and this section. If cash or a cash equivalent, as listed in 8 CFR 103.6, is being provided to secure a bond, DHS

must issue a receipt on a form designated by DHS.

(2) *Amount.* Any public charge bond, or agreements to secure a public charge bond on cash or cash equivalents, as listed in 8 CFR 103.6, must be in an amount decided by DHS, not less than $10,000, annually adjusted for inflation based on the Consumer Price Index for All Urban Consumers (CPI–U), and rounded up to the nearest dollar. The bond amount may not be appealed by the alien or the obligor.

(d) *Conditions of the bond.* A public charge bond must remain in effect until the alien naturalizes or otherwise obtains U.S. citizenship, permanently departs the United States, or dies, the alien requests cancellation after 5 years of being a lawful permanent resident, the alien changes immigration status to one not subject to public charge ground of inadmissibility, and the bond is cancelled in accordance with paragraph (g) of this section. An alien on whose behalf a public charge bond has been submitted may not receive any public benefits, as defined in 8 CFR 212.21(b), after the alien's adjustment of status to that of a lawful permanent resident, until the bond is cancelled in accordance with paragraph (g) of this section. An alien must also comply with any other conditions imposed as part of the bond.

(e) *Submission.* A public charge bond may be submitted on the alien's behalf only after DHS notifies the alien and the alien's representative, if any, that a bond may be submitted. The bond must be submitted to DHS in accordance with the instructions of the form designated by DHS for this purpose, with the fee prescribed in 8 CFR 103.7(b), and any procedures contained in the DHS notification to the alien. DHS will specify the bond amount and duration, as well as any other conditions, as appropriate for the alien and the immigration benefit being sought. USCIS will notify the alien and the alien's representative, if any, that the bond has been accepted, and will provide a copy to the alien and the alien's representative, if any, of any communication between the obligor and the U.S. government. An obligor must notify DHS within 30 days of any change in the obligor's or the alien's physical and mailing address.

(f) *Substitution.* A bond not eligible for cancellation under paragraph (g) of this section must be substituted prior to the expiration of the validity of the bond previously submitted to DHS.

(1) *Substitution Process.* Either the obligor of the bond previously submitted to DHS or a new obligor may submit a substitute bond on the alien's behalf. If the bond previously submitted to DHS is a limited duration bond because it expires on a date certain, the substitute bond must be submitted no later than 180 days before the bond previously submitted to USCIS expires and the substitute bond must be valid and effective on or before the day the bond previously submitted to DHS expires. If the bond previously submitted to DHS is a bond of unlimited duration because it does not bear a specific end date, the substitute bond must specify an effective date. The substitute bond must meet all of the requirements applicable to the initial bond as required by this section and 8 CFR 103.6, and if the obligor is different from the original obligor, the new obligor must assume all liabilities of the initial obligor. The substitute bond must also cover any breach of the bond conditions which occurred before DHS accepted the substitute bond, in the event DHS did not learn of the breach until after the expiration or cancellation of the bond previously submitted to DHS.

(2) *Acceptance.* Upon submission of the substitute bond, DHS will review the substitute bond for sufficiency. If the bond on file has not yet expired, DHS will cancel the bond previously submitted to DHS, and replace it with the substitute bond, provided the substitute bond is sufficient. If the substitute bond was submitted before the previously submitted bond expired, but is insufficient, DHS will notify the obligor of the substitute bond to correct the deficiency within the timeframe specified in the notice. If the deficiency is not corrected within the timeframe specified, and the previously submitted bond has not yet expired, the previously submitted bond will remain in effect.

(g) *Cancellation of the Public Charge Bond.* (1) An alien or obligor may request that DHS cancel a public charge bond if the alien:

(i) Naturalized or otherwise obtained United States citizenship;

(ii) Permanently departed the United States;

(iii) Died;

(iv) Reached his or her 5-year anniversary since becoming a lawful permanent resident; or

(v) Obtained a different immigration status not subject to public charge inadmissibility, as listed in 8 CFR 212.23, following the grant of lawful permanent resident status associated with the public charge bond.

(2) *Permanent Departure Defined.* For purposes of this section, permanent departure means that the alien lost or abandoned his or her lawful permanent resident status, whether by operation of law or voluntarily, and physically departed the United States. An alien is only deemed to have voluntarily lost lawful permanent resident status when the alien has submitted a record of abandonment of lawful permanent resident status, on the form prescribed by DHS, in accordance with the form's instructions.

(3) *Cancellation Request.* An alien must request that a public charge bond be cancelled by submitting a form designated by DHS, in accordance with that form's instructions and the fee prescribed in 8 CFR 103.7(b). If a request for cancellation of a public charge bond is not filed, the bond shall remain in effect until the form is filed, reviewed, and a decision is rendered.

(4) *Adjudication and Burden of Proof.* The alien and the obligor have the burden to establish, by a preponderance of the evidence, that one of the conditions for cancellation of the public charge bond listed in paragraph (g)(1) of this section has been met. If DHS determines that the information included in the cancellation request is insufficient to determine whether cancellation is appropriate, DHS may request additional information as outlined in 8 CFR 103.2(b)(8). DHS must cancel a public charge bond if DHS determines that the conditions of the bond have been met, and that the bond was not breached, in accordance with paragraph (h) of this section. For cancellations under paragraph (g)(1)(iv) of this section, the alien or the obligor must establish that the public charge bond has not been breached during the 5-year period preceding the alien's fifth anniversary of becoming a lawful permanent resident.

(5) *Decision.* DHS will notify the obligor, the alien, and the alien's representative, if any, of its decision regarding the request to cancel the public charge bond. When the public charge bond is cancelled, the obligor is released from liability. If the public charge bond has been secured by a cash deposit or a cash equivalent, DHS will refund the cash deposit to the obligor. If DHS denies the request to cancel the bond, DHS will notify the obligor and the alien, and the alien's representative, if any, of the reasons why, and of the right of the obligor to appeal in accordance with the requirements of 8 CFR part 103, subpart A. An obligor may file a motion pursuant to 8 CFR 103.5 after an unfavorable decision on appeal. Neither the alien nor the alien's representative may appeal a denial to cancel the public charge bond or file a motion.

(h) Breach—(1) Breach and Claim in Favor of the United States. An

administratively final determination that a bond has been breached creates a claim in favor of the United States. Such claim may not be released or discharged by an immigration officer. A breach determination is administratively final when the time to file an appeal with the Administrative Appeals Office (AAO) pursuant to 8 CFR part 103, subpart A, has expired or when the appeal is dismissed or rejected.

(2) *Breach of Bond Conditions.* (i) The conditions of the bond are breached if the alien has received public benefits, as defined in 8 CFR 212.21(b), after the alien's adjustment of status to that of a lawful permanent resident and before the bond is cancelled under paragraph (g) of this section. Public benefits, as defined in 8 CFR 212.21(b), received during periods while an alien is present in the United States in a category that is exempt from the public charge ground of inadmissibility, as set forth in 8 CFR 212.23, following the initial grant of status as a lawful permanent resident, and public benefits received after the alien obtained U.S. citizenship, may not be considered when determining whether the conditions of the bond have been breached. DHS will not consider any benefits, as defined in 8 CFR 212.21 (b)(1) through (b)(3), received by an alien who, at the time of receipt filing, adjudication or bond breach or cancellation determination, is enlisted in the U.S. armed forces under the authority of 10 U.S.C. 504(b)(1)(B) or 10 U.S.C. 504(b)(2), serving in active duty or in the Ready Reserve component of the U.S. Armed Forces, or if received by such an individual's spouse or child as defined in section 101(b) of the Act.; or

(ii) The conditions of the bond otherwise imposed by DHS as part of the public charge bond are breached.

(3) *Adjudication.* DHS will determine whether the conditions of the bond have been breached. If DHS determines that it has insufficient information from the benefit granting agency to determine whether a breach occurred, DHS may request additional information from the benefit granting agency. If DHS determines that it has insufficient information from the alien or the obligor, it may request additional information as outlined in 8 CFR part 103 before making a breach determination. If DHS intends to declare a bond breached based on information that is not otherwise protected from disclosure to the obligor, DHS will disclose such information to the obligor to the extent permitted by law, and provide the obligor with an opportunity to respond and submit rebuttal evidence, including specifying a deadline for a response. DHS will send a copy of this notification to the alien and the alien's representative, if any. After the obligor's response, or after the specified deadline has passed, DHS will make a breach determination.

(4) *Decision.* DHS will notify the obligor and the alien, and the alien's representative, if any, of the breach determination. If DHS determines that a bond has been breached, DHS will inform the obligor of the right to appeal in accordance with the requirements of 8 CFR part 103, subpart A. The obligor may only file a motion in accordance with 8 CFR 103.5 of an unfavorable decision on appeal. The alien or the alien's representative, if any, may not appeal the breach determination or file a motion.

(5) *Demand for Payment.* Demands for amounts due under the terms of the bond will be sent to the obligor or any agent/co-obligor after a declaration of breach becomes administratively final.

(6) *Amount of Bond Breach and Effect on Bond.* The bond must be considered breached in the full amount of the bond.

(i) *Exhaustion of administrative remedies.* Unless administrative appeal is precluded by regulation, a party has not exhausted the administrative remedies available with respect to a public charge bond under this section until the party has obtained a final decision in an administrative appeal under 8 CFR part 103, subpart A.

(ii) [Reserved]

PART 214—NONIMMIGRANT CLASSES

■ 9. The authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Public Law 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

■ 10. Section 214.1 is amended by:
■ a. Adding paragraph (a)(3)(iv),
■ b. Removing the term, ''and'' in paragraph (c)(4)(iii);
■ c. Redesignating paragraph (c)(4)(iv) as paragraph (c)(4)(v); and
■ d. Adding a new paragraph (c)(4)(iv).

The additions read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

(a) * * *

(3) * * *

(iv) Except where the nonimmigrant classification for which the alien applies, or seeks to extend, is exempt from section 212(a)(4) of the Act or that section has been waived, as a condition for approval of extension of status, the alien must demonstrate that he or she has not received since obtaining the nonimmigrant status he or she seeks to extend, is not receiving, nor is likely to receive, a public benefit as defined in 8 CFR 212.21(b). For the purposes of this determination, DHS will consider such public benefits received on or after [DATE 60 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE]. In assessing whether the alien has met his or her burden, DHS will consider the nonimmigrant classification the alien is seeking to extend, the reasons for seeking the extension of stay and the expected period of stay. For purposes of this determination, DHS may require the submission of a declaration of self-sufficiency on a form designated by DHS, in accordance with form instructions.

* * * * *

(c) * * *

(4) * * *

(iv) As set forth in 8 CFR 214.1(a)(3)(iv), except where the alien's nonimmigrant classification is exempted by law from section 212(a)(4) of the Act, the alien has not received since obtaining the nonimmigrant status for which he or she seeks to extend, is not currently receiving, nor is likely to receive, public benefits as described in in 8 CFR 212.21(b). For the purposes of this determination, DHS will consider public benefits received on or after [DATE 60 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE]; and

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF A PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 11. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; Pub. L. 105–100, section 202, 111 Stat. 2160, 2193; Pub. L. 105–277, section 902, 112 Stat. 2681; Pub. L. 110–229, tit. VII, 122 Stat. 754; 8 CFR part 2.

■ 12. Section 245.4 is amended by redesignating the undesignated text as paragraph (a) and adding paragraph (b) to read as follows:

§ 245.4 Documentary requirements.

* * * * *

(b) For purposes of public charge determinations under section 212(a)(4) of the Act and 8 CFR 212.22, an alien who is seeking adjustment of status under this part must submit a declaration of self-sufficiency on a form designated by DHS, in accordance with form instructions.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

■ 13. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

■ 14. Section 248.1 is amended by:
■ a. Revising paragraph (a);
■ b. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively; and
■ c. Adding a new paragraph (b); and
■ d. Revising newly redesignated paragraph (c)(4).

The revisions and additions read as follows:

§ 248.1 Eligibility.

(a) *General.* Except for those classes enumerated in § 248.2 of this part, any alien lawfully admitted to the United States as a nonimmigrant, including an alien who acquired such status in accordance with section 247 of the Act, 8 U.S.C. 1257, who is continuing to maintain his or her nonimmigrant status, may apply to have his or her nonimmigrant classification changed to any nonimmigrant classification other than that of a spouse or fiance(e), or the child of such alien, under section 101(a)(15)(K) of the Act, 8 U.S.C. 1101(a)(15)(K), or as an alien in transit under section 101(a)(15)(C) of the Act, 8 U.S.C. 1101(a)(15)(C). Except where the nonimmigrant classification to which the alien seeks to change is exempted by law from section 212(a)(4) of the Act, as a condition for approval of a change of nonimmigrant status, the alien must demonstrate that he or she has not received since obtaining the nonimmigrant status from which he or she seeks to change, is not currently receiving, nor is likely to receive, public benefits as described in 8 CFR 212.21(b). DHS will consider public benefits received on or after [DATE 60 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE]. An alien defined by section 101(a)(15)(V), or 101(a)(15)(U) of the Act, 8 U.S.C. 1101(a)(15)(V) or 8 U.S.C. 1101(a)(15)(U), may be accorded nonimmigrant status in the United States by following the procedures set forth in 8 CFR 214.15(f) and 214.14, respectively.

(b) *Decision in change of status proceedings.* Where an applicant or petitioner demonstrates eligibility for a requested change of status, it may be granted at the discretion of DHS. There is no appeal from the denial of an application for change of status.

(c) * * *

(4) As a condition for approval, an alien seeking to change nonimmigrant classification must demonstrate that he or she has not received since obtaining the nonimmigrant status from which he or she seeks to change, is not receiving, nor is likely to receive, a public benefit as defined in 8 CFR 212.21(b). For purposes of this determination, DHS will consider such benefits received on or after [DATE 60 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE]. In assessing whether the alien has met his or her burden, DHS will consider the prospective nonimmigrant classification, the reasons for seeking the change of status, and the expected period of stay. DHS may require the submission of a declaration of self-sufficiency on a form designated by DHS, in accordance with form instructions. This provision does not apply to classes of nonimmigrants who are explicitly exempt by law from section 212(a)(4) of the Act.

* * * * *

Kirstjen M. Nielsen,

Secretary.

[FR Doc. 2018–21106 Filed 10–5–18; 8:45 am]

BILLING CODE 4410–10–P

FEDERAL REGISTER

Vol. 83 Wednesday,

No. 196 October 10, 2018

Part IV

The President

Proclamation 9799—German-American Day, 2018

Federal Register
Vol. 83, No. 196
Wednesday, October 10, 2018

Presidential Documents

Title 3—

The President

Proclamation 9799 of October 5, 2018

German-American Day, 2018

By the President of the United States of America

A Proclamation

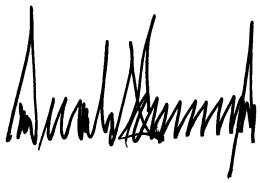
German Americans have helped build our Republic, shape our heritage, and enrich our culture since the arrival of the first German settlers in the New World on October 6, 1683. They brought with them and instilled in their descendants a desire for liberty and dreams of a better life. Our history is replete with examples of their commitment to civic engagement, hard work, and invention. On German-American Day, we proudly celebrate the invaluable contributions that Americans of German descent—the largest ancestry group in the United States—have made to every facet of our society.

More than 43 million Americans proudly claim German heritage, linked by the shared sense of entrepreneurship and tradition German-American pioneers have instilled in our great country. The industry and ingenuity of German Americans shaped and continue to impact our national landscape. They played a central role in establishing and building some of our great American cities, including Philadelphia, Pennsylvania; Cincinnati, Ohio; St. Louis, Missouri; Milwaukee, Wisconsin; and others. German Americans have made an indelible mark on business, agriculture, art, design, science, technology, and education. German Americans also have a proud history of military service, including the more than 200,000 who served in the Union Army during the Civil War.

The deep bond between our Nation and Germany, which predates our independence, continues today. Together, we are a cornerstone of the transatlantic alliance and champions of economic and personal freedom. As Germany launches its yearlong German-American friendship festival, *Wunderbar Together,* we proudly honor these strong historical ties and examine how we will build on our partnership in the years to come.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 6, 2018, as German-American Day. I call upon all Americans to celebrate the achievements and contributions of German Americans with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2018–22232
Filed 10–9–18; 11:15 am]
Billing code 3295–F9–P

Reader Aids

Federal Register

Vol. 83, No. 196

Wednesday, October 10, 2018

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, OCTOBER

49265–49458 1
49459–49768 2
49769–49986 3
49987–50254 4
50255–50474 5
50475–50802 9
50803–51300 10

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
9791 50241
9792 50243
9793 50245
9794 50247
9795 50249
9796 50251
9797 50253
9798 50803
9799 51299

Administrative Orders:
Memorandums:
Memorandum of September 10, 2018 50237
Presidential Determinations:
No. 2018–12 of September 11,2018 50239

5 CFR

9800 49769

7 CFR

51 50475
318 49987
319 49987
945 49776
1400 49459
1416 49459

Proposed Rules:
56 50527
62 50527
70 50527
226 50038
810 49498
905 49499
920 49312
985 50527
986 50531
1212 49314

8 CFR

Proposed Rules:
103 51114
212 51114
213 51114
214 51114
245 51114
248 51114

10 CFR

Proposed Rules
2 50533
431 49501

12 CFR

45 50805
201 49472
204 49473
237 50805
349 50805
624 50805
1221 50805
1231 49987

Proposed Rules:
30 50046
722 49857

14 CFR

39 ..... 49265, 49269, 49272, 49275, 49475, 49780, 49784, 49786, 49789, 49791, 49793, 50477, 50479, 50482, 50814, 50816, 50818, 50821
71 ..... 49277, 49482, 49483, 50255, 50256, 50823

Proposed Rules:
21 50536
39 ..... 49317, 50047, 50537, 50539, 50860, 50862
71 ..... 49506, 50050

15 CFR

902 49994

16 CFR

410 50484

Proposed Rules:
1130 50542

17 CFR

210 50148
229 50148
230 50148
239 50148
240 50148
249 50148
274 50148

Proposed Rules:
210 49630
229 49630
239 49630
240 ..... 49630, 50297
249 49630

21 CFR

172 ..... 50487, 50490
177 50490
573 49485

Proposed Rules:
573 49508

22 CFR

5 50823
121 50003
123 50003

23 CFR

658 Appendix C 49487

24 CFR

570 50257

26 CFR

1 .....50258, 50864, 51072

29 CFR

4001.....49799
4022.....49799
4043.....49799
4044.....49799
Proposed Rules:
541.....49869

33 CFR

100.....49489
117 .....49278, 49279, 49280, 50007, 50259
165 .....49281, 49283, 50260, 50262, 50503
Proposed Rules:
165.....50310, 50545

36 CFR

242.....50758
1007.....50826
1008.....50826
1009.....50826
1011.....50826
Proposed Rules:
242.....49322

38 CFR

36.....50506

39 CFR

3050.....49286

40 CFR

9 .....49295, 49806, 50838
52 .....49295, 49297, 49298, 49300, 49492, 49826, 50007, 50010, 50012, 50014, 50018, 50022, 50024, 50264, 50266, 50271, 50274, 50506, 50849, 50851, 50854
70.....49300
81.....50024
82.....50026
180.....50284
721 .....49295, 49806, 50838
Proposed Rules:
52 .....49330, 49509, 49870, 49872, 49894, 50052, 50312, 50314, 50548, 50551, 50865, 50867
62.....49897
70.....49509
81.....50556
82.....49332
86.....49344
271.....49900, 50869
721.....49903, 50872

42 CFR

411.....49832
412.....49832
413.....49832, 49836
424.....49832, 49836
495.....49836
Proposed Rules:
405.....49513
423.....49513

44 CFR

Ch. I.....49302
64.....50289

46 CFR

502.....50290
503.....50290
515.....50290
520.....50290
530.....50290
535.....50290
540.....50290
550.....50290
555.....50290
560.....50290

47 CFR

73.....50035

48 CFR

801.....49302
811.....49302
832.....49302
852.....49302
870.....49302
Proposed Rules:
232.....50052
242.....50052
252.....50052

49 CFR

Proposed Rules:
10.....50053
395.....50055
555.....50872
571.....50872
591.....50872
1152.....50326

50 CFR

100.....50758
622.....50295
635.....50857
660.....50510
665.....49495
679 .....49496, 49497, 49994, 50036
Proposed Rules:
17 .....50560, 50574, 50582, 50610
100.....49322
622.....50056
648.....50059
697.....50061

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 302/P.L. 115–254
FAA Reauthorization Act of 2018 (Oct. 5, 2018; 132 Stat. 3186)

Last List October 5, 2018

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.