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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 TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2018-0553; Product Identifier 2017-NM-138-AD; Amendment 39-19446; AD 2018-20-12]

RIN 2120-AA64

#### Airworthiness Directives; Bombardier, Inc., Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model DHC-8-102, -103, and -106 airplanes, Model DHC-8-200 series airplanes, and Model DHC-8-300 series airplanes. This AD was prompted by reports of arcing and smoke emanating from the windshield heater terminal lugs. This AD requires revising the maintenance or inspection program to incorporate maintenance review board (MRB) tasks for general visual inspections of the windshield moisture seal. This AD also requires re-torquing the windshield heater terminal lugs, applying a coating to the windshield heater screw heads, doing a chemical cleaning of the wiring and components, doing a visual inspection of the wiring and components, doing an operational test of the pilot's and co-pilot's windshield heating system, and repair if necessary. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 23, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 23, 2018.

**ADDRESSES:** For service information identified in this final rule, contact

Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email [thd.qseries@aero.bombardier.com](mailto:thd.qseries@aero.bombardier.com); internet <http://www.bombardier.com>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0553.

#### 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-2018-0553; 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 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:** John P. DeLuca, Aerospace Engineer, Avionics and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7369; fax 516-794-5531; email [g-avs-nyaco-cos@faa.gov](mailto:g-avs-nyaco-cos@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 Bombardier, Inc., Model DHC-8-102, -103, and -106 airplanes, Model DHC-8-200 series airplanes, and Model DHC-8-300 series airplanes. The NPRM published in the **Federal Register** on July 6, 2018 (83 FR 31493). The NPRM was prompted by reports of arcing and smoke emanating from the windshield, caused by loose or damaged windshield heater terminal lugs. The NPRM proposed to require revising the maintenance or inspection program to incorporate MRB tasks for general visual

inspections of the windshield moisture seal. The NPRM also proposed to require re-torquing the windshield heater terminal lugs, applying a coating to the windshield heater screw heads, doing a chemical cleaning of the wiring and components, doing a visual inspection of the wiring and components, doing an operational test of the pilot's and co-pilot's windshield heating system, and repair if necessary.

We are issuing this AD to address loose terminal lugs and terminal lugs damaged due to fluid ingress between the windshields and side window posts, which could lead to burning of the lugs and cracking of the windshields, and could ultimately cause a loss of cabin pressure, resulting in an emergency descent.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF-2017-25, dated July 31, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc., Model DHC-8-102, -103, and -106 airplanes, Model DHC-8-200 series airplanes, and Model DHC-8-300 series airplanes. The MCAI states:

There have been several reports of arcing and smoke emanating from the windshields. Investigation of these incidents revealed that de-icing fluid and water could enter between the windshields and side window posts, leading to possible damage of the windshield heater terminal lugs creating arcing and smoke. In addition, investigation also revealed that the windshield heater terminal lugs tend to loosen over time. Loose terminal lugs could also have a similar effect of arcing and smoke. Both events could lead to burning of the lugs and, due to the excessive heat, cracking of the windshields. If not corrected, these conditions could cause a loss of cabin pressure resulting in an emergency descent.

You may examine the MCAI in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0553.

#### Comments

We gave the public the opportunity to participate in developing this final rule. We have considered the comment received. The Air Line Pilots Association, International (ALPA) indicated its support for the NPRM.

## Conclusion

We reviewed the relevant data, considered the comment received, 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

Bombardier has issued Service Bulletin 8–30–41, Revision A, dated March 24, 2017. This service information describes procedures for re-

torqueing the windshield heater terminal lugs and applying Humiseal coating to the screw heads of the windshield heater, doing a chemical cleaning and general visual inspection of the wiring and components, and doing an operational test of the windshield heating system.

Bombardier has also issued the following service information, which describes airworthiness limitation tasks for a general visual inspection of the windshield moisture seal. These documents are distinct since they apply to different airplane models.

- de Havilland Inc. Dash 8 Series 100 Maintenance Task Card Task Number 5610/01, “General Visual Inspection of the Windshield Moisture Seal,” dated August 5, 2017.

- de Havilland Inc. Dash 8 Series 200 Maintenance Task Card Task Number 5610/01, “General Visual Inspection of the Windshield Moisture Seal,” dated August 5, 2017.

- de Havilland Inc. Dash 8 Series 300 Maintenance Task Card Task Number 5610/01, “General Visual Inspection of the Windshield Moisture Seal,” dated March 15, 2017.

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

## Costs of Compliance

We estimate that this AD affects 63 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × \$85 per hour = \$255 .....	\$0	\$255	\$16,065

\* Table does not include estimated costs for revising the maintenance or inspection program.

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be \$7,650 (90 work-hours × \$85 per work-hour).

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

## Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: “General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

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

**2018–20–12 Bombardier, Inc.:** Amendment 39–19446; Docket No. FAA–2018–0553; Product Identifier 2017–NM–138–AD.

### (a) Effective Date

This AD is effective November 23, 2018.

### (b) Affected ADs

None.

### (c) Applicability

This AD applies to Bombardier, Inc., Model DHC–8–102, –103, –106, –201, –202,



–301, –311, and –315 airplanes, certificated in any category, serial numbers 003 through 672 inclusive.

**(d) Subject**

Air Transport Association (ATA) of America Code 30, Ice and rain protection.

**(e) Reason**

This AD was prompted by reports of arcing and smoke emanating from the windshield, caused by loose or damaged windshield heater terminal lugs. We are issuing this AD to address loose terminal lugs and terminal lugs damaged due to fluid ingress between the windshields and side window posts, which could lead to burning of the lugs and cracking of the windshields, and could ultimately cause a loss of cabin pressure, resulting in an emergency descent.

**(f) Compliance**

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

**(g) Maintenance or Inspection Program Revision**

Within 30 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the applicable task identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD into the applicable program support manual (PSM) identified in table 1 to paragraph (g) of this AD, which is included in the existing maintenance or inspection program. The initial compliance time for the tasks are within 1,600 flight hours or 12 months, whichever occurs first after the effective date of this AD.

(1) de Havilland Inc. Dash 8 Series 100 Maintenance Task Card Task Number 5610/01, “General Visual Inspection of the Windshield Moisture Seal,” dated August 5, 2017.

(2) de Havilland Inc. Dash 8 Series 200 Maintenance Task Card Task Number 5610/01, “General Visual Inspection of the Windshield Moisture Seal,” dated August 5, 2017.

(3) de Havilland Inc. Dash 8 Series 300 Maintenance Task Card Task Number 5610/01, “General Visual Inspection of the Windshield Moisture Seal,” dated March 15, 2017.

**TABLE 1 TO PARAGRAPH (g) OF THIS AD—PSM TO UPDATE**

Airplane model	Maintenance requirements manual (MRM)
DHC–8–102, –103, and –106.	PSM 1–8–7
DHC–8–201 and –202 .....	PSM 1–82–7
DHC–8–301, –311, and –315.	PSM 1–83–7

**(h) No Alternative Actions or Intervals**

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be

used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

**(i) Cleaning, Inspection, Re-Torquing, Sealant Application, and Operational Test**

Within 8,000 flight hours or 60 months, whichever occurs first after the effective date of this AD: Perform a chemical cleaning of the wiring and components, do a general visual inspection of the wiring and components for signs of cracking, erosion, wear, or other damage, re-torque the windshield heater terminal lugs, apply Humiseal coating to the screw heads of the windshield heater, and do an operational test of the pilot's and co-pilot's windshield heating system, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–30–41, Revision A, dated March 24, 2017. If the operational test fails, before further flight, do corrective actions, repeat the test, and do applicable corrective actions until the operational test is passed. If any cracking, erosion, wear, or other damage is found, before further flight, repair using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

**(j) Credit for Previous Actions**

This paragraph provides credit for the actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–30–41, dated March 31, 2016.

**(k) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

**(l) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2017–25, dated July 31, 2017, for related information. This MCAI may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2018–0553.

(2) For more information about this AD, contact John P. DeLuca, Aerospace Engineer, Avionics and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7369; fax 516–794–5531; email [9-avs-nyaco-cos@faa.gov](mailto:9-avs-nyaco-cos@faa.gov).

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (m)(4) of this AD.

**(m) Material Incorporated by Reference**

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

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

(i) Bombardier Service Bulletin 8–30–41, Revision A, dated March 24, 2017.

(ii) de Havilland Inc. Dash 8 Series 100 Maintenance Task Card Task Number 5610/01, “General Visual Inspection of the Windshield Moisture Seal,” dated August 5, 2017.

(iii) de Havilland Inc. Dash 8 Series 200 Maintenance Task Card Task Number 5610/01, “General Visual Inspection of the Windshield Moisture Seal,” dated August 5, 2017.

(iv) de Havilland Inc. Dash 8 Series 300 Maintenance Task Card Task Number 5610/01, “General Visual Inspection of the Windshield Moisture Seal,” dated March 15, 2017.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email [thd.qseries@aero.bombardier.com](mailto:thd.qseries@aero.bombardier.com); internet <http://www.bombardier.com>.

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(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 Des Moines, Washington, on September 20, 2018.

**John P. Piccola,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2018–22150 Filed 10–17–18; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2018-0586; Product Identifier 2017-NM-151-AD; Amendment 39-19445; AD 2018-20-11]

RIN 2120-AA64

**Airworthiness Directives; Bombardier, Inc., Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model DHC-8-300 series airplanes. This AD was prompted by reports indicating that a certain emergency exit door could not be opened during maintenance. This AD requires a detailed inspection of the ball bearings of an emergency exit, replacement of bearings if necessary, application of corrosion inhibiting compound (CIC), and revision of the maintenance or inspection program, as applicable. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 23, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 23, 2018.

**ADDRESSES:** For service information identified in this final rule, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email [thd.qseries@aero.bombardier.com](mailto:thd.qseries@aero.bombardier.com); internet <http://www.bombardier.com>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0586.

**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-2018-0586; 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 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:**

Darren Gassetto, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7323; fax 516-794-5531; email [9-avs-nyaco-cos@faa.gov](mailto:9-avs-nyaco-cos@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 Bombardier, Inc., Model DHC-8-300 series airplanes. The NPRM published in the **Federal Register** on July 6, 2018 (83 FR 31496). The NPRM was prompted by reports indicating that a certain emergency exit door could not be opened during maintenance. The NPRM proposed to require a detailed inspection of the ball bearings of an emergency exit, replacement of bearings if necessary, application of CIC, and revision of the maintenance or inspection program, as applicable.

We are issuing this AD to address corrosion of the emergency exit door ball bearings, which could result in the inability to open the emergency exit door during an emergency evacuation and consequently impede airplane egress.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2017-30, dated August 30, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc., Model DHC-8-300 series airplanes. The MCAI states:

An operator has reported the inability to open the Forward Right Hand Type I emergency exit door with either the internal or external handle during maintenance. Investigation has determined that the handle was found to be jammed due to corroded center and lower shaft ball bearings. Condensation has been found to be the root cause of the Forward Right Hand Type I emergency exit door hardware corrosion. Other Forward Right Hand Type I emergency exit door ball bearings are also susceptible to corrosion. Inability to open the Forward Right Hand Type I emergency exit door during an emergency evacuation may impede aircraft egress.

This [Canadian] AD mandates the inspection for corrosion and replacement, as required, of all Forward Right Hand Type I emergency exit door ball bearings, and the application of corrosion inhibiting compound (CIC), to ensure that the Forward Right Hand Type I emergency exit door can be opened when required.

You may examine the MCAI in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0586.

**Comments**

We gave the public the opportunity to participate in developing this final rule. We have considered the comment received. The Air Line Pilots Association, International (ALPA) indicated its support for the NPRM.

**Conclusion**

We reviewed the relevant data, considered the comment received, 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 14 CFR Part 51**

Bombardier has issued the following service information:

- Service Bulletin 8-52-65, dated July 26, 2017, which describes procedures for a detailed inspection of the forward right-hand type I emergency exit door ball bearings for corrosion, seal damage, and loss of lubricant; applying CIC; and replacing emergency exit door ball bearings if necessary.
- de Havilland Inc. Dash 8 Series 300 Maintenance Task Card Task Number 5220/12 ("Servicing of Forward RH Emergency Exit Mechanisms"), dated March 15, 2017, which describes procedures for servicing the forward right-hand emergency exit door mechanisms.
- Temporary Revision (TR) 54-042, dated April 10, 2018, to the DHC-8-300 Aircraft Maintenance Manual (AMM), which describes procedures for servicing the type I emergency exit door mechanisms.

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 16 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

**ESTIMATED COSTS FOR REQUIRED ACTIONS**

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × \$85 per hour = \$255 .....	\$0	\$255	\$4,080

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate

maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be \$7,650 (90 work-hours × \$85 per work-hour).

We estimate the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. We have no way of determining the number of aircraft that might need these on-condition actions:

**ESTIMATED COSTS OF ON-CONDITION ACTIONS**

Labor cost	Parts cost	Cost per product
6 work-hours × \$85 per hour = \$510 .....	\$586	\$1,096

**Authority for This Rulemaking**

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

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

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

**2018–20–11 Bombardier, Inc.:** Amendment 39–19445; Docket No. FAA–2018–0586; Product Identifier 2017–NM–151–AD.

**(a) Effective Date**

This AD is effective November 23, 2018.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Bombardier, Inc., Model DHC–8–301, –311, and –315 airplanes, certificated in any category, serial numbers 100 through 672 inclusive.

**(d) Subject**

Air Transport Association (ATA) of America Code 52, Doors.

**(e) Reason**

This AD was prompted by reports indicating that the forward right-hand type I emergency exit door could not be opened during maintenance. An investigation determined that the exit door handle was jammed due to corroded center and lower shaft ball bearings. We are issuing this AD to address corrosion of the emergency exit door ball bearings, which could result in the inability to open the emergency exit door

during an emergency evacuation and consequently impede airplane egress.

#### (f) Compliance

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

#### (g) Revision of Maintenance or Inspection Program

Within 60 days after the effective date of this AD: Revise the maintenance or inspection program, as applicable, to incorporate de Havilland Inc. Dash 8 Series 300 Maintenance Task Card Task Number 5220/12 ("Servicing of Forward RH Emergency Exit Mechanisms"), dated March 15, 2017; and Temporary Revision 54-042, dated April 10, 2018, to the DHC-8-300 Aircraft Maintenance Manual (AMM). The initial compliance time for doing the task is at the time specified in de Havilland Inc. Dash 8 Series 300 Maintenance Task Card Task Number 5220/12 ("Servicing of Forward RH Emergency Exit Mechanisms"), dated March 15, 2017, or within 60 days after the effective date of this AD, whichever occurs later.

#### (h) Inspection and Replacement

Within 5,000 flight hours or 36 months, whichever occurs first, after the effective date of this AD: Do a detailed inspection of all ball bearings of the forward right-hand type I emergency exit for corrosion, seal damage, and loss of lubricant; replace bearings as applicable; and apply corrosion inhibiting compound (CIC); in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8-52-65, dated July 26, 2017. Do all applicable replacements before further flight.

#### (i) No Alternative Actions or Intervals

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

#### (j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

#### (k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF-2017-30, dated August 30, 2017, for related information. This MCAI may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0586.

(2) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7323; fax 516-794-5531; email [9-avs-nyaco-cos@faa.gov](mailto:9-avs-nyaco-cos@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 this AD specifies otherwise.

(i) Bombardier Service Bulletin 8-52-65, dated July 26, 2017.

(ii) de Havilland Inc. Dash 8 Series 300 Maintenance Task Card Task Number 5220/12 ("Servicing of Forward RH Emergency Exit Mechanisms"), dated March 15, 2017.

(iii) Temporary Revision (TR) 54-042, dated April 10, 2018, to the DHC-8-300 Aircraft Maintenance Manual (AMM).

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email [thd.qseries@aero.bombardier.com](mailto:thd.qseries@aero.bombardier.com); internet <http://www.bombardier.com>.

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

(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 Des Moines, Washington, on September 20, 2018.

**John P. Piccola,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2018-22148 Filed 10-17-18; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2018-0161; Product Identifier 2017-NM-088-AD; Amendment 39-19450; AD 2018-20-16]

RIN 2120-AA64

#### Airworthiness Directives; Bombardier, Inc., Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are superseding Airworthiness Directive (AD) 2013-11-12, which applied to certain Bombardier, Inc., Model BD-100-1A10 airplanes. AD 2013-11-12 required inspecting for the correct serial number of a certain hydraulic system accumulator, and replacing affected hydraulic system accumulators with new or serviceable accumulators. This AD expands the applicability and requires modifying or replacing certain hydraulic brake system accumulators. This AD also requires revising the maintenance or inspection program to add life limits for the accumulators. This AD was prompted by a determination that certain other hydraulic system accumulators must be modified or replaced and life limits must be added. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 23, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 23, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of July 9, 2013 (78 FR 33206, June 4, 2013).

**ADDRESSES:** For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401; email [thd.crj@aero.bombardier.com](mailto:thd.crj@aero.bombardier.com); internet <http://www.bombardier.com>. You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0161.

## 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-2018-0161; 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 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:

Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7318; fax 516-794-5531.

## SUPPLEMENTARY INFORMATION:

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2013-11-12, Amendment 39-17472 (78 FR 33206, June 4, 2013) (“AD 2013-11-12”). AD 2013-11-12 applied to certain Bombardier, Inc., Model BD-100-1A10 airplanes. The NPRM published in the **Federal Register** on March 9, 2018 (83 FR 10415). The NPRM was prompted by a determination that certain other hydraulic system accumulators must be modified or replaced and life limits must be added. The NPRM proposed to continue to require inspecting for the correct serial number of a certain hydraulic system accumulator, and replacing affected hydraulic system accumulators with new or serviceable accumulators. The NPRM also proposed to expand the applicability and require modifying or replacing certain hydraulic brake system accumulators. The NPRM also proposed to require revising the maintenance or inspection program to add life limits for the accumulators. We are issuing this AD to prevent failure of a screw cap or end cap and loss of the related hydraulic system, which could result in damage to airplane structure and consequent reduced controllability of the airplane.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2011-41R1, dated March 27, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition

for certain Bombardier, Inc. Model BD-100-1A10 airplanes. The MCAI states:

Seven cases of on-ground hydraulic accumulator screw cap/end cap failure have been experienced on CL-600-2B19 aeroplanes, resulting in loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. To date, the lowest number of flight cycles accumulated at the time of failure has been 6991.

Although there have been no failures to date on any BD-100-1A10 aeroplanes, accumulators similar to those installed on the CL-600-2B19 are installed on the BD-100-1A10. The affected part numbers (P/Ns) of the accumulators installed on BD-100-1A10 are 900095-1 (Auxiliary Hydraulic System accumulator), 33-155500 (Inboard Brake accumulator), and 33-147500 (Outboard Brake accumulator).

A detailed analysis of the calculated line of trajectory of a failed screw cap/end cap for the accumulators has been conducted, resulting in the identification of areas where systems and/or structural components could potentially be damaged. Although all of the failures on the CL-600-2B19 to date have occurred on the ground, an in-flight failure affecting such components could potentially have an adverse effect on the controllability of the aeroplane.

Revision 1 of this [Canadian] AD is issued to mandate the [inspection and] replacement [of] Brake System Hydraulic accumulators that are not identified by the letter “E” or “NAE” after the serial number on the identification plate. Revision 1 also mandates the re-orientation of the brake accumulators P/N 33-147500 and P/N 33-155500 and the insertion of three discard tasks in the Challenger 300 Time Limits/Maintenance Checks (TLMC) Manual.

You may examine the MCAI in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0161.

## Comments

We gave the public the opportunity to participate in developing this final rule. The following presents the comment received on the NPRM and the FAA’s response.

### Request To Add Maintenance Manual

NetJets Aviation stated that paragraph (n) of the proposed AD, which requires revising the maintenance or inspection program to incorporate certain life limit tasks, does not reference the Bombardier Challenger 350 Time Limits/Maintenance Check (TLMC) Manual. NetJets Aviation noted that only the Bombardier Challenger 300 TLMC Manual is referenced.

We infer that the commenter is asking that the Bombardier Challenger 350 TLMC Manual be added as another source of service information for accomplishing the actions required by

paragraph (n) of this AD. We agree with the commenter’s request and have changed paragraph (n) accordingly. Although the tasks identified in the Bombardier Challenger 300 TLMC Manual also apply to Bombardier Challenger 350 airplanes, we have included the Bombardier Challenger 350 TLMC in this AD for clarity.

## Conclusion

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

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

We also determined that this change will not increase the economic burden on any operator or increase the scope of this final rule.

## Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information:

- Service Bulletin 100-32-20, Revision 02, dated April 14, 2015, which describes procedures for modifying (e.g., re-orienting) the installation of the hydraulic brake accumulators.
- Service Bulletin 100-32-21, dated May 24, 2012, which describes procedures for replacing the hydraulic brake system accumulators.
- Task 29-21-13-101 Discard the Auxiliary Hydraulic System Accumulator, Part No. 900095-1, of Section 5-10-11 of Part 2, “Airworthiness Limitations,” of Bombardier Challenger 300 BD-100 Time Limits/Maintenance Checks Manual, Revision 17, dated December 15, 2016; and Bombardier Challenger 350, BD-100 Time Limits/Maintenance Checks Manual, Revision 9, dated December 18, 2017, which describes procedures for removal and installation of the hydraulic brake system accumulators. These tasks are distinct since they apply to different airplane models.
- Task 32-43-37-101 Discard the Brake Accumulator, Part No. 33-147500, of Section 5-10-11 of Part 2, “Airworthiness Limitations,” of Bombardier Challenger 300 BD-100 Time Limits/Maintenance Checks Manual, Revision 17, dated December 15, 2016; and Bombardier Challenger

350, BD-100 Time Limits/Maintenance Checks Manual, Revision 9, dated December 18, 2017, which describes procedures for removal and installation of the brake accumulators. These tasks are distinct since they apply to different airplane models.

- Task 32-44-05-101 Discard the Emergency/Parking Brake Accumulator, Part No. 33-155500, of Section 5-10-11 of Part 2, "Airworthiness Limitations," of Bombardier Challenger 300 BD-100

Time Limits/Maintenance Checks Manual, Revision 17, dated December 15, 2016; and Bombardier Challenger 350, BD-100 Time Limits/Maintenance Checks Manual, Revision 9, dated December 18, 2017, which describes procedures for removal and installation of the emergency parking brake accumulators. These tasks are distinct since they apply to different airplane models.

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 187 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
Inspection to determine part numbers (retained actions from AD 2013-11-12).	1 work-hour × \$85 per hour = \$85.	\$0 .....	\$85 .....	\$15,895.
Modifying or replacing hydraulic brake system accumulators (new actions).	58 work-hours × \$85 per hour = \$4,930.	Up to \$31,500 .....	Up to \$36,430 .....	Up to \$6,812,410.

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate

maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be \$7,650 (90 work-hours × \$85 per work-hour).

We estimate the following costs to do any necessary replacements that will be required based on the results of the 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
Hydraulic accumulator replacement .....	5 work-hours × \$85 per hour = \$340 .....	\$4,510	\$4,850

#### Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C.

In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

#### Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and

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

#### List of Subjects in 14 CFR Part 39

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013-11-12, Amendment 39-17472 (78

FR 33206, June 4, 2013), and adding the following new AD:

**2018–20–16 Bombardier, Inc.:** Amendment 39–19450; Docket No. FAA–2018–0161; Product Identifier 2017–NM–088–AD.

**(a) Effective Date**

This AD is effective November 23, 2018.

**(b) Affected ADs**

This AD replaces AD 2013–11–12, Amendment 39–17472 (78 FR 33206, June 4, 2013) (“AD 2013–11–12”).

**(c) Applicability**

This AD applies to Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category, having serial numbers 20003 through 20604 inclusive.

**(d) Subject**

Air Transport Association (ATA) of America Code 29, Hydraulic Power.

**(e) Reason**

This AD was prompted by reports of failure of a screw cap or end cap of the hydraulic system accumulator while on the ground, which resulted in loss of use of that hydraulic system and high-energy impact damage to adjacent systems and structures. We are issuing this AD to prevent failure of a screw cap or end cap and loss of the related hydraulic system, which could result in damage to airplane structure and consequent reduced controllability of the airplane.

**(f) Compliance**

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

**(g) Retained Inspection With No Changes**

This paragraph restates the requirements of paragraph (g) of AD 2013–11–12 with no changes. For airplanes having serial numbers 20003 through 20335 inclusive: At the applicable time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD: Inspect the identification plate on the hydraulic system accumulator having part number (P/N) 900095–1 to determine if an “E” is part of the suffix of the serial number stamped on the identification plate, as listed in paragraph 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 100–29–14, dated December 16, 2010. A review of airplane maintenance records is acceptable in lieu of this inspection if the suffix of the serial number can be conclusively determined from that review.

(1) For an accumulator that has accumulated more than 3,150 total flight cycles as of July 9, 2013 (the effective date of AD 2013–11–12), inspect that accumulator within 350 flight cycles after July 9, 2013.

(2) For an accumulator that has accumulated 3,150 or fewer total flight cycles as of July 9, 2013 (the effective date of AD 2013–11–12), inspect that accumulator before it has accumulated 3,500 total flight cycles.

(3) For an accumulator on which it is not possible to determine the total flight cycles accumulated as of July 9, 2013 (the effective date of AD 2013–11–12), inspect that accumulator within 350 flight cycles after July 9, 2013.

**(h) Retained Replacement With No Changes**

This paragraph restates the requirements of paragraph (h) of AD 2013–11–12 with no changes. If, during the inspection required by paragraph (g) of this AD, any accumulator having P/N 900095–1 is found on which the letter “E” is not part of the suffix of the serial number on the identification plate: Before further flight, replace the accumulator with a new or serviceable accumulator, in accordance with paragraph 2.C. of the Accomplishment Instructions of Bombardier Service Bulletin 100–29–14, dated December 16, 2010.

**(i) Retained Parts Installation Prohibition With No Changes**

This paragraph restates the requirements of paragraph (i) of AD 2013–11–12 with no changes. For airplanes having serial numbers 20003 through 20335 inclusive: As of July 9, 2013 (the effective date of AD 2013–11–12), no person may install on any airplane a hydraulic system accumulator having P/N 900095–1, on which the letter “E” is not part of the suffix of the serial number on the identification plate.

**(j) New Requirement of This AD: Replacement of Brake System Hydraulic Accumulators**

For airplanes having serial numbers 20003 through 20347 inclusive: At the applicable time specified in paragraph (j)(1), (j)(2), or (j)(3) of this AD, replace all brake system hydraulic accumulators having P/N 33–147500 or P/N 33–155500 that are not identified by the letter “E” or “NAE” after the serial number on the identification plate with an accumulator of the same part number that is identified by the letter “E” or “NAE” after the serial number. Do the replacement in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–32–21, dated May 24, 2012.

(1) For an accumulator that has accumulated more than 4,700 total flight cycles as of the effective date of this AD, inspect that accumulator within 300 flight cycles after the effective date of this AD.

(2) For an accumulator that has accumulated 4,700 or fewer total flight cycles as of the effective date of this AD, inspect that accumulator before it has accumulated 5,000 total flight cycles.

(3) For an accumulator on which it is not possible to determine the total flight cycles accumulated as of the effective date of this AD, inspect that accumulator within 300 flight cycles after the effective date of this AD.

**(k) New Requirement of This AD: Additional Parts Installation Prohibition**

For airplanes having serial numbers 20003 through 20347 inclusive: As of the effective date of this AD, no person may install on any airplane a hydraulic system accumulator having P/N 33–147500 or P/N 33–155500, on which the letter “E” or “NAE” is not after the serial number on the identification plate.

**(l) New Requirement of This AD: Modification of the Inboard and Outboard Brake Accumulators**

For airplanes having serial numbers 20003 through 20395 inclusive: Within 1,600 flight

hours or 14 months after the effective date of this AD, whichever occurs first, modify (reorient) the installation of the inboard and outboard brake accumulators, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–32–20, Revision 02, dated April 14, 2015.

**(m) Credit for Previous Actions**

This paragraph provides credit for the actions specified in paragraph (l) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 100–32–20, dated February 25, 2013; or Revision 01, dated March 5, 2015.

**(n) New Requirement of This AD: Maintenance or Inspection Program Revision**

For airplanes having serial numbers 20003 through 20604 inclusive: Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate life limit tasks 29–21–13–101, 32–43–37–101, and 32–44–05–101 of Section 5–10–11 of Part 2, “Airworthiness Limitations”, of Bombardier Challenger 300 BD–100 Time Limits/ Maintenance Checks Manual, Revision 17, dated December 15, 2016; or Bombardier Challenger 350 BD–100 Time Limits/ Maintenance Checks Manual, Revision 9, dated December 18, 2017, as applicable. The initial compliance time for the tasks is within the applicable time specified in that service information, or within 30 days after the effective date of this AD, whichever occurs later.

**(o) No Alternative Actions and Intervals**

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

**(p) Other FAA AD Provisions**

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch,



FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

#### (q) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF-2011-41R1, dated March 27, 2017, for related information. This MCAI may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0161.

(2) For more information about this AD, contact Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516-228-7318; fax: 516-794-5531.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (r)(5) and (r)(6) of this AD.

#### (r) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on November 23, 2018.

(i) Bombardier Service Bulletin 100-32-20, Revision 02, dated April 14, 2015.

(ii) Bombardier Service Bulletin 100-32-21, dated May 24, 2012.

(iii) Bombardier Challenger 300 BD-100 Time Limits/Maintenance Checks Manual, Revision 17, dated December 15, 2016, Part 2, Airworthiness Limitations, Section 5-10-11:

(A) Task 29-21-13-101 Discard the Auxiliary Hydraulic System Accumulator, Part No. 900095-1;

(B) Task 32-43-37-101 Discard the Brake Accumulator, Part No. 33-147500;

(C) Task 32-44-05-101 Discard the Emergency/Parking Brake Accumulator, Part No. 33-155500.

(iv) Bombardier Challenger 350 BD-100 Time Limits/Maintenance Checks Manual, Revision 9, dated December 18, 2017, Part 2, Airworthiness Limitations, Section 5-10-11:

(A) Task 29-21-13-101 Discard the Auxiliary Hydraulic System Accumulator, Part No. 900095-1;

(B) Task 32-43-37-101 Discard the Brake Accumulator, Part No. 33-147500;

(C) Task 32-44-05-101 Discard the Emergency/Parking Brake Accumulator, Part No. 33-155500.

(4) The following service information was approved for IBR on July 9, 2013 (78 FR 33206, June 4, 2013).

(i) Bombardier Service Bulletin 100-29-14, dated December 16, 2010.

(ii) Reserved.

(5) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9,

Canada; telephone 514-855-5000; fax 514-855-7401; email [thd.crj@aero.bombardier.com](mailto:thd.crj@aero.bombardier.com); internet <http://www.bombardier.com>.

(6) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

(7) 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 Des Moines, Washington, on September 25, 2018.

**John P. Piccola,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2018-22137 Filed 10-17-18; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 902

#### 50 CFR Parts 300 and 679

[Docket No. 170626590-8785-02]

RIN 0648-BG94

### Fisheries of the Exclusive Economic Zone off Alaska; Pacific Halibut and Sablefish Individual Fishing Quota Program; Community Development Quota Program; Modifications to Recordkeeping and Reporting Requirements

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule that modifies regulations governing the Halibut and Sablefish Individual Fishing Quota (IFQ) Program. This rule includes three actions. The first action allows Western Alaska Community Development Quota (CDQ) groups to lease (to receive by transfer) halibut IFQ in IFQ regulatory areas 4B, 4C, and 4D in years of extremely low halibut commercial catch limits. This action is necessary to provide additional harvest opportunities to CDQ groups and community residents, and provide IFQ holders with the opportunity to receive value for their IFQ when the halibut commercial catch limits may not be large enough to provide for an

economically viable fishery for IFQ holders. The second action removes an obsolete reference in the IFQ Program regulations. The third action clarifies IFQ vessel use cap regulations. This final rule is intended to promote the goals and objectives of the Northern Pacific Halibut Act of 1982 (Halibut Act), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands (BSAI) Management Area, and other applicable laws.

**DATES:** This rule is effective on November 19, 2018.

**ADDRESSES:** Electronic copies of the Regulatory Impact Review (Analysis) prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99082-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or by fax to (202) 395-5806.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Warpinski, (907) 586-7228.

#### SUPPLEMENTARY INFORMATION:

#### Authority for Action

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut through regulations established under the authority of the Halibut Act. The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary of Commerce (Secretary). NMFS publishes the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62.

The Halibut Act, at sections 773c(a) and (b), provides the Secretary with general responsibility to carry out the Convention and the Halibut Act. The Halibut Act, at section 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in



conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary.

The Council developed the IFQ Program for the commercial halibut and sablefish fisheries. The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679 under the authority of section 773 of the Halibut Act. The IFQ Program for the sablefish fishery is implemented by the BSAI FMP and Federal regulations at 50 CFR part 679 under the authority of section 303(b) of the Magnuson-Stevens Act.

### Background

On February 23, 2018, NMFS published a proposed rule (83 FR 8028) and invited public comment. The following summarizes the IFQ Program, the CDQ Program, the need for this final rule, and the anticipated effects of the final rule. Additional detail about the action is provided in the preamble of the proposed rule and in the Analysis.

#### *The IFQ Program*

The IFQ Program for the management of the fixed gear (hook-and-line and pot gear) halibut and sablefish fisheries off Alaska was implemented by NMFS in 1995 (58 FR 59375, November 9, 1993). A central objective of the IFQ Program is to support the social and economic character of the fisheries and the coastal fishing communities where many of these fisheries are based. A detailed description of the IFQ Program can be found in the proposed rule for this action (83 FR 8028, February 23, 2018) and the Analysis.

Under the IFQ Program, access to the fixed gear sablefish and halibut fisheries is limited to those persons holding quota share (QS). QS is an exclusive, revocable privilege that allows the holder to harvest a specific percentage of either the total allowable catch (TAC) in the sablefish fishery or the annual commercial catch limit in the halibut fishery. QS is designated for specific geographic areas of harvest, a specific vessel operation type (catcher vessel or catcher/processor), and for a specific range of vessel sizes that may be used to harvest the sablefish or halibut (vessel category).

This final rule uses the term “Area” to refer to a specific IFQ regulatory area. The IFQ Program designates four vessel categories of halibut QS: Category A shares designated for catcher/processors, vessels that process their catch at sea, and do not have a vessel length restriction; Category B shares designated for catcher vessels greater

than 60 feet length overall (LOA); Category C shares designated for catcher vessels greater than 35 feet but less than or equal to 60 feet LOA; and Category D shares designated for catcher vessels less than or equal to 35 feet LOA.

NMFS annually issues IFQ permits to each QS holder. An annual IFQ permit authorizes the permit holder to harvest a specified amount of the IFQ species in a regulatory area from a specific operation type and vessel category. The Council and the public frequently use the terms “IFQ lease” or “lease” to refer to the transfer of IFQ without a transfer of the underlying quota shares (QS). However, NMFS does not generally use the term “lease” in its IFQ Program regulations governing the transfer of IFQ. Therefore, for consistency with the terminology used in the existing regulations and for clarity, this rule uses the term “transfer of IFQ.”

NMFS issues halibut IFQ consistent with the IPHC’s regulatory areas. NMFS’ IFQ regulatory areas (Areas) are defined in 50 CFR part 679 and described in Figure 15 to part 679 and Section 1.3 of the Analysis. The first action in this rule pertains to Areas 4B, 4C, 4D, and 4E. Area 4B includes waters in the Central and Western Aleutian Islands. Areas 4C, 4D, and 4E include waters north of the Aleutian Islands, in the Bering Sea, and around the Pribilof Islands. The IPHC considers Areas 4C, 4D, and 4E a single stock unit for assessment and management purposes, and the combined Areas are referred to as Area 4CDE in this final rule.

The commercial catch limits for Areas 4B and 4CDE are allocated between two distinct management programs, the CDQ Program and the IFQ Program. Throughout the duration of the IFQ Program, the Area 4E commercial catch limit has been exclusively allocated to the CDQ Program; therefore, no Area 4E QS or IFQ is allocated.

Overall, the halibut IFQ commercial catch limits in Areas 4B and 4CDE have trended downward over the past 15 years (see Section 3.6.1 of the Analysis). The Area 4B commercial catch limit has dropped substantially from 2001 to 2015. In 2015, the Area 4B commercial catch limit for IFQ was less than a quarter of what it was in 2001. The combined commercial catch limit for IFQ in Areas 4C and 4D has seen more fluctuation during this period, but has still experienced an overall downward trend since 2007. In 2007, the combined commercial catch limit for IFQ in Areas 4C and 4D was about 2.2 million pounds; in 2015, it was about 0.7 million pounds.

#### *The CDQ Program*

The CDQ Program was implemented in 1992, and in 1996, the Magnuson-Stevens Act was amended to include provisions specific to the CDQ Program. The purposes of the CDQ Program are (1) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the BSAI management area; (2) to support economic development in western Alaska; (3) to alleviate poverty and provide economic and social benefits for residents of western Alaska; and (4) to achieve sustainable and diversified local economies in western Alaska (16 U.S.C. 1855(i)(1)(A)).

The CDQ Program consists of six different non-profit managing organizations (CDQ groups) representing different geographical regions in Alaska. The CDQ Program receives annual allocations of TAC for a variety of commercially valuable species in the BSAI groundfish, crab, and halibut fisheries, which are in turn allocated among the CDQ groups. Among the species CDQ groups are allocated for commercial fishing, Pacific halibut is an important species for community resident employment and income. NMFS allocates halibut to CDQ groups for commercial fisheries in four Areas: 4B, 4C, 4D, and 4E (see Section 3.5.1 of the Analysis). See Section 3.5.2 of the Analysis for additional detail on the history of the halibut CDQ fishery.

The resident halibut CDQ fleets and criteria for participation in CDQ fisheries vary among the CDQ groups. The resident halibut CDQ fleets are impacted by internal economic decisions made by the CDQ groups and in the ways the CDQ groups choose to promote economic development in their communities. Many of the small boat fishermen in CDQ communities are dependent on the halibut fishery (Section 3.5.3 of the Analysis).

### Need for Action

The downward trend of halibut commercial catch limits in Areas 4B and 4CDE over the past 15 years has been dramatic, with current limits significantly lower than those of the recent past years. The recent years of low halibut abundance and the resulting low commercial catch limits in Areas 4B and 4CDE have made it increasingly difficult for most CDQ groups to create a viable commercial halibut fishing opportunity for their community residents.

Under current regulations, CDQ groups cannot receive by transfer any IFQ derived from catcher vessel QS. Current regulations also prohibit halibut

QS holders from transferring their IFQ separately from the underlying QS except in very narrow, specific situations (see Section 3.7 of the Analysis for more information).

To address these problems, this final rule creates a voluntary option for IFQ holders in Areas 4B, 4C, or 4D to temporarily transfer their halibut IFQ to a CDQ group in years of extremely low halibut abundance. This flexibility allows CDQ groups to expand the fishing opportunities for the small boat fleets operating out of the CDQ group's communities and provides IFQ holders with the opportunity to receive value for their IFQ when extremely low halibut commercial catch limits may not be large enough to provide for an economically viable fishery for IFQ holders.

### **This Final Rule and the Anticipated Effects**

This final rule includes three actions. The primary action, Action 1, creates a voluntary option for an IFQ holder to temporarily transfer his or her halibut IFQ to a CDQ group in years of extremely low halibut abundance. Actions 2 and 3 make minor regulatory adjustments to remove an obsolete reference in the IFQ Program regulations and to clarify IFQ vessel use cap regulations, respectively. The following paragraphs provide additional detail on the actions.

#### **Action 1**

This final rule (1) defines the halibut commercial catch limits under which CDQ groups may receive IFQ by transfer, (2) establishes limits on the types and amounts of IFQ that can be transferred, and (3) establishes reporting requirements for CDQ groups receiving IFQ by transfer. This final rule does not convert transferred IFQ to CDQ. Allocations of halibut CDQ will not change under this final rule.

Under this final rule, CDQ groups may receive transfers of halibut catcher vessel IFQ (Categories B, C, and D IFQ) in Areas 4C and 4D when the halibut annual commercial catch limit is less than 1.5 million pounds in Area 4CDE. CDQ groups may receive transfers of halibut catcher vessel IFQ (Categories B, C, and D IFQ) in Area 4B when the annual halibut commercial catch limit is less than 1 million pounds in Area 4B. IFQ holders may transfer both blocked and unblocked IFQ to CDQ groups. This final rule does not revise current regulations that authorize an IFQ holder in Areas 4B, 4C and 4D to transfer his or her Category A halibut IFQ to any qualified person, including a CDQ group. However, as explained later, this

rule provides additional harvesting flexibility for Category A halibut IFQ transferred to a CDQ group in years of extremely low halibut abundance.

The Council recommended and NMFS is implementing these thresholds based on an analysis of commercial catch limits between 2008 and 2017, a period of time representing a range of different halibut commercial catch limits and decreasing opportunities for CDQ community fishermen. The Council considered a range of different commercial catch limit thresholds for both Areas 4B and 4CDE before selecting these thresholds. The preamble to the proposed rule provides additional information on the factors considered by the Council and NMFS (83 FR 8028, March 26, 2018).

These thresholds are intended to balance the goal of providing additional halibut fishing opportunities for CDQ residents when the halibut CDQ allocation alone may not be large enough to sustain small vessel resident fisheries, with the need to avoid potential adverse distributional impacts on other halibut IFQ users that could result if IFQ transfers were permitted without restrictions. These thresholds provide the flexibility to transfer halibut IFQ in Areas 4B, 4C, and 4D only during worst case scenarios for halibut commercial catch limits in these areas (Section 2.3 of the Analysis). For Area 4CDE, the Council determined and NMFS agrees that a halibut commercial catch limit below 1.5 million pounds reflects a worst case scenario for Area 4CDE as it represents an extremely low commercial catch limit for these areas. For Area 4B, the Council determined and NMFS agrees that a halibut commercial catch limit below 1 million pounds, which has not been experienced during the last 10 years, reflects a worst case scenario for Area 4B as it represents an extremely low commercial catch limit for this area.

This final rule establishes several limits on the catcher vessel IFQ that can be transferred while providing some flexibility with transferred catcher vessel and catcher/processor IFQ. The rationale for the limits can be found in Section 2.2 of the Analysis and in the preamble to the proposed rule (83 FR 8028, March 26, 2018). The limits are: (1) A CDQ group will be able to receive catcher vessel IFQ by transfer only for an area in which it also holds halibut CDQ; (2) no vessel greater than 51 feet length overall (LOA) may be used to harvest catcher vessel IFQ transferred to a CDQ group; (3) catcher vessel IFQ resulting from QS acquired after December 14, 2015, may not be transferred to a CDQ group until 3 years

after the QS was acquired (*i.e.*, a cooling off period); (4) an IFQ holder will not be allowed to transfer catcher vessel halibut IFQ to a CDQ group for more than 2 consecutive years; and (5) in Area 4B, only those QS holders who hold fewer than 76,355 QS units specified for Area 4B will be allowed to transfer their catcher vessel IFQ to CDQ groups.

The first limit prevents a CDQ group from receiving catcher vessel halibut IFQ by transfer for an area in which that CDQ group does not hold halibut CDQ. The Council recommended and NMFS is implementing this limit so that any catcher vessel IFQ transferred to a CDQ group is available for use in conjunction with halibut CDQ that is issued to a CDQ group.

Additionally, under this final rule at § 679.42(a)(1)(iii), a CDQ group that is eligible to receive a transfer of Area 4D catcher vessel IFQ will be able to harvest that IFQ, and any Category A IFQ it holds, in Area 4E (Section 3.5.2 of the Analysis). This flexibility is consistent with section 12(8) of the IPHC annual management measures (83 FR 10390, March 9, 2018), which allows Area 4D halibut CDQ to be harvested in Area 4E.

The second limit prohibits the use of vessels greater than 51 feet LOA to harvest catcher vessel IFQ that is transferred to a CDQ group. The Council recommended and NMFS is implementing this vessel size limit because this is the largest size vessel owned by CDQ community residents that has landed halibut CDQ during the past 10 years, 2008 through 2017 (Section 3.5.3 of the Analysis). Current regulations provide sufficient flexibility to allow IFQ that could be transferred to a CDQ group under this final rule to be fished on a vessel of any length up to 51 feet LOA (see Section 2.4 of the Analysis).

This final rule clarifies that any Area 4D Category A IFQ that is held by a CDQ group or transferred to a CDQ group may be fished in Area 4E by vessels less than or equal to 51 feet LOA when the commercial catch limit threshold in Area 4CDE is triggered. This final rule does not revise current regulations that authorize Category A IFQ for Areas 4B, 4C, or 4D to be fished in the corresponding area on a vessel of any length.

Under the third limit, IFQ resulting from QS acquired after December 14, 2015, may not be transferred to a CDQ group until 3 years after the QS was acquired (*i.e.*, the date NMFS approved the transfer). This provision effectively creates a "cooling off" period. The Council recommended and NMFS is

implementing this cooling off period to reduce the incentive for individuals to acquire QS with the intention of transferring the resulting IFQ to CDQ groups rather than fishing the IFQ.

The fourth limit prohibits an IFQ holder from transferring catcher vessel halibut IFQ for a specific IFQ regulatory area to a CDQ group for more than two consecutive years. This two-year limit applies to calendar years and only to years in which the commercial catch limit is below the threshold. Additionally, this limit applies to the transfer of any halibut IFQ for a specific area. If an IFQ holder chooses to transfer some but not all of his or her IFQ for a particular area during a year when the annual commercial catch limit for that area is set below the threshold, that transfer will count towards the two-year limit. Transfers of IFQ for one area will not affect the ability to transfer IFQ for another area. This final rule limits the potential for an IFQ holder to continuously transfer IFQ to CDQ groups rather than fishing that IFQ or transferring the underlying QS to other new entrants in the fishery.

Under the fifth limit, only catcher vessel QS holders that hold fewer than 76,355 QS units specified for Area 4B may transfer their catcher vessel IFQ to CDQ groups. NMFS will consider all categories of Area 4B QS holdings regardless of blocked or unblocked status. This limit ensures that persons holding larger amounts of QS units continue to be active fishermen in the Area 4B halibut fishery while providing an opportunity for persons holding smaller amounts of QS units to transfer catcher vessel IFQ to CDQ groups if the 1 million pound commercial catch limit threshold to allow IFQ transfers is met. As described in the proposed rule (83 FR 8028, March 26, 2018), this limitation applies only for Area 4B to accommodate the specific nature of IFQ operations in the remote Aleutian Island communities in Area 4B.

This final rule establishes a reporting requirement for CDQ groups that receive IFQ by transfer. The report is required only for those years in which CDQ groups received IFQ by transfer. CDQ groups that receive IFQ by transfer will be required to report the annual amount and vessel category of Area 4 halibut IFQ transferred to the CDQ group, the criteria used to select IFQ holders to transfer Area 4 halibut IFQ to the CDQ group, and the criteria used to determine the person(s) eligible to fish Area 4 halibut IFQ received by transfer. This report will allow the Council, NMFS, and the public to monitor the use of IFQ transferred to CDQ groups and provide the Council with

information to determine whether the use of transferred IFQ is consistent with its intent for the action. This final rule requires the report to be submitted to NMFS and the Council no later than January 31 of the year after the IFQ was transferred to the CDQ group. This deadline is consistent with other reports required under the IFQ Program and ensures that NMFS and the Council have received the report prior to the issuance of IFQ, which typically occurs in mid-February. If a CDQ group is required to submit a report and does not do so by the deadline, the CDQ group will be ineligible to receive transfers of catcher vessel IFQ until the report is submitted.

Under this final rule, a CDQ group that wants to receive halibut IFQ by transfer will make an arrangement with an IFQ holder to transfer his or her IFQ. The CDQ group must complete an Application for Temporary Transfer of Halibut and Sablefish IFQ and submit the application to NMFS for approval. Once approved, NMFS will issue the CDQ group an IFQ permit with the pounds of halibut IFQ that will be available to be fished. After determining who will fish the halibut IFQ, the CDQ group with the IFQ permit must apply to NMFS for a hired master permit for the vessel operator designated to fish the halibut IFQ. Current regulations authorize a vessel operator to harvest halibut IFQ and CDQ on the same fishing trip. A vessel operator harvesting both halibut CDQ and IFQ transferred to a CDQ group is required to carry (1) a halibut CDQ permit, (2) a CDQ hired master permit, (3) a copy of the IFQ permit of the CDQ group, and (4) an IFQ hired master permit. Additionally, any vessels fishing halibut IFQ transferred to a CDQ group will be subject to the current IFQ vessel use caps under § 679.42(h)(1). If a vessel harvests both halibut IFQ and CDQ, only the halibut IFQ accrues towards, and is subject to, the vessel use cap.

Halibut that is landed by a vessel operator harvesting CDQ and IFQ will be debited off two separate catch limits. Therefore, for purposes of catch accounting, participants are required to track what amount of halibut harvest is associated with the group's CDQ and what amount is associated with the IFQ permit held by the CDQ group. This distinction must be recorded on the fish ticket (Section 3.8.11.3 of the Analysis). NMFS updated the database that monitors transfers of IFQ between permit holders and that is used to issue hired master permits to allow for this new type of transfer (see Section 3.8.11.4 of the Analysis).

Under this final rule, CDQ groups are responsible for cost recovery fees based on the amount of IFQ pounds held on the IFQ permit. Section 304(d)(2)(A) of the Magnuson-Stevens Act obligates NMFS to recover the actual costs of management, data collection, and enforcement (direct program cost) of the IFQ fisheries. Therefore, NMFS implemented a cost recovery fee program for the IFQ fisheries in 2000 (65 FR 14919, March 20, 2000). While costs specific to the CDQ Program for halibut are recoverable through a separate cost recovery program (81 FR 150, January 5, 2016), this final rule requires regulatory changes to the IFQ transfer and hired master use provisions and therefore constitutes a change in management of the IFQ Program. CDQ group participants receiving IFQ transfers will be required to pay an IFQ cost recovery fee as a portion of the ex-vessel value of their landed halibut.

Section 8(2) of the IPHC annual management measures (83 FR 10390, March 9, 2018) authorizes a vessel operator harvesting halibut CDQ in Areas 4D or 4E to retain halibut that are less than the size limit established by the IPHC for personal use. Under the status quo, a vessel operator harvesting halibut IFQ held by a CDQ group along with halibut CDQ may retain halibut less than legal size for personal use. Vessel operators harvesting both halibut CDQ and halibut IFQ transferred to a CDQ group in Areas 4D or 4E may retain halibut smaller in length than the size limit established by the IPHC for personal use as specified in section 8 of the IPHC annual management measures. The personal use allotment applies to all halibut IFQ transferred to a CDQ group under this exemption. Section 8(3) of the IPHC annual management measures requires a CDQ group to report on all retained halibut for personal use that are smaller than legal size and harvested on behalf of a CDQ group.

This final rule modifies the definition of "annual commercial catch limit" at 50 CFR 300.61 to include definitions for Areas 3B and 4A, and for Areas 4B, 4C, 4D, and 4E.

This final rule modifies § 679.41 to allow transfer of halibut IFQ in Areas 4B, 4C, and 4D in years of low halibut commercial catch limits in Areas 4B and 4CDE to CDQ groups along with the specific conditions under which this transfer activity may occur.

This final rule adds a reporting requirement under § 679.5(l)(10) to require a CDQ group to submit a report to NMFS and the Council on the criteria it used to select IFQ holders from whom IFQ transfers were received, the criteria it used to determine the persons who

could harvest transferred IFQ, and the amount and type of IFQ transferred.

This final rule adds a provision under § 679.42 to allow Area 4D IFQ that is transferred to a CDQ group to be harvested in Area 4E.

#### *Anticipated Effects of Action 1*

The preamble to the proposed rule describes the anticipated effects of Action 1 on CDQ groups, CDQ residents, IFQ holders, and halibut QS holders (83 FR 8028, March 26, 2018).

Overall, this final rule provides IFQ holders and CDQ groups with an opportunity to alleviate the adverse economic, social, and cultural impacts of extremely low levels of commercial halibut catch limits on Western Alaskan communities. This final rule could also provide distributional benefits to some processing plants, secondary service providers, and communities as a whole. This final rule could benefit halibut QS holders in Areas 4B, 4C, and 4D by permitting them to transfer their Area 4B, 4C, and 4D halibut IFQ in years of extremely low commercial catch limits. This final rule could also result in some consolidation of the number of IFQ trips, and could affect the decisions of QS holders to transfer their QS if they have the ability to transfer their IFQ to CDQ groups. The preamble of the proposed rule (83 FR 8028, March 26, 2018) and Section 3.8 of the Analysis have additional details on the anticipated effects of Action 1.

#### *Action 2*

This final rule removes an obsolete reference in § 679.42(a)(2)(i). Currently, this regulation provides an exception to a prohibition at § 679.42(a)(2). However, the exception refers to § 679.42(k), which was modified in 2008 by the final rule to revise regulations governing the use of commercial halibut QS and the processing of non-IFQ species when processed halibut is on board a vessel (73 FR 8822; February 15, 2008). That final rule removed paragraph (k) and re-designated § 679.42(l) as paragraph (k). NMFS inadvertently neglected to remove the cross-reference to paragraph (k) in § 679.42(a)(2)(i). Therefore, with this final rule, NMFS removes the cross-reference to paragraph (k) to clarify that persons possessing unused Category B, C, or D halibut QS may be on board a catcher/processor vessel when that vessel is harvesting and processing Category A halibut or sablefish IFQ, or is harvesting and processing non-IFQ species. The effects of this action are expected to be minor and beneficial by improving the clarity of the regulations.

#### *Action 3*

This final rule clarifies existing regulations pertaining to the IFQ vessel limitations, also referred to as the vessel use caps. NMFS adds language to § 679.42(h)(1) and (h)(2) to clarify that the vessel use caps apply to halibut and sablefish IFQ and not to halibut and sablefish CDQ. This action improves the clarity of the regulations and helps IFQ and CDQ participants understand the regulations to which they are subject. The effects of this action are expected to be minor and beneficial by improving the clarity of the regulations.

#### **Comments and Responses**

NMFS received 4 comment letters on the proposed rule. One of the comment letters was outside the scope of this action. NMFS has summarized and responded to the six unique comments in the remaining three comment letters.

*Comment 1:* There should not be a transfer of halibut IFQ during years of low abundance unless they give back to others during years of high abundance. They harvest so much that they caused the low abundance.

*Response:* NMFS disagrees. Based on the best available scientific information from the IPHC, halibut is not considered to be subject to overfishing as that term is defined by the IPHC (Section 3.6.1 of Analysis). As described in Section 3.6.1 of the Analysis, annual catch limits are set in a precautionary manner to achieve optimum yield on a continuing basis. As described in the proposed rule and Section 3.6.1 of the Analysis, this final rule does not increase the overall amount of halibut in Areas 4B or 4CDE that is authorized to be harvested on an annual basis. The final rule establishes a voluntary program that provides participants with an opportunity to utilize available catch to mutual benefit during times of low abundance and does not require QS holders to transfer IFQ to CDQ groups during times of low abundance or require CDQ groups to transfer IFQ back to QS holders during times of high abundance.

*Comment 2:* This rule allows leasing quota when the fish populations are low and it would increase the chance of overfishing the halibut stock.

*Response:* Annual halibut commercial catch limits are adjusted downward with decreasing abundance to protect the stock and prevent overfishing. This final rule does not change the process of allocating halibut among Areas or the process of establishing halibut commercial catch limits, nor will this final rule change specific management measures that govern the harvest of halibut in Areas 4B and 4CDE, such as

fishing location, timing, effort, or authorized gear types. Section 3.6.1 of the Analysis describes the current status of the halibut stock which is not overfished or subject to overfishing. This final rule creates an exception to allow CDQ groups to receive IFQ by transfer, within the established annual catch limits, in years of low abundance. Therefore, this final rule will not increase the chance of overfishing of the halibut stock.

*Comment 3:* It is worth pausing to remember how bad the old days were, prior to implementation of the IFQ program. In order to catch as much of the TAC as possible, the industry did not pay attention to the environmental impact of its operations, worker safety, and excessive bycatch. NOAA is right to continue to refine this outstanding program. The proposed rule to allow transfers of IFQ to CDQ groups is well-written and prevents abuse of the program by "mailbox-fishermen" and favors the coastal communities.

*Response:* NMFS acknowledges this comment.

*Comment 4:* If the halibut stock is low enough to trigger this flexibility, expanding flexibility will further aggravate the problem of an overfished stock. When the stock is low, then everyone should suffer, both CDQ fishermen and IFQ fishermen, in order for the stock to regenerate.

*Response:* NMFS disagrees. Annual halibut commercial catch limits are set with precaution and adjusted downward in times of low abundance to avoid overfishing. The flexibility provided by this final rule will not create an overfished condition or contribute to overfishing. This final rule does not modify the methods for apportioning halibut catch limits between the CDQ and IFQ Programs. As halibut catch limits increase or decrease based on halibut abundance, participants in the CDQ and IFQ Programs are not affected any differently under this final rule than under current regulations. If the catch limit threshold is low enough to trigger the ability for QS holders to transfer their IFQ to CDQ groups, then QS holders and CDQ groups benefit from a voluntary market transaction. Disapproving this rule would not increase halibut abundance. Section 3.8 of the Analysis provides additional detail on the anticipated effects of this final rule.

*Comment 5:* NMFS should consider setting lease terms for this exception because if the cost of the lease is too high, the benefits of the proposed rule would be blunted.

*Response:* The Council and NMFS did not want to be involved in setting lease

terms, similar to other transfer exceptions in the IFQ Program. The IFQ Program relies on market-based values and NMFS anticipates that IFQ and CDQ participants would come to a private agreement in this voluntary exception. In Section 3.8.7 of the Analysis, NMFS describes the impact that the transfer of IFQ (*i.e.*, leasing) could have on QS markets. As described in the preamble of this final rule, there are several limitations on the transfer of IFQ. These limitations are intended, in part, to maintain current fishing business practices and to limit potential adverse impacts on a range of participants in the CDQ and IFQ Programs. This final rule does not establish additional requirements on the specific agreements between QS holders and CDQ groups when transferring IFQ because the limitations established by this final rule sufficiently constrain the amount of IFQ, the vessel category of IFQ, and the specific halibut catch limits conditions in Areas 4B and 4CDE IFQ that may be transferred.

*Comment 6:* NMFS should terminate the policy to allow unused quota to carry over to the next season and instead allow unused quota to carry over to the next season only for the purposes of leasing it to CDQ groups.

*Response:* This final rule does not modify existing regulations that allow a QS holder's annual IFQ allocation to be adjusted to cover under- or over-harvest from the previous year (see regulations at § 679.40(d) and (e)). The Council focused on alternatives that would allow transfer of IFQ to CDQ groups within the year of low halibut commercial catch limits, rather than adjusting over/under harvest rules that would apply to the following year when the halibut commercial catch limits may not be under the thresholds, as a more direct method of addressing the issue.

#### **OMB Revisions to PRA References in 15 CFR 902.1(b)**

Section 3507(c)(B)(i) of the Paperwork Reduction Act (PRA) requires that agencies inventory and display a current control number assigned by the Director of the Office of Management and Budget (OMB), for each agency's information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule adds a new collection-of-information for recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the section resulting from this final rule.

#### **Changes From the Proposed Rule**

NMFS makes two minor changes to the proposed regulatory text in this final rule. First, § 679.5(l)(10) is changed to include the words "and the Council." New regulations at § 679.5(w) require a CDQ group to submit a report to both NMFS and the Council. Adding this language to § 679.5(l)(10) creates consistency between these sections. Second, NMFS changes "halibut IFQ" to "IFQ halibut" in § 679.42(h)(1) and "sablefish IFQ" to "IFQ sablefish" in § 679.42(h)(2). The proposed changes were intended to refer to the type of fish (IFQ halibut and IFQ sablefish defined at § 679.2) that will count towards the vessel limits prescribed by these paragraphs rather than the type of fishing rights (halibut IFQ and sablefish IFQ).

#### **Classification**

The NMFS Alaska Region Administrator determined that this final rule is necessary for the conservation and management of the IFQ halibut fishery off Alaska and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act, the Halibut Act, and other applicable laws.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the Council, and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations are in addition to, and not in conflict with, IPHC regulations. This final rule is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification or on the economic impacts of the rule more generally. As a result, a regulatory flexibility analysis

was not required, and none was prepared, pursuant to 5 U.S.C. 605.

#### **Collection-of-Information Requirements**

This final rule contains collection-of-information requirements subject to the PRA, which have been approved by OMB under OMB control number 0648-0764. After this final rule's effective date, OMB Control Number 0648-0764 will be merged with OMB Control Numbers 0648-0272 and 0648-0711.

Public reporting burden is estimated to average per response: 2 hours for Application for Temporary Transfer of Halibut and Sablefish IFQ, 40 hours for the annual report, and 1 minute for electronic submission of cost recovery fees or 30 minutes for non-electronic fee submission. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

#### **List of Subjects**

##### **15 CFR Part 902**

Reporting and recordkeeping requirements.

##### **50 CFR Part 300**

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

##### **50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 12, 2018.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR parts 300 and 679 as follows:

## Title 15—Commerce and Foreign Trade

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

■ 1. The authority citation for part 902 continues to read as follows:

*Authority:* 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”, add an entry in alphanumeric order for “679.5(w)” to read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

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(b) * * *				
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CFR part or section where the information collection requirement is located	Current OMB control No. (all numbers begin with 0648–)			
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50 CFR:				
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679.5(w) .....				–0272
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## Title 50—Wildlife and Fisheries

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

■ 3. The authority for 50 CFR part 300, subpart E, continues to read as follows:

*Authority:* 16 U.S.C. 773–773k.

■ 4. In § 300.61, revise the definition of “Annual commercial catch limit” to read as follows:

**§ 300.61 Definitions.**

\* \* \* \* \*

*Annual commercial catch limit*, for purposes of commercial fishing in:

(1) Commission regulatory areas 2C and 3A, means the annual commercial allocation minus an area-specific estimate of commercial halibut wastage.

(2) Commission regulatory areas 3B and 4A, means the annual total allowable halibut removals by persons fishing IFQ.

(3) Commission regulatory areas 4B, 4C, 4D, and 4E, means the annual total allowable halibut removals by persons fishing IFQ and CDQ.

\* \* \* \* \*

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

■ 5. The authority citation for 50 CFR part 679 continues to read as follows:

*Authority:* 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 6. In § 679.5, add paragraphs (l)(10) and (w) to read as follows:

**§ 679.5 Recordkeeping and reporting.**

\* \* \* \* \*

(l) \* \* \*

(10) A report on annual IFQ regulatory areas 4B, 4C, and 4D Halibut IFQ transfer activities must be submitted to NMFS and the Council by a CDQ group as required at § 679.5(w).

\* \* \* \* \*

(w) *Report on Area 4 halibut IFQ transfers to CDQ groups—(1)*

*Applicability.* A CDQ group that receives IFQ regulatory area 4 halibut IFQ by transfer must submit a timely and complete report on the CDQ group's annual halibut IFQ transfer activities for each calendar year that it receives IFQ regulatory area 4 halibut IFQ by transfer. A CDQ group is not required to submit a report for any calendar year in which it did not receive any IFQ regulatory area 4 halibut IFQ by transfer.

(2) *Time limits and submittal.* A CDQ group must submit a complete report by January 31 of the year following a fishing year during which the CDQ group receives IFQ regulatory area 4B, 4C, or 4D halibut IFQ by transfer. The complete report must be submitted to the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252, and to NMFS-Alaska Regional Administrator, P.O. Box 21668, Juneau, AK, 99802–1668.

(3) *Complete report.* A complete report contains all report requirements described in paragraphs (w)(4)(i) through (w)(4)(iii) of this section.

(4) *Report requirements.* A CDQ group must report the following information:

(i) The annual amount, IFQ regulatory area, and vessel category of IFQ regulatory area 4B, 4C, and 4D halibut IFQ transferred to the CDQ group;

(ii) The criteria used to select IFQ holders to transfer IFQ regulatory area 4B, 4C, and 4D halibut IFQ to the CDQ group; and

(iii) The criteria used to determine the person(s) eligible to harvest IFQ regulatory area 4B, 4C, and 4D halibut IFQ received by transfer.

■ 7. In § 679.41,

■ a. Add paragraph (c)(13);

■ b. Revise paragraphs (d)(1), (g)(1), and (h)(2); and

■ c. Add paragraph (o).

The additions and revisions read as follows:

**§ 679.41 Transfer of quota shares and IFQ.**

\* \* \* \* \*

(c) \* \* \*

(13) If the person applying to receive halibut IFQ assigned to vessel categories B, C, or D in IFQ regulatory areas 4B, 4C, or 4D is a CDQ group, the following determinations are required:

(i) The CDQ group applying to receive halibut IFQ for an IFQ regulatory area receives an annual allocation of halibut CDQ for that IFQ regulatory area pursuant to § 679.31(b)(1);

(ii) The QS holder applying to transfer halibut IFQ to a CDQ group has not transferred any halibut IFQ assigned to vessel categories B, C, or D for that IFQ regulatory area to a CDQ group during the last two consecutive fishing years;

(iii) If the IFQ to be transferred to a CDQ group results from QS that was transferred to the QS holder after December 14, 2015, the QS holder applying to transfer halibut IFQ to a CDQ group has held the underlying QS for that IFQ for a minimum of 3 years from the date NMFS approved the transfer;

(iv) If the IFQ to be transferred to a CDQ group is assigned to vessel categories B, C, or D in IFQ regulatory area 4B, the QS holder applying to transfer that halibut IFQ to a CDQ group holds fewer than 76,355 halibut QS units in IFQ regulatory area 4B; and

(v) The CDQ group applying to receive halibut IFQ has submitted a complete report if required to do so by § 679.5(w).

(d) \* \* \*

(1) *Application for Eligibility.* All persons, except as provided in paragraphs (d)(1)(i) and (d)(1)(ii) of this section, applying to receive QS or IFQ must submit an Application for Eligibility to Receive QS/IFQ (Application for Eligibility) containing accurate information to the Regional Administrator. The Regional Administrator will not approve a transfer of IFQ or QS to a person until the Application for Eligibility for that person is approved by the Regional Administrator. The Regional Administrator shall provide an Application for Eligibility form to any person on request.

(i) An Application for Eligibility is not required for a CQE if a complete application to become a CQE, as described in paragraph (l)(3) of this section, has been approved by the Regional Administrator on behalf of an eligible community.

(ii) An Application for Eligibility is not required for a CDQ group.

\* \* \* \* \*

(g) \* \* \*

(1) Except as provided in paragraph (f), paragraph (g)(2), paragraph (l), paragraph (n) or paragraph (o) of this section, only persons who are IFQ crew members, or who were initially issued QS assigned to vessel categories B, C, or D, and meet the eligibility requirements in this section, may receive by transfer QS assigned to vessel categories B, C, or D, or the IFQ resulting from it.

\* \* \* \* \*

(h) \* \* \*

(2) IFQ resulting from categories B, C, or D QS may not be transferred separately from its originating QS, except as provided in paragraph (d), paragraph (f), paragraph (k), paragraph (l), paragraph (m), or paragraph (o) of this section.

\* \* \* \* \*

(o) *Transfer of IFQ to CDQ groups.* (1) A QS holder who holds fewer than 76,355 units of halibut QS in IFQ regulatory area 4B may transfer halibut IFQ assigned to vessel categories B, C, or D in IFQ regulatory area 4B to a CDQ group that receives an allocation of IFQ regulatory area 4B halibut CDQ if the annual commercial halibut catch limit, as defined in § 300.61 of this title, for Area 4B is less than 1 million pounds in that calendar year.

(2) A QS holder in IFQ regulatory areas 4C or 4D may transfer halibut IFQ assigned to vessel categories B, C, or D in IFQ regulatory areas 4C or 4D to a CDQ group that receives an allocation of halibut CDQ in that IFQ regulatory area if the annual commercial halibut catch limit, as defined in § 300.61 of this title, for Area 4CDE is less than 1.5 million pounds in that calendar year.

(3) A QS holder must meet the requirements in paragraph (c)(13) of this section to transfer halibut IFQ assigned to vessel categories B, C, or D in IFQ regulatory areas 4B, 4C, or 4D to a CDQ group.

(4) A CDQ group that receives halibut IFQ by transfer may not transfer that halibut IFQ to any other person.

■ 8. In § 679.42,

■ a. Revise paragraph (a)(1);

■ b. Remove paragraph (a)(2)(i);

■ c. Redesignate paragraphs (a)(2)(ii) through (iv) as paragraphs (a)(2)(i) through (iii);

■ d. Add new paragraph (a)(2)(iv); and

■ e. Revise paragraphs (h)(1) introductory text and (h)(2) introductory text.

The revisions and additions read as follows:

#### § 679.42 Limitations on use of QS and IFQ.

(a) \* \* \*

(1) The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area, except for the following:

(i) All or part of the QS and IFQ specified for regulatory area 4C may be harvested in either Area 4C or Area 4D.

(ii) All or part of the halibut CDQ specified for regulatory area 4D may be harvested in either Area 4D or Area 4E.

(iii) If a CDQ group is authorized to receive a transfer of halibut IFQ assigned to vessel categories B, C, or D in IFQ regulatory area 4D as specified in § 679.41(o) of this part, all or part of the halibut IFQ specified for regulatory area 4D that is held by or transferred to a CDQ group may be harvested in either Area 4D or Area 4E.

(2) \* \* \*

\* \* \* \* \*

(iv) Halibut IFQ assigned to vessel category B, C, or D held by a CDQ group may not be used on a vessel over 51 feet LOA, irrespective of the vessel category assigned to the IFQ.

\* \* \* \* \*

(h) \* \* \*

(1) *Halibut.* No vessel may be used, during any fishing year, to harvest more IFQ halibut than one-half percent of the combined total catch limits of halibut for IFQ regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, except that:

\* \* \* \* \*

(2) *Sablefish.* No vessel may be used, during any fishing year, to harvest more IFQ sablefish than one percent of the combined fixed gear TAC of sablefish for the GOA and BSAI IFQ regulatory areas, except that:

\* \* \* \* \*

[FR Doc. 2018–22687 Filed 10–17–18; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF THE TREASURY

### 17 CFR Part 420

#### Government Securities Act Regulations: Large Position Reporting Rules

**AGENCY:** Office of the Assistant Secretary for Financial Markets, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury (Treasury) is issuing a final rule to amend its Large Position Reporting rules (LPR Rules). These technical amendments make no substantive changes to the rules but are designed to provide Treasury with

additional flexibility to specify in its notice requesting large position reports where and how reports are to be filed. Accordingly, Treasury will provide notice by issuing a public announcement and subsequently publishing the notice in the **Federal Register**. Treasury believes these amendments may also minimize the costs and burden on reporting entities.

**DATES:** The amendments are effective November 17, 2018.

**ADDRESSES:** This final rule is available at <http://www.treasurydirect.gov> and <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Lori Santamarena, Kurt Eidemiller, Kevin Hawkins, or John Garrison, Department of the Treasury, Bureau of the Fiscal Service, Government Securities Regulations Staff, (202) 504–3632 or email us at [govsecreg@fiscal.treasury.gov](mailto:govsecreg@fiscal.treasury.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

##### A. Treasury's Large Position Reporting Rules

The LPR Rules<sup>1</sup> are issued under the Government Securities Act (GSA),<sup>2</sup> as amended, for the purposes of monitoring the impact of large positions in Treasury securities in the Treasury securities market and otherwise assisting the Securities and Exchange Commission (SEC) in enforcing the GSA.<sup>3</sup> The LPR Rules provide an on-demand reporting system<sup>4</sup> that requires reports to be filed by entities that control 10 percent or more in a particular Treasury security (or securities) as of a particular date. The reports provide information on large positions in Treasury securities held by market participants and additional insight into the supply and demand dynamics in certain Treasury securities.<sup>5</sup> This information allows

<sup>1</sup> 78 FR 73414 December 10, 2014.

<sup>2</sup> Public Law 103–202, 107 Stat. 2344 (1993) [15 U.S.C. 78o–5(f)].

<sup>3</sup> Treasury does not believe that large positions in Treasury securities are inherently problematic and there is no presumption of manipulative or illegal intent merely because a reporting entity's position is large enough to be subject to Treasury's LPR Rules.

<sup>4</sup> An “on-demand” reporting system, rather than a regular, ongoing system of reporting, provides Treasury with the information necessary to understand supply and demand dynamics in the Treasury securities market, while minimizing the potential impact on the market's efficiency and liquidity and the cost to taxpayers of funding the federal debt. It also minimizes the cost and burden to those reporting entities affected by the LPR Rules.

<sup>5</sup> The GSA specifically provides that Treasury shall not be compelled to disclose publicly any

Continued



Treasury to monitor the impact of concentrations of positions.<sup>6</sup> Since the rules became effective in 1997, Treasury has conducted 16 large position report calls.

#### *B. Who Is Subject to the LPR Rules*

Treasury's LPR Rules apply to all foreign and domestic persons and entities that control a reportable position in a Treasury security, including but not limited to: Government securities brokers and dealers; registered investment companies; registered investment advisers; custodians, including depository institutions that exercise investment discretion; hedge funds; pension funds; insurance companies; and foreign affiliates of U.S. entities. Central banks (including U.S. Federal Reserve Banks for their own account), foreign governments, and international monetary authorities may voluntarily submit large position reports when they meet or exceed a reporting threshold.

#### *C. The Existing Large Position Report Submission Process*

Under the current LPR Rules, reports are required to be filed by facsimile (fax) or delivered by hardcopy to FRBNY. A report is considered filed when received by FRBNY. Reporting entities typically have three and one-half business days to submit reports, and most reports are filed by fax with FRBNY. Following previous calls for large position reports, many reporting entities have commented that it is difficult to find functional fax machines and would prefer an alternate means of submission. In response to this feedback, Treasury is currently exploring alternate options for the submission of reports.

## **II. Technical Amendments to the LPR Rules**

These technical amendments make no substantive changes to the LPR Rules. They are designed to provide Treasury with the flexibility to specify in its notice requesting large position reports where and how reports are to be filed. These amendments will also provide Treasury with the added flexibility to consider alternate means of submission, which may further reduce the burden on reporting entities. Treasury will provide notice of a request for reports, and how the reports are to be delivered, by

information required to be kept or reported for large position reporting. In particular, the GSA exempts such information from disclosure under the Freedom of Information Act. See 15 U.S.C. 780–5(f)(6).

<sup>6</sup> Under current rules, this information is also made available to the Federal Reserve Bank of New York (FRBNY), as Treasury's agent, and the SEC. See 15 U.S.C. 780–5(f)(1).

issuing a public announcement and subsequently publishing the notice in the **Federal Register**.

Specifically, the technical amendments replace references to “press release” with “public announcement,” provide the option for Treasury to specify in its public announcement that reports can be submitted to Treasury directly; and provide the option for Treasury to specify in its public announcement how reports are to be submitted by removing references to “facsimile” and “delivered hard copy.”

## **III. Special Analyses**

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. This rule is not a significant regulatory action for purposes of Executive Order 12866.

This final rule is procedural in nature under 5 U.S.C. 553(b)(A) and therefore prior notice and comment procedures are not required. In addition, because the final rule makes no substantive change to the existing rules and imposes no additional requirements, we find under 5 U.S.C. 553(b)(B) that there is good cause that notice and public procedures are unnecessary, and that the rule can be issued in final form.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. These amendments reflect Treasury's continuing interest in meeting its informational needs while minimizing the cost and burden on those entities affected by the regulations.

#### **List of Subjects in 17 CFR Part 420**

Banks, Banking, Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 17 CFR part 420 is amended as follows:

## **PART 420—LARGE POSITION REPORTING**

■ 1. The authority citation for part 420 continues to read as follows;

**Authority:** 15 U.S.C. 780–5(f).

■ 2. Amend § 420.3 by revising the second sentence of paragraph (a) and revising paragraphs (h), (i), and (j) to read as follows:

#### **§ 420.3 Reporting.**

(a) \* \* \* Treasury will provide notice of the large position thresholds by issuing a public announcement and subsequently publishing the notice in the **Federal Register**. \* \* \*

\* \* \* \* \*

(h) The report must be filed before noon Eastern Time on the fourth business day following issuance of a public announcement.

(i) A report to be filed pursuant to paragraph (c) of this section will be considered filed when received by Treasury or the Federal Reserve Bank of New York according to the instructions provided in the public announcement.

(j) A reporting entity that has filed a report pursuant to paragraph (c) of this section shall, at the request of Treasury, or the Federal Reserve Bank of New York at the direction of Treasury, timely provide any supplemental information pertaining to such report.

\* \* \* \* \*

**Brian Smith,**

*Deputy Assistant Secretary for Federal Finance.*

[FR Doc. 2018–22732 Filed 10–17–18; 8:45 am]

**BILLING CODE 4810–AS–P**

## **DEPARTMENT OF DEFENSE**

### **Department of the Navy**

#### **32 CFR Part 706**

#### **Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy (DoN), Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS BILLINGS (LCS 15) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.



**DATES:** This rule is effective October 18, 2018 and is applicable beginning October 5, 2018.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Kyle Fralick, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE, Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS BILLINGS (LCS 15) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 2 (a)(i), pertaining to the height of the forward

masthead light above the hull: And Annex I paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead light. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

#### List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water).

For the reasons set forth in the preamble, the DoN amends part 706 of

title 32 of the Code of Federal Regulations as follows:

#### PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

**Authority:** 33 U.S.C. 1605.

■ 2. Section 706.2 is amended by:

■ a. In Table One, adding, in alpha numerical order, by vessel number, an entry for USS BILLINGS (LCS 15); and

■ b. In Table Five, adding, in alpha numerical order, by vessel number, an entry for USS BILLINGS (LCS 15).

The additions read as follows:

#### § 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

\* \* \* \* \*

TABLE ONE

Vessel					No.	Distance in meters of forward masthead light below minimum required height § 2(a)(i) annex I
* * * * *						
USS BILLINGS .....					(LCS 15) ..	5.9
* * * * *						
* * * * *						

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship annex I, sec. 3(a)	After mast-head light less than 1/2 ship's length aft of forward masthead light annex I, sec. 3(a)	Percentage horizontal separation attained
* * * * *					
USS BILLINGS .....	(LCS 15) ..		X	X	23
* * * * *					

Approved: October 15, 2018.

**A.S. Janin,**

*Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).*

Dated: October 15, 2018.

**Meredith Steingold Werner,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2018-22730 Filed 10-17-18; 8:45 am]

**BILLING CODE 3810-FF-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket Number USCG-2018-0869]

RIN 1625-AA08

#### Special Local Regulation; San Diego Bay, San Diego, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary special local regulation for navigable waters of the San Diego Bay offshore of Harbor Island bound landward of a line by the following coordinates starting west at 32°43.033' N and 117°12.792' W and proceeding east to 32°43.166' N and 117°12.266' W, proceeding east to 32°43.166' N and 117°11.633' W, and ending at 32°43.100' N and 117°11.300' W. This special local regulation is necessary to provide for the safety of life on navigable waters during the event. This action will restrict vessel traffic in these waters of the San Diego Bay, from 10:00 a.m. to 6:00 p.m. on October 17, 2018 through October 21, 2018.

**DATES:** This rule is effective without actual notice from October 18, 2018 until October 21, 2018. For the purposes of enforcement from 10 a.m. to 6 p.m. daily, actual notice will be used from 10 a.m. on October 17, 2018 until October 18, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0869 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Junior Grade Briana Biagas, Waterways Management, U.S. Coast Guard Sector San Diego, Coast

Guard; telephone 619-278-7656, email [D11MarineEventsSD@uscg.mil](mailto:D11MarineEventsSD@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

##### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. Due to the timing of the event, we are unable to issue a NPRM before the event is scheduled.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This rule is necessary for the safety of life during the event on these navigable waters. For the reasons above, including the timing of the event, it would be impracticable to delay this rule to provide a full 30 days' notice.

##### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233, which authorizes the Coast Guard to establish and define special local regulations. The COTP San Diego is establishing a special local regulation for the waters of the San Diego Bay bound landward of a line by coordinates starting west at 32°43.033' N and 117°12.792' W and proceeding east to 32°43.166' N and 117°12.266' W, proceeding east to 32°43.166' N and 117°11.633' W, and ending at 32°43.100' N and 117°11.300' W. The purpose of this rule is to ensure safety of participants, vessels and the navigable waters in the regulated area before, during, and after the scheduled event.

##### IV. Discussion of the Rule

This rule establishes a special local regulation from 10:00 a.m. to 6:00 p.m. on October 17, 2018 through October 21,

2018. The special local regulation will cover all navigable waters of the San Diego Bay bound landward of a line by coordinates starting west at 32°43.033' N and 117°12.792' W and proceeding east to 32°43.166' N and 117°12.266' W, proceeding east to 32°43.166' N and 117°11.633' W, and ending at 32°43.100' N and 117°11.300' W. The purpose of this rule is to ensure safety of participants, vessels and the navigable waters in the regulated area before, during, and after the scheduled event. Persons and vessels will be prohibited from anchoring, blocking, loitering, or impeding within this regulated waterway unless authorized by the COTP, or his designated representative, during the specified dates and times. Additionally, movement of all vessels within the regulated area and entry of all vessels into the regulated area will be restricted. The Coast Guard will publish information on the event in the weekly LNM.

##### V. Regulatory Analyses

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

###### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance, it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on size, location, duration, and time-of-day of the special local regulation. The Coast Guard will publish a LNM that details the vessel restrictions of the regulated area.

###### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and

operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the impacted portion of the San Diego Bay bound landward of a line by coordinates starting west at 32°43.033' N and 117°12.792' W and proceeding east to 32°43.166' N and 117°12.266' W, proceeding east to 32°43.166' N and 117°11.633' W, and ending at 32°43.100' N and 117°11.300' W from 10:00 a.m. to 6:00 p.m. on October 17, 2018 through October 21, 2018.

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

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

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### D. Federalism and Indian Tribal Governments

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

have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of marine event special local regulations on a portion of the navigable waters of the San Diego Bay. It is categorically excluded from further review under paragraph L61 and L63(b) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without

jeopardizing the safety or security of people, places or vessels.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

#### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 33 CFR 1.05–1.

■ 2. Add § 100.35T11–0869 to read as follows:

#### § 100.35T11–0869 Special Local Regulation for Marine Event; San Diego Bay, San Diego, CA.

(a) *Regulated area.* The following location is a regulated area: All navigable waters of San Diego Bay bound landward of a line by coordinates starting west at 32°43.033' N and 117°12.792' W and proceeding east to 32°43.166' N and 117°12.266' W, proceeding east to 32°43.166' N and 117°11.633' W, and ending at 32°43.100' N and 117°11.300' W.

(b) *Definitions.* The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port San Diego in the enforcement of the regulated areas.

(c) *Special local regulations.* (1) Persons and vessels will be prohibited from anchoring, blocking, loitering, or impeding within this regulated waterway unless authorized by the COTP, or his designated representative, during the dates and times listed in paragraph (d) of this section.

(2) Movement of all vessels within the regulated area and entry of all vessels into the regulated area will be restricted.

(3) To seek permission to enter the regulated area, contact the Captain of the Port (COTP) San Diego or the COTP's designated representative.

(4) The Coast Guard will publish a notice in the Eleventh Coast Guard District Local Notice to Mariners and issue a Safety Marine Information Broadcast of VHF–FM marine band radio announcing specific event location, dates and times.

(d) *Enforcement period(s).* Daily from 10:00 a.m. to 6:00 p.m. on October 17, 2018 through October 21, 2018.

Dated: October 2, 2018.

**J.R. Buzzella,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2018-22736 Filed 10-17-18; 8:45 am]

BILLING CODE 9110-04-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[WV106-6044; FRL-9983-55-Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Update to Materials Incorporated by Reference

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; administrative change.

**SUMMARY:** The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the West Virginia state implementation plan (SIP). The regulations affected by this update have been previously submitted by the West Virginia Department of Environmental Protection (WV DEP) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

**DATES:** This action is effective October 18, 2018.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and 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/code-of-federal-regulations/ibr-locations.html>. EPA requests that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Erin Trouba, (215) 814-2023 or by email at [trouba.erin@epa.gov](mailto:trouba.erin@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such

elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the proposed SIP revisions to EPA. Once these control measures and strategies are approved by EPA, and after notice and comment, they are incorporated into the federally-approved SIP and are identified in part 52 "Approval and Promulgation of Implementation Plans," title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52, but is "incorporated by reference." This means that EPA has approved a given state regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows EPA and the public to monitor the extent to which a state implements a SIP to attain and maintain the NAAQS and to take enforcement action if necessary.

The SIP is a living document which a state revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document. On February 10, 2005 (70 FR 7024), EPA published a **Federal Register** beginning the new IBR procedure for West Virginia. On February 28, 2007 (72 FR 8903), February 10, 2009 (74 FR 6542), December 28, 2010 (75 FR 81474), July 25, 2013 (78 FR 44884), and June 14, 2017 (82 FR 27118) EPA published updates to the IBR material for West Virginia. Since the publication of the last IBR update, EPA has approved into the SIP the following regulatory changes to the following West Virginia regulations:

##### A. Added Regulations

None.

##### B. Revised Regulations

1. 45 CSR 8 (Ambient Air Quality Standards)
2. 45 CSR 14 (Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration)

##### C. Removed Regulations

1. 45 CSR 39 (Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides)
2. 45 CSR 41 (Control of Annual Sulfur Dioxides Emissions)
3. In 52.2520 paragraph (d) Source Specific Requirements for West Virginia, there was a removal of source-specific SIP requirements for the following five facilities in West Virginia that had permanently shutdown: Mountaineer Carbon Company; Standard Lafarge; Follansbee Steel Corporation; International Mill Service, Inc.; and Columbian Chemicals Company.

## II. EPA Action

In this action, EPA is announcing the update to the IBR material as of May 1, 2018 and revising the text within 40 CFR 52.2520(b). In addition, notice is provided of correcting **Federal Register** citations listed in the Table (c) paragraph of 40 CFR 52.2520, as described: A. Under the "EPA approval date" EPA is correcting numerous **Federal Register** citation locations to reflect the first page of the preamble opposed to the regulatory text page for West Virginia regulations 45 CSR Series 8 and 45 CSR Series 14.

## III. Good Cause Exemption

EPA has determined that this rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This rule simply codifies provisions which are already in effect as a matter of law in federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by

removing outdated citations and incorrect table entries.

#### 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 previously EPA approved regulations promulgated by the State of West Virginia and federally effective prior to May 1, 2018. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region III 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

##### A. General Requirements

Under the Clean Air Act (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 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 rule is not a "major rule" as defined by 5 U.S.C. 804(2).

##### C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the West Virginia SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" update action for West Virginia.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 27, 2018.

**Cecil Rodrigues,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority for citation for part 52 continues to read as follows:

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

##### Subpart XX—West Virginia

- 2. Section 52.2520 is amended by:
- a. Revising paragraph (b).
  - b. Revising paragraph (c) table entries for 45 CSR 8 (Ambient Air Quality Standards) and 45 CSR 14 (Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration).

The revisions read as follows:

##### § 52.2520 Identification of plan.

\* \* \* \* \*

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to May 1, 2018, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Entries in paragraphs (c) and (d) of this section with the EPA approval dates after May 1, 2018 for the State of West Virginia have been approved by EPA for inclusion in the State implementation plan and for incorporation by reference into the plan as it is contained in this section, and will be considered by the Director of the Federal Register for approval in the next update to the SIP compilation.

(2) EPA Region III certifies that the materials provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the state implementation plan as of the dates referenced in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference into the state implementation plan may be inspected at the Environmental Protection Agency,

Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. To obtain the material, please call the Regional Office at (215) 814-3376. You may also inspect the material with an

EPA approval date prior to May 1, 2018 for the State of West Virginia at the National Archives and Records Administration (NARA). For information on the availability of this

material at NARA, go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.  
(c) *EPA-Approved Regulations and Statutes.*

## EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [Chapter 16-20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
*	*	*	*	*
[45 CSR] Series 8 ..		Ambient Air Quality Standards		
Section 45-8-1 .....	General .....	6/1/17	3/23/18, 83 FR 12677.	Filing and effective dates are revised.
Section 45-8-2 .....	Definitions .....	6/1/17	3/23/18, 83 FR 12677.	Previous Approval 9/22/2014.
Section 45-8-3 .....	Adoption of Standards .....	6/1/17	3/23/18, 83 FR 12677.	Effective date is revised.
Section 45-8-4 .....	Inconsistency Between Rules .....	6/1/17	3/23/18, 83 FR 12677.	Replaced "West Virginia Department of Environmental Protection" with "Division of Air Quality."
*	*	*	*	*
[45 CSR] Series 14		Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration		
Section 45-14-1 .....	General .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-2 .....	Definitions .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-3 .....	Applicability .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-4 .....	Ambient Air Quality Increments and Ceilings.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-5 .....	Area Classification .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-6 .....	Prohibition of Dispersion Enhancement Techniques.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-7 .....	Registration, Report and Permit Requirements for Major Stationary Sources and Major Modifications.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-8 .....	Requirements Relating to Control Technology.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-9 .....	Requirements Relating to the Source's Impact on Air Quality.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-10 .....	Modeling Requirements .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-11 .....	Air Quality Monitoring Requirements .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-12 .....	Additional Impacts Analysis Requirements.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-13 .....	Additional Requirements and Variances for Source Impacting Federal Class 1 Areas.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-14 .....	Procedures for Sources Employing Innovative Control Technology.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-15 .....	Exclusions From Increment Consumption.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-16 .....	Specific Exemptions .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-17 .....	Public Review Procedures .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-18 .....	Public Meetings .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-19 .....	Permit Transfer, Cancellation and Responsibility.	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-20 .....	Disposition of Permits .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45-14-21 .....	Conflict with Other Permitting Rules .....	06/01/2015	08/11/2016, 81 FR 53008.	

## EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
Section 45–14–25 ...	Actual PALs .....	06/01/2015	08/11/2016, 81 FR 53008.	
Section 45–14–26 ...	Inconsistency Between Rules .....	06/01/2015	08/11/2016, 81 FR 53008.	
*	*	*	*	*

\* \* \* \* \*

[FR Doc. 2018–22653 Filed 10–17–18; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

[Docket No. FWS–R6–ES–2016–0013;  
FXES11130900000C6–189–FF09E42000]

RIN 1018–BB41

**Endangered and Threatened Wildlife  
and Plants; Removing Deseret  
Milkvetch (*Astragalus desereticus*)  
From the Federal List of Endangered  
and Threatened Plants**

**AGENCY:** Fish and Wildlife Service,  
Interior.

**ACTION:** Final rule; document  
availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are removing Deseret milkvetch (*Astragalus desereticus*) from the Federal List of Endangered and Threatened Plants due to recovery. Based on the best available scientific and commercial data, threats to Deseret milkvetch identified at the time of listing are not as significant as originally anticipated and are being adequately managed, the species' population is much greater than was known at the time of listing, and threats to this species have been sufficiently minimized such that it no longer meets the definition of an endangered species or threatened species under the Endangered Species Act of 1973, as amended (Act).

**DATES:** This final rule is effective November 19, 2018.

**ADDRESSES:** Comments, materials received and supporting documentation used in the preparation of this final rule are available on the internet at <http://www.regulations.gov> under Docket No. FWS–R6–ES–2016–0013. Additionally, comments, materials received, and supporting documentation are available for public inspection by appointment at

our Utah Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**, below). The post-delisting monitoring plan for Deseret milkvetch is available on our Endangered Species Program's national website (<http://endangered.fws.gov>) and the internet at <http://www.regulations.gov> under Docket No. FWS–R6–ES–2016–0013.

**FOR FURTHER INFORMATION CONTACT:** Larry Crist, Field Supervisor, telephone: 801–975–3330. Direct all questions or requests for additional information to: DESERET MILKVETCH QUESTIONS, U.S. Fish and Wildlife Service; Utah Ecological Services Field Office; 2369 Orton Circle, Suite 50; West Valley City, UT 84119. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Previous Federal Actions**

On October 2, 2017, we published a proposed rule to remove Deseret milkvetch from the List of Endangered and Threatened Plants (*i.e.*, to “delist” the species) (82 FR 45779). Please refer to that proposed rule for a detailed description of the Federal actions concerning this species that occurred prior to October 2, 2017.

**Species Description and Habitat Information**

Deseret milkvetch was first collected in 1893, again in 1909, then not located again until 1981 (Barnaby 1989, p. 126; Franklin 1990, p. 2). The gap in collections may be due to confusion regarding initial records, which were wrongly attributed to Sanpete County, Utah (Franklin 1990, p. 2). The 1964 description and classification of Deseret milkvetch by Barneby is the accepted taxonomic status (Barneby 1989, p. 126; ITIS 2015).

Deseret milkvetch is a perennial, herbaceous plant in the legume family with silvery-gray pubescent leaves that are 2 to 5 inches (4 to 12 centimeters) long and flower petals that are white to pinkish with lilac-colored tips (Barneby 1989, p. 126). The flower structure

indicates an adaptation to pollination primarily by large bees, likely bumblebees (*Bombus* spp.), which are generalist pollinators (Stone 1992, p. 4). The species appears to be tolerant of drought (Stone 1992, p. 3). A more detailed description of the biology and life history of Deseret milkvetch can be found in our 5-year review of the species (U.S. Fish and Wildlife Service 2011, pp. 5–7).

Deseret milkvetch is endemic to Utah County in central Utah, with the only known population near the town of Birdseye (Stone 1992, p. 2). It occurs exclusively on sandy-gravelly soils weathered from the Moroni geological formation, which are limited to an area of approximately 100 square miles (mi<sup>2</sup>) (259 square kilometers (km<sup>2</sup>)) (Franklin 1990, p. 4; Stone 1992, p. 3). The species is known to occur at elevations of 5,400 to 5,700 feet (ft) (1,646 to 1,737 meters (m)) (Stone 1992, p. 2; Anderson 2016, pers. comm.; Fitts 2016, pers. comm.). Based upon the species' narrow habitat requirements, it has likely always been rare, with little unoccupied suitable habitat (Franklin 1990, p. 6; Stone 1992, p. 6).

Deseret milkvetch is found on steep south- and west-facing slopes with scattered Colorado pinyon pine (*Pinus edulis*) and Utah juniper (*Juniperus osteosperma*) (Franklin 1990, p. 2). It also grows on west-facing road-cuts where plants are typically larger than those found in undisturbed habitat (Franklin 1990, p. 2). The species' habitat is sparsely vegetated (SWCA Environmental Consultants 2015, p. 7). The species is an associate of the pinyon-juniper plant community. It is not shade-tolerant but is found in open areas between trees (Goodrich *et al.* 1999, p. 265).

Deseret milkvetch is probably a relatively new species on the scale of geologic time. The species' genus has the ability to colonize disturbed or unstable habitats in dry climates. This ability has likely hastened the evolution of the genus and given rise to many species of *Astragalus* that are sharply differentiated and individually

geographically restricted (Stone 1992, p. 6). Deseret milkvetch tolerates at least some degree of disturbance, such as that caused by road maintenance activities (Franklin 1990, p. 2; Fitts and Fitts 2009, p. 5).

### Species Abundance, Distribution, and Trends

In 1990, surveys for Deseret milkvetch estimated fewer than 5,000 plants in a single population (Franklin 1990, p. 3). A subsequent survey at the same site in 1992 estimated more than 10,000 plants, indicating that a large seed bank likely exists (Stone 1992, p. 7). Consequently, at the time of listing, we estimated a total population of 5,000 to 10,000 plants (64 FR 56590, October 20, 1999).

In 2008, the Utah Natural Heritage Program surveyed suitable habitats and provided a total population estimate for the species (Fitts 2008, p. 1). The surveyors found new plant sites (hereafter referred to as a colony) to the north and west of the previously known population. The total population estimate was 152,229 plants—including seedlings, juveniles, and adults (Fitts and Fitts 2009, p. 4), well above the number of plants known to occur in 1990. If only adults were counted in the 2008 survey, the population estimate was 86,775 to 98,818 plants (U.S. Fish and Wildlife Service 2011, p. 10). The species remains known from a single population, with multiple colonies.

In 2009, surveys were expanded, and the updated total population estimate was 197,277 to 211,915 juvenile and adult plants (Fitts and Fitts 2010, p. 6); however, the survey methodology in this year was not clearly described. More plants likely occurred on nearby private land with exposed Moroni Formation outcrops, but the landowner did not give permission to survey (Fitts and Fitts 2010, p. 7). These surveys may have overestimated the species' population using the partial census method due to extrapolation from earlier hand-drawn colony boundaries; the small number of transects; and the inclusion of seedlings, which have a high rate of mortality (U.S. Fish and Wildlife Service 2011, p. 10).

In 2016, partial surveys were conducted showing dense levels of occupancy in the northmost portion of the range, in areas that were known to be occupied but had not been previously surveyed (Fitts 2018, pers. comm.). In 2017, surveys of all accessible habitats were conducted in accordance with the protocol used in 2008, resulting in a population estimate of 88,427 (adults and juveniles) in the population total, with 50,483 on State lands (UNHP 2018, p. 4–5). Surveys in

2017 did not include private lands, and so we estimated the total population by applying known densities of adjacent State lands to the private land acreages (UNHP 2018, entire).

The 2017 population estimates represent a reduction in population from the surveys conducted in 2008 and 2009 but are still well above the number of plants known in 1990. We believe the reduction in numbers from 2009 to 2017 is consistent with what we know about the species' response to drought conditions. In 2015 and 2016, the habitat experienced moderate to severe drought conditions (National Drought Resilience Partnership 2018, entire). In late 2016 and early 2017, the habitat received above-average precipitation levels, and the lower overall population coupled with the increased proportion of juvenile plants recorded in spring of 2017 would be consistent with a response to two seasons of drought followed by increased precipitation in the preceding fall causing a germination event. The proportion of juvenile plants increased from 15 percent in 2008 to 44 percent in 2017 (USFWS 2011, p. 10; UNHP 2018, p. 4). We believe this represents a natural response cycle to annual precipitation patterns and not a declining trend caused by anthropogenic stressors. Additionally, the consistent presence of seedlings and juveniles in the 2008, 2009, 2016, and 2017 surveys indicates that recruitment occurs regularly and a robust seedbank exists. Although 2018 survey results are not yet available, we expect they will be reflective of the low precipitation level in 2018.

At the time of listing, we estimated the occupied habitat of Deseret milkvetch to include approximately 300 acres (ac) (122 hectares (ha)) in an area 1.6 miles (mi) (2.6 kilometers (km)) by 0.3 mi (0.5 km) (64 FR 56590; October 20, 1999). The most recent occupied habitat estimate is approximately 345 ac (140 ha) in an area 2.8 mi (4.5 km) by 0.3 mi (0.5 km) (Fitts and Fitts 2010, p. 6; SWCA Environmental Consultants 2015, p. 2). The species remains known from one population (Birdseye) of scattered colonies on the Moroni formation soils near Birdseye, Utah (U.S. Fish and Wildlife Service 2011, p. 8).

In summary, periodic surveys of Deseret milkvetch were completed from 1990 through 2017. The available information indicates a substantial population increase since 1990 when the first surveys were conducted (from an estimated 5,000–10,000 plants in 1990 to an estimated 88,000 plants in 2017). Population and demographic fluctuations between 2008 and 2017 are

likely a natural part of this species' lifecycle that is related to precipitation. While the exact distribution of colonies has shifted over time, there has been no overall reduction in the area occupied since the time of listing and additional colonies have been located (UNHP 2018, p. 3). Therefore, we conclude that the population has been stable to increasing overall since the time of listing.

### Land Ownership

An estimated 230 ac (93 ha; 67 percent) of the 345 ac (140 ha) of total occupied habitat for Deseret milkvetch are in the Birdseye Unit of the Northwest Manti Wildlife Management Area (WMA) owned by the Utah Division of Wildlife Resources (UDWR). Of the remaining habitat, 25 ac (10 ha; 7 percent) are owned by the Utah Department of Transportation (UDOT) and 90 ac (36 ha; 26 percent) are privately owned (UDWR *et al.* 2006, p. 4). The Utah School and Institutional Trust Lands Administration (SITLA) owns most of the mineral rights in the species' habitat (UDWR *et al.* 2006, p. 7). No populations of Deseret milkvetch are known to occur on Federal lands (Franklin 1990, pp. 3–4; Anderson 2016, pers. comm.).

### Conservation Efforts

A recovery plan for Deseret milkvetch was not prepared; therefore, specific delisting criteria were not developed for the species. However, in 2005, we invited agencies with management or ownership authorities within the species' habitat to serve on a team to develop an interagency conservation agreement for Deseret milkvetch intended to facilitate a coordinated conservation effort between the agencies (UDWR *et al.* 2006, entire). The Conservation Agreement for *Astragalus desereticus* (Deseret milkvetch) (Conservation Agreement) was signed and approved by UDWR, UDOT, SITLA, and the Service in 2006, with a duration of 30 years. The Conservation Agreement provides guidance to stakeholders to address threats and establish goals to ensure the long-term survival of the species (UDWR *et al.* 2006, p. 7). Conservation actions identified in the Conservation Agreement (in italics), their current status, and efforts to accomplish these actions are described below.

- *Maintain species' habitat within the WMA in its natural state, restricting habitat disturbance:* This action is successful and ongoing. UDWR acquired the Birdseye Unit of the Northwest Manti WMA in 1967. Prior to this acquisition, livestock grazing occurred for more than 50 years on the property



(UDWR *et al.* 2006, p. 6). Since the acquisition, livestock grazing has been used only on a limited basis as a management tool by UDWR. However, habitat occupied by Deseret milkvetch is not suitable for grazing, and impacts to the species from grazing have been negligible (UDWR *et al.* 2006, p. 7). This habitat has not been grazed by livestock since 2002 (U.S. Fish and Wildlife 2011, p. 17). Future grazing within the occupied habitat is unlikely due to the steep terrain (Howard 2016, pers. comm.).

A draft wildlife management plan completed by UDWR proposes closing some unauthorized, unpaved roads within the WMA, which likely would further benefit the species by reducing habitat fragmentation and reducing future human access to the population (Howard 2018, pers. comm.). We anticipate that the plan will be finalized within the next year (Howard 2018, pers. comm.). Because this plan is currently only in draft, we do not rely on it in this final rule to delist the species. However, it provides an indication of future management intentions of UDWR to the continuing benefit of the species from the ongoing management of the WMA.

Removal of juniper in the WMA to improve habitat may occur, but areas occupied by Deseret milkvetch will be avoided to prevent plant damage and mortality associated with this type of surface-disturbing activity (Howard 2018, pers. comm.). The steep terrain associated with Deseret milkvetch makes grazing, juniper removal, and livestock grazing in the species' occupied habitat unlikely.

- *Retain species' habitat within the WMA under the management of UDWR:* This action is successful and ongoing. The UDWR continues to manage the species' habitat within the WMA in its natural state with minimal disturbance, as stipulated in the Conservation Agreement (Howard 2016, pers. comm.).

- *Evaluate the feasibility of acquiring conservation easements or fee title purchases on small private land parcels between U.S. Highway 89 and the existing WMA as resources, and willing sellers become available:* No easements or property have been acquired, and we do not rely on this conservation action in this final rule to delist the species. However, UDWR has a Statewide initiative to acquire additional lands, so that future acquisition may be possible (Howard 2016, pers. comm.).

- *Avoid using herbicides in the species' habitat managed by UDOT:* This action is successful and ongoing. The UDOT does not use herbicides in Deseret milkvetch habitat within

highway rights-of-way, and has committed to continuing this action as stipulated in the Conservation Agreement (Kisen 2016, pers. comm.).

- *Avoid disturbing plants during highway maintenance and construction carried out by UDOT:* This action is successful and ongoing. The UDOT has not disturbed the species during highway maintenance and construction, and no highway widening projects are anticipated through at least 2040, which is as far as their planning extends (Kisen 2016, pers. comm.).

- *Monitor populations on an annual basis as needed:* This action is successful and ongoing. Surveys were conducted in May of 2016, 2017, and 2018 by Utah Natural Heritage Program personnel.

- *Continue discussions between the UDWR and Service on the development and review of management plans and habitat restoration that may affect species' habitat on the WMA:* This action is successful and ongoing. The Service's Utah Ecological Services Field Office is actively engaged with UDWR in the development and review of actions that may affect the species. The UDWR and Service meet periodically to implement protections identified in the Conservation Agreement.

In summary, most of the conservation actions described in the Conservation Agreement have been successfully implemented and are part of an ongoing management strategy for conserving Deseret milkvetch. Potential threats from residential development, livestock grazing, and highway maintenance and widening are addressed by conservation actions on the approximately 74 percent of the species' occupied habitat that is owned and managed by either UDWR or UDOT. The Conservation Agreement will continue to be implemented through at least 2036.

As described above, we have new information on Deseret milkvetch since our listing decision, and the species' status has improved. This improvement is likely due to expanded surveys, as well as the amelioration of threats and an improved understanding of the stressors affecting the species (see Summary of Factors Affecting the Species, below). In addition to the conservation actions identified in the Conservation Agreement, new opportunities for conservation of the species may be implemented in the future. For example, a new power line proposed near the species' habitat will use the same corridor as an existing transmission line (see Factor A discussion, below). However, this future action is not a factor in our delisting determination.

Survey results from 2017 (the most recent population estimates available) estimated that the total population was 88,427 juvenile and adult plants occurring on approximately 345 ac (140 ha) of habitat, which is a significant increase when compared to estimates of 5,000 to 10,000 plants occurring on approximately 300 ac (122 ha) at the time of listing. The majority of Deseret milkvetch occupied habitat (74 percent) is managed by UDWR and UDOT, and we have no information that indicates the species faces significant threats on private lands. All of the conservation actions for UDWR- and UDOT-managed habitat have been successfully implemented, with the exception of acquiring conservation easements. These measures have been effective in preventing impacts to the species and its habitat on State-managed lands. Additionally, as described below, threats identified at the time of listing in 1999 are not as significant as originally anticipated (U.S. Fish and Wildlife Service 2011, p. 21).

#### Summary of Changes From the Proposed Rule

We have made updates to our discussions of the species' population status (including 2017 information) and factors affecting the species, based on comments submitted by the public and information provided by peer reviewers. In addition, we now refer to the species primarily by its common name, rather than its scientific name, throughout this rule.

#### Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. "Species" is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). A species is an "endangered species" for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range and is a "threatened species" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. We consider "foreseeable future" as that period of time within which a reliable prediction can be reasonably relied upon in making a determination about the future conservation status of a species, as described in the Solicitor's

opinion dated January 16, 2009 (M–37021).

A species may be determined to be an endangered or threatened species because of one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in delisting a species.

For species that are already listed as endangered or threatened and being considered for delisting, the five-factor analysis is an evaluation of the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the removal of the Act's protections. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; and/or (3) the original scientific data used at the time the species was classified were in error. A recovered species has had threats removed or reduced to the point that it no longer meets the Act's definitions of endangered or threatened.

Deseret milkvetch is listed as a threatened species. For the purposes of this analysis, we will evaluate whether or not the currently listed species, Deseret milkvetch, should continue to be listed as a threatened species, based on the best scientific and commercial information available.

We consider 20 years to be a reasonably foreseeable future within which reliable predictions can be made for Deseret milkvetch. This time period includes multiple generations of the species, coincides with the duration of the Conservation Agreement, and falls within the planning period used by UDOT. We consider 20 years a conservative timeframe in view of the much longer-term protections in place for 67 percent of the species' occupied habitat that occurs within the UDWR WMA.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor

and the species responds negatively, the factor may be a threat, and during the five-factor threats analysis, we will attempt to determine the significance of the threat. The threat is significant if it drives or contributes to the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. However, the identification of factors that could affect a species negatively may not be sufficient to justify a finding that the species warrants listing or should remain listed. The information must include evidence sufficient to suggest that the potential threat is likely to materialize and that it has the capacity (sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the Act. This determination does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The following analysis examines the factors currently affecting Deseret milkvetch, or that are likely to affect it within the foreseeable future.

#### *A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

Deseret milkvetch is found in three different land use zones, as categorized by Utah County Land Use Ordinance (Jorgensen 2016b, pers. comm.; Utah County 2016, chapter 5). Approximately 74.6 percent of the species' habitat occurs in Critical Environment Zone 1, which has the primary purpose of supporting water resources for culinary use, irrigation, recreation, natural vegetation, and wildlife. Approximately 16.7 percent occurs in Residential Agricultural Zone 5, which has the primary purpose of preserving agricultural lands. The remaining 8.6 percent occurs in Critical Environment Zone 2, which has the primary purpose of preserving fragile environmental uses (Jorgensen 2016b, pers. comm.). These zones do not strictly regulate management or land use and, therefore, are not discussed under Factor D, below; however, the Utah County Land Use Ordinance prioritizes uses and provides management guidance for all lands in Utah County, unless specifically exempted (Utah County 2016, chapter 5). All of the conservation actions in place for the species meet the guidelines under their respective land use zone, and we are not aware of any occupied habitat specifically exempted from the guidance described for the aforementioned land use zones.

The following potential stressors were identified for this species at the time of listing: (1) Residential development, (2) highway maintenance and widening, and (3) livestock grazing and trampling. For this final rule, we also considered: (4) Mineral development, (5) transmission lines, and (6) climate change. Each of these stressors is assessed below.

#### *Residential Development*

In our October 20, 1999, final listing rule (64 FR 56590), substantial human population growth and urban expansion were predicted in the Provo, Spanish Fork, and Weber River drainages east of the Wasatch Mountains. In that rule, increased residential development was considered a threat to the species due to the potential for loss of plants and habitat that results from the construction of roads, buildings, and associated infrastructure (e.g., utilities). However, counter to the predictions of the Quality Growth Efficiency Tools Technical Committee cited in that final listing rule, residential development in these areas has been very limited. The nearest community, Birdseye, is unincorporated and has not been included in recent U.S. Census Bureau surveys; therefore, no recent population estimates are available. We are aware of only one house, and a barn that was recently built adjacent to Deseret milkvetch occupied habitat (Fitts 2016, pers. comm.). We are aware of only three proposed development properties in this area. One property has the potential for 95 lots and is 2.8 mi (4.5 km) from the known occupied habitat of Deseret milkvetch. The other two developments would be single dwelling properties approximately four mi (6 km) and five mi (8 km) from known occupied habitat (Larsen 2016, pers. comm.; Jorgensen 2016a, pers. comm.). These three proposed developments are located near Thistle Creek, upstream from Deseret milkvetch habitat (Jorgensen 2016a, pers. comm.). However, the species' habitat occurs on steep upland slopes that are not vulnerable to potential habitat impacts from upstream areas. Residential development at this scale and distance from Deseret milkvetch population is not likely to impact the species or its habitat now or within the foreseeable future.

The majority of Deseret milkvetch habitat occurs on steep, rocky, erosive slopes that are not favorable for development; consequently, we do not anticipate any future residential development in the species' occupied habitat (Fitts 2016, pers. comm.). Additionally, as previously described,

approximately 230 ac (93 ha)—67 percent of total habitat for the species—are in a WMA owned by the UDWR that is protected from residential development, as discussed under Factor D, below.

We conclude, based on the available information, that residential development is not a threat to Deseret milkvetch due to: (1) The minimal disturbance from residential development that has occurred on the species' habitat to date and the minimal amount of disturbance anticipated in the future; (2) the steep, rocky, erosive nature of the species' habitat, which precludes most development; and (3) the amount of habitat (67 percent) that is protected from residential development.

#### Highway Widening and Maintenance

In our October 20, 1999, final listing rule (64 FR 56590), potential widening of Highway 89 was considered a threat to plants growing in the highway right-of-way. Highway 89 widening would likely result in the loss of Deseret milkvetch plants and habitat that are directly adjacent to Highway 89. Regular highway maintenance activities include herbicide use to control weeds and could also result in the loss of plants and habitat within the right-of-way. The species appears to tolerate some levels of disturbance related to road maintenance because it recolonizes areas that have been disturbed by tracked vehicles, road grading equipment, and road cuts (Franklin 1990, p. 2; Fitts and Fitts 2009, p. 5; SWCA 2015, p. 7).

Widening of Highway 89 has not occurred and is not anticipated by UDOT through at least 2040, which is as far as planning extends (Kisen 2016, pers. comm.). The nearest highway development project is a modification of the intersection of Highway 89 and Highway 6 (Kisen 2016, pers. comm.). This project is approximately seven mi (11 km) north of Birdseye and four mi (6 km) north of the nearest occurrence of the species. Therefore, we do not anticipate any direct or indirect impacts to the species. No other highway projects are currently planned within 20 mi (32 km) of Birdseye (Kisen 2016, pers. comm.).

Road maintenance on Highway 89 is ongoing. However, as committed to in the Conservation Agreement, UDOT avoids herbicide use and other disturbance in the species' habitat (Lewinsohn 2016, pers. comm.; UDWR *et al.* 2006, p. 9). In instances where herbicides must be used, UDOT will not apply it by an aerial application within 500 ft (152.5 m) of occupied habitat and

will maintain a 100-ft (30-m) buffer for hand application around individual plants (UDWR *et al.* 2006, p. 9).

In summary, highway widening is not anticipated within the vicinity of occupied Deseret milkvetch habitat. We are not aware of planned road-widening construction projects in or near the species' habitat, and UDOT has committed to avoiding herbicide use and other disturbance in occupied Deseret milkvetch habitat during maintenance activities (Lewinsohn 2016, pers. comm.; UDWR *et al.* 2006, p. 9). Therefore, based on the available information, we conclude that highway widening and maintenance are not a threat to Deseret milkvetch.

#### Livestock Grazing and Trampling

In our October 20, 1999, final listing rule (64 FR 56590), livestock grazing and trampling were considered threats to the species because of direct consumption of plants, trampling of plants and the burrows of ground-dwelling pollinators, and increased soil erosion. In contrast to many species of *Astragalus*, this species apparently is not toxic to livestock, and is palatable and may be consumed (Stone 1992, p. 6; Tilley *et al.* 2010, p. 1).

Prior to UDWR acquiring the Northwest Manti WMA in 1967, livestock grazing occurred for more than 50 years on habitat occupied by Deseret milkvetch and may help to explain why attempts to locate the species were unsuccessful for decades (UDWR *et al.* 2006, p. 6). Once UDWR acquired the land, they chained (removed scrub growth) and seeded level land upslope of the species' habitat to improve grazing for wild ungulates and livestock. The last cattle grazing on the Wildlife Management Unit occurred in 2002 (U.S. Fish and Wildlife 2011, p. 17).

The UDWR does not currently allow livestock grazing on the Birdseye Unit of the WMA and does not plan for any future grazing within the portion of the WMA that contains Deseret milkvetch habitat (Howard 2018, pers. comm.). Avoidance of livestock grazing in the species' habitat that is managed by UDWR is stipulated in the Conservation Agreement (UDWR *et al.* 2006, p. 8). Additionally, the species' habitat is not well-suited to grazing due to sparse forage and steep slopes. Some private lands where the species occurs allow livestock grazing; however, when last visited, there was no evidence of impacts to the species (U.S. Fish and Wildlife 2011, p. 17).

In summary, livestock grazing and trampling were considered a threat to Deseret milkvetch in our October 20, 1999, final listing rule (64 FR 56590)

because grazing occurred historically over much of the species' habitat and we were concerned about trampling and erosion impacts. However, livestock grazing no longer occurs on the UDWR WMA, representing 67 percent of the species' habitat. Additionally, occupied Deseret milkvetch habitat on both private and protected lands is steep and rocky, with sparse forage for cattle. Consequently, minimal grazing impacts have been documented. We conclude, based on the available information, that livestock grazing and trampling are not a threat to Deseret milkvetch.

#### Mineral Development

Impacts from mineral development were not considered in our October 20, 1999, final listing rule (64 FR 56590). At the time the Conservation Agreement was signed, there was no information indicating that mineral development was going to occur in or near occupied Deseret milkvetch habitat (UDWR *et al.* 2006, p. 7). SITLA owns the mineral rights on most of the land occupied by the species, and the agency has not had any inquiries regarding mineral development in the species' habitat since the Conservation Agreement was signed (UDWR *et al.* 2006, p. 7; Wallace 2017, pers. comm.). In the Conservation Agreement, which will remain in effect through 2036, SITLA agreed to alert any energy and mineral developers to the presence of occupied habitat and recommend surface use stipulations that avoid disturbance and provide mitigation for unavoidable effects to plants or their habitat (UDWR *et al.* 2006, p. 8).

In summary, mineral development was not considered a threat when Deseret milkvetch was listed under the Act. According to the compliance office of SITLA, there have been no inquiries regarding mineral development in this area. It is a severed estate, therefore, SITLA does not own the mineral rights, but would manage surface disturbance associated with mineral development and the area is flagged in their business system as being under a conservation agreement (Wallace 2017, pers. comm.). Therefore, based on the available information, we conclude that mineral development is not a threat to Deseret milkvetch.

#### Transmission Lines

Impacts from transmission lines were not considered in our October 20, 1999, final listing rule (64 FR 56590). The Mona to Bonanza high-voltage transmission line is an existing power line near Deseret milkvetch habitat located at the easternmost extent of the known range of the species (Miller 2016,

pers. comm.). The TransWest Express transmission line is a planned power line that would use the same corridor as the existing Mona to Bonanza transmission line (SWCA Environmental Consultants 2015, p. 1). TransWest Express developers estimated that approximately 10.9 ac (4.4 ha) of potential or occupied habitat for the species occurs within 300 ft (91 m) of proposed transmission structures, and approximately 0.25 ac (0.10 ha) would be directly disturbed (SWCA Environmental Consultants 2015, p. 17). However, minimal impacts are expected to result from the transmission line installation because dust abatement measures would be implemented, the proposed route is located farther away from Deseret milkvetch populations than the existing Mona to Bonanza transmission line, and existing access roads would be used within the species' habitat (U.S. Fish and Wildlife Service 2016, pp. 25–31). Consequently, impacts from the proposed TransWest Express transmission line are not anticipated to result in a population-level effect to the species based upon the localized extent of impacts and the currently robust status of the species (see *Species Abundance, Distribution, and Trends*, above). In addition, because the species can tolerate some levels of disturbance and plants have recolonized disturbed areas, any remaining development-related impacts should be minimal (Fitts and Fitts 2009, p. 5; Franklin 1990, p. 2).

In summary, Deseret milkvetch maintains a large, robust population next to the existing Mona to Bonanza transmission line, and only a very minimal amount of habitat (less than 0.25 ac (0.10 ha)) would be disturbed by the proposed future construction of the TransWest transmission line. We conclude, based on the available information, that transmission lines are not a threat to Deseret milkvetch.

#### Effects of Climate Change

Impacts from climate change were not considered in our October 20, 1999, final listing rule (64 FR 56590). Our current analyses for species classification under the Act include consideration of ongoing and projected changes in climate. The terms “climate” and “climate change” are defined by the Intergovernmental Panel on Climate Change (IPCC). “Climate” refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term “climate change” thus refers to a change in the mean or

variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Estimates regarding the risk of future persistent droughts in the southwestern United States range from 50 to 90 percent (Ault *et al.* 2013, p. 7545). Climate models that predict future temperatures over three different time periods in the 21st century for the southwestern United States show the greatest warming in summer months (3.5 to 6.5 degrees Fahrenheit (°F)) (1.9 to 3.6 degrees Celsius (°C)), with a localized maximum increase in temperatures in central Utah (Kunkel *et al.* 2013, p. 72). Nationwide, Utah ranks eighth in rate of warming since 1912, with a 0.233 °F (0.129 °C) increase per decade; and seventh in rate of warming since 1970, with a 0.588 °F (0.327 °C) increase per decade (Tebaldi *et al.* 2012, pp. 3, 5).

The *Astragalus* genus has the ability to colonize disturbed or unstable habitats in progressively dry climates and thus appears to be adapted to drought (Stone 1992, p. 6). We do not have a clear understanding of how Deseret milkvetch responds to precipitation changes, although the species has persisted in spite of recent dry conditions. Generally, plant numbers decrease during drought years and recover in subsequent seasons that are less dry. For example, many plants of Deseret milkvetch appeared to die-off in response to the 2012 drought, but have since repopulated the area from the seed bank (Fitts 2016, pers. comm.). Deseret milkvetch and other species in the bean family typically have persistent seed banks with at least some proportion of the seed bank being long-lived because the seeds are physically dormant for long periods of time (Dodge 2009, p. 3; Orscheg and Enright 2011, p. 186; Segura *et al.* 2014, p. 75). Dormant seeds have a seed coat that imposes a physical barrier between water and the embryo, and this type of dormancy

provides an ecological advantage by staggering germination over a long period of time, protecting the embryo from microbial attack, and increasing the longevity of seeds within the soil (Fulbright 1987, p. 40). Species with physically dormant seeds typically have seeds germinating over many years, which increases the probability of the species' persistence in an unpredictable environment and has been termed a “bet-hedging strategy” (Simons 2009, pp. 1990–1991; Williams and Elliott 1960, pp. 740–742). This strategy buffers a population against catastrophic losses and negative effects from environmental variation (Tielbörger *et al.* 2014, p. 4). Deseret milkvetch can be dormant and not detectable for some years, but later detected in the same area given favorable precipitation conditions (Fitts 2016, pers. comm.). This pattern provides some evidence the species has a persistent seed bank and possibly other life stages that remain dormant during drought conditions.

Deseret milkvetch appears well-adapted to a dry climate and can quickly colonize after disturbance. Plants growing in high-stress landscapes (e.g., poor soils and variable moisture) are generally adapted to stress and thus may experience lower mortality during severe droughts (Gitlin *et al.* 2006, pp. 1477, 1484). Furthermore, plants and plant communities of arid and semi-arid systems may be less vulnerable to the effects of climate change if future climate conditions are within the historic natural climatic variation experienced by Deseret milkvetch (Tielbörger *et al.* 2014, p. 7). The species likely has experienced multiple periods of prolonged drought conditions in the past as documented from reconstructed pollen records in sagebrush steppe lands (Mensing *et al.* 2007, pp. 8–10). Natural climatic variation in the Southwest for the last 500 years included periodic major droughts (Kunkle *et al.* 2013, p. 14). Therefore, it is likely that Deseret milkvetch will be able to withstand future periods of prolonged drought.

In summary, climate change is affecting and will continue to affect temperature and precipitation events. We expect that Deseret milkvetch, like other narrow endemics, could experience future climate change-related drought. However, the scope of any effects is mostly speculative at this time because current data are not reliable at the local level. The information we do have indicates the species and the genus are adapted to drought and are able to recolonize disturbed areas. Therefore, based upon available information, we conclude that

climate change is not a threat to Deseret milkvetch currently or within the foreseeable future.

#### Summary of Factor A

The following stressors warranted consideration as possible current or future threats to Deseret milkvetch under Factor A: (1) Residential development, (2) highway maintenance and widening, (3) livestock grazing and trampling, (4) mineral development, (5) transmission lines, and (6) climate change. However, these stressors either have not occurred to the extent anticipated at the time of listing or are being adequately managed, or the species is tolerant of the stressor as described below.

- Minimal disturbance from residential development has occurred on Deseret milkvetch habitat to date or is anticipated in the future because of the steep, rocky, erosive nature of the species' habitat. In addition, 67 percent of the species' habitat is protected from residential development due to its inclusion in a State WMA.
- UDOT anticipates no highway widening in habitat occupied by Deseret milkvetch, and herbicide use and other disturbances are avoided in habitat for the species.
- The steep, rocky nature of Deseret milkvetch habitat and sparse forage availability minimize livestock grazing, and 67 percent of all of the species' known habitat is carefully managed by UDWR to restrict it from grazing.
- The lack of inquiries and severed estate status of the habitat occupied by Deseret milkvetch indicate that mineral development is not a threat.
- The existing transmission line is not a threat to Deseret milkvetch, and activity associated with the proposed transmission line occurring within the species' occupied habitat will be confined to existing access roads.
- Deseret milkvetch and its genus are likely adapted to drought related to climate change.
- Deseret milkvetch appears able to recolonize disturbed areas readily.

Therefore, based on the available information, we do not consider there to be any threats related to the present or threatened destruction, modification, or curtailment of habitat or range of Deseret milkvetch.

#### *B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Overutilization for any purpose was not considered a threat in the final rule to list the species (64 FR 56590; October 20, 1999). The only collections of the species that we are aware of were for

scientific purposes. An unknown number of seeds were collected in 2007, and approximately 850 seeds were collected from 45 plants in 2008. In addition, 1,016 seeds were collected from 55 plants in 2009, for germination trials and long-term seed storage at Red Butte Gardens and Arboretum in Salt Lake City, Utah, and the National Center for Genetic Resources Preservation in Fort Collins, Colorado (Dodge 2009, p. 4). This amount of collection is insignificant given the current population estimates for the species, and overall it is beneficial because it will improve our understanding of species propagation and ensure genetic preservation. We are not aware of any other utilization of the species. Therefore, based on the available information, we do not consider there to be any threats related to overutilization for commercial, recreational, scientific, or educational purposes of Deseret milkvetch.

#### *C. Disease or Predation*

Disease and predation were not considered threats in the final rule to list the species (64 FR 56590; October 20, 1999). We are not aware of any issues or potential stressors regarding disease or insect predation. As described in more detail above under Factor A, grazing—which could be considered a form of predation—is limited in the species' habitat and does not affect the species throughout its range or at a population level. Therefore, based on the available information, we do not consider there to be any threats related to disease or predation of Deseret milkvetch.

#### *D. The Inadequacy of Existing Regulatory Mechanisms*

Section 4(b)(1)(A) of the Act requires the Service to take into account “those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species.” In relation to Factor D under the Act, we interpret this language to require us to consider relevant Federal, State, and Tribal laws, regulations, and other such mechanisms that may minimize any of the threats we describe in the threats analyses under the other four factors or otherwise enhance conservation of the species. We give the strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations; an example would be State governmental actions enforced under a State statute, constitution, or regulation or Federal action under statute or regulation.

For currently listed species that are being considered for delisting, we consider the adequacy of existing regulatory mechanisms to address threats to the species absent the protections of the Act. We examine whether other regulatory mechanisms would remain in place if the species were delisted, and the extent to which those mechanisms would continue to help ensure that future threats will be reduced or minimized.

In our discussion under Factors A, B, C, and E, we evaluate the significance of threats as mitigated by any conservation efforts and existing regulatory mechanisms. Where threats exist, we analyze the extent to which conservation measures and existing regulatory mechanisms address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats. As previously discussed, conservation measures initiated by UDWR, SITLA, and UDOT under the Conservation Agreement manage potential threats caused by residential development, highway maintenance and widening, and livestock grazing and trampling, as well as the more recently identified proposed transmission line. In addition to these conservation measures, relevant Utah State statutes and UDWR administrative rules that will remain in effect regardless of Deseret milkvetch's status under the Act include:

1. Title 23—Wildlife Resources Code of Utah, Chapter 21—Lands and Waters for Wildlife Purposes, Section 5—State-owned lands authorized for use as wildlife management areas, fishing waters and other recreational activities. This statute authorizes the creation, operation, maintenance, and management of wildlife management areas including the Birdseye Unit of the Northwest Manti WMA. The Birdseye Unit contains 67 percent of all known habitat occupied by Deseret milkvetch. Consequently, two-thirds of all known habitat is currently managed and will continue to be managed as wildlife habitat regardless of the species' status under the Act.

2. Utah Administrative Code, Rule R657–28—Use of Division Lands. This administrative rule describes the lawful uses and activities on UDWR lands including Birdseye Unit of the Northwest Manti WMA. These uses cannot conflict with the intended land use or be detrimental to wildlife or wildlife habitat. This administrative rule provides further support to beneficial management on the 67 percent of occupied habitat managed by

UDWR, regardless of the species' status under the Act.

We are not aware of any habitat occupied by Deseret milkvetch on Federal lands. We anticipate that the conservation measures initiated by UDWR, SITLA, and UDOT under the Conservation Agreement will continue through at least 2036. Consequently, we find that conservation measures along with existing State regulatory mechanisms are adequate to address specific stressors absent protections under the Act.

#### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

##### *Rarity*

In our October 20, 1999, final listing rule (64 FR 56590), small population size was considered a concern for the species because of the potential for low levels of genetic diversity as compared to other more widespread, related species. A species may be considered rare due to: (1) Limited geographic range, (2) occupation of specialized habitats, or (3) small population numbers (Primack 1998, p. 176). This species meets each of these qualifications.

Deseret milkvetch is likely a localized neoendemic, that is, it is a relatively new species on the scale of geologic time and likely has always been geographically restricted (rare) (Stone 1992, p. 6). A species that has always been rare, yet continues to survive, could be well-equipped to continue to exist in the future. Many naturally rare species exhibit traits that allow them to persist for long periods within small geographic areas, despite their small population size. Consequently, the fact that a species is rare does not necessarily indicate that it may be endangered or threatened. Rarity alone, in the absence of other stressors, is not a threat. Despite the species' unique habitat characteristics and limited range, its current population numbers and preliminary demographic analyses show that its known population (via information at monitored sites) is much larger than in 1990, when the first surveys were conducted, and will likely be sustained due to the species' resiliency and the absence of significant stressors. Additionally, as noted under Factor B, above, seeds have been collected for long-term seed storage at Red Butte Gardens and Arboretum in Salt Lake City, Utah, and the National Center for Genetic Resources Preservation in Fort Collins, Colorado (Dodge 2009, p. 4). This collection provides added security for the species.

##### *Stochastic Events*

In our October 20, 1999, final listing rule (64 FR 56590), stochastic events—particularly fire, drought, and disease—were considered a threat because of the species' small population size and highly restricted range. Because rare species may be vulnerable to single event occurrences, it is important to have information on how likely it is such an event may occur and how it may affect the species. Demographic stochasticity—random events in survival and reproductive success—and genetic stochasticity—from inbreeding and changes in gene frequency—are not significant threats based on limited abundance trends and the known population size of Deseret milkvetch (Stone 1992, pp. 8–10).

Environmental stochasticity—such as fire, drought, and disease—may also be a threat to the species (Stone 1992, p. 10). However, we have concluded that fire is unlikely in the open, a sparsely wooded habitat that the species favors (72 FR 3379, January 25, 2007; U.S. Fish and Wildlife 2011, p. 21). As explained above under “Climate Change” in the Factor A discussion, the species appears to be drought tolerant, showing an ability to rebound the following drought and recolonize disturbed areas in progressively dry climates. Lastly, as noted above in the Factor C discussion, there is no evidence of disease or insect pests affecting Deseret milkvetch. Since listing in 1999, survey data have shown that the species' known range is somewhat larger and its population numbers are much higher than previously thought, thus indicating tolerance to stochastic events. These increases are likely due to a combination of expanded surveys and increases in population.

##### *Summary of Factor E*

Given the lack of threats within the Deseret milkvetch population and the robust population size, we conclude that rarity and stochastic events are not threats to the species.

##### *Cumulative Effects*

Many of the stressors discussed in this analysis could work in concert with each other and result in a cumulative adverse effect to Deseret milkvetch, *i.e.*, one stressor may make the species more vulnerable to other threats. For example, stressors discussed under Factor A that individually do not rise to the level of a threat could together result in habitat loss. Similarly, small population size in combination with stressors discussed under Factor A (residential development, highway maintenance and

widening, livestock grazing and trampling, mineral development, transmission lines, and climate change) could present a potential concern.

However, most of the potential stressors we identified either have not occurred to the extent originally anticipated at the time of listing in 1999 or are adequately managed as described in this final rule. Furthermore, those stressors that are evident, such as drought and rarity, appear well-tolerated by the species. In addition, we do not anticipate stressors to increase on UDWR lands that afford protections to the species on 67 percent of occupied habitat for the reasons discussed earlier in this rule. Furthermore, the increases documented in the abundance and distribution of the species since it was listed in 1999 do not support a conclusion that cumulative activities threaten the species.

#### **Summary of Comments and Recommendations**

In the proposed rule published in the **Federal Register** on October 2, 2017 (82 FR 45779), we requested that all interested parties submit written comments on the proposal by December 1, 2017. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We did not receive any requests for a public hearing. All substantive information provided during the comment period has either been incorporated directly into this final determination or is addressed below.

##### *Peer Reviewer Comments*

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270) and updated guidance issued on August 22, 2016 (USFWS 2016, entire), we solicited expert opinion from three knowledgeable individuals with scientific expertise that included familiarity with Deseret milkvetch, its habitat, its biological needs and potential threats, or principles of conservation biology. We received responses from all of the peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the proposed delisting of Deseret milkvetch. The peer reviewers provided additional information, clarifications, and suggestions to improve the final rule. We included their information in this final rule. Two peer reviewers were supportive of the delisting action. The third provided only minor technical comments and editorial suggestions on the rule and did

not express an opinion regarding the action.

#### Public Comments

We received 15 letters from the public (as well as one from a peer reviewer) that provided comments on the proposed rule. Of these, six commenters stated their support for the delisting of Deseret milkvetch, and six commenters believed that it does not warrant delisting. We also received three comments that were not directly related to the proposed action in any way and are not addressed below.

Relevant public comments are addressed in the following summary, and new information was incorporated into the final rule as appropriate.

(1) *Comment:* We received four public comments that the species should not be delisted based primarily on its limited range and single population.

*Our Response:* Rarity or range restriction alone is not a basis for determining that a species meets the definition of “endangered species” or “threatened species.” Our analysis of the best commercial and scientific information available indicates that the population of Deseret milkvetch is secure. We also determined that despite the limited range of this species, stressors either have not occurred to the extent anticipated at the time of listing in 1999 or are being adequately managed, or the species is tolerant of the stressor.

(2) *Comment:* We received one comment that our proposed delisting was premature because survey data results from 2016 were not available at the time of publication of the proposed rule (October 2, 2017). This commenter suggested that we should not base our decision on information that was being excluded from public access.

*Our Response:* The proposed delisting was based on the best commercial and scientific information available at the time. We did not have access to 2016 survey data at the time and did not base our decision on it or withhold this information from the public. Partial surveys were conducted in 2016, and full surveys were conducted in 2017. This rule has been updated with relevant information from both years. Survey results are not yet available for 2018.

(3) *Comment:* We received two public comments suggesting that additional surveys should be conducted before the species is delisted, to provide more information on population status and also how stressors are impacting the population.

*Our Response:* This final rule includes survey information from 2017,

which supports our conclusion that the species has maintained occupancy and a robust population. Additionally, the post-delisting monitoring (PDM) plan provides for a minimum of 5 years of annual monitoring after this rule takes effect. The PDM plan also includes criteria to determine whether population trends allow for completion of monitoring, or if additional monitoring or a status review is needed. We believe this will provide adequate confirmation of population stability in the absence of the Act’s protections.

(4) *Comment:* We received four public comments supporting the delisting of Deseret milkvetch on the basis that its listing has impeded human use on the land it occupies, specifically in regards to grazing and off-road vehicle use. These comments suggested the species should be delisted so that grazing and off-road vehicle use could increase within the habitat.

*Our Response:* We may only base our determination of the status of a species on the best available commercial or scientific information. We may not consider the impact to land management or the demand for other uses within the species’ habitat when determining whether a species is endangered or threatened, except insofar as to whether such uses represent stressors that may threaten the species. Additionally, a conservation agreement for this species remains in effect, and we do not anticipate existing regulations regarding motorized vehicle use or grazing in the habitat to change as a result of this delisting. If the human use of the habitat for recreation, grazing, or other purposes increase significantly in the future, a reassessment of this species’ status may be initiated.

(5) *Comment:* We received a comment stating that the lack of a recovery plan for the species, combined with the voluntary nature of the existing Conservation Agreement and the fact that only 18 years remain in the current agreement, means that adequate protections are not provided to the species in the absence of the protections of the Act.

*Our Response:* Recovery plans provide roadmaps to species recovery, but are not required in order to achieve recovery of a species or to evaluate it for delisting. Recovery plans are also nonbinding documents that rely on voluntary participation from landowners, land managers, and other recovery partners. Additionally, we have no information to suggest that UDWR, SITLA, and UDOT will not continue to act in good faith according to the Conservation Agreement as it exists. A listing decision must consider

actions taken by States to provide for the conservation of a species. Lack of continued implementation of the Conservation Agreement or large changes in management practices in the species’ habitat by the State of Utah may result in reevaluation of the status of Deseret milkvetch.

(6) *Comment:* We received one public comment stating that the projected development rates in Utah County are likely to negatively impact Deseret milkvetch habitat to the degree that would constitute a species-level threat; thus, delisting the species at this time is not appropriate.

*Our Response:* We agree that residential development in Utah County is increasing and that the patterns of such development are not entirely predictable. However, we have no information to suggest that development within Deseret milkvetch occupied habitat on private lands is imminent. Furthermore, development is prohibited within the Birdseye Wildlife Management Unit, which represents the majority of the known population. For additional detail, see our threats analysis under A. *The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.*

(7) *Comment:* We received a public comment stating that we should not delist Deseret milkvetch due to our lack of information regarding the species, particularly in the areas of population biology, population viability, genetics, phenology, and response to stressors.

*Our Response:* We utilized the best scientific and commercial information available for this species in our determination. We conclude that enough information is available for Deseret milkvetch and its stressors to adequately evaluate its status. Should additional research or post-delisting monitoring in the future provide information that indicates our evaluation is in error or, the species’ status has declined since delisting, we would reevaluate the status of the species based on this information.

#### Determination of Species Status

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for determining whether a species meets the definition of “endangered species” or “threatened species.” The Act defines an endangered species as any species that is “in danger of extinction throughout all or a significant portion of its range” and a threatened species as any species “that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The Act



requires that we determine whether a species meets the definition of “endangered species” or “threatened species” because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

The same factors apply whether we are analyzing the species’ status throughout all of its range or a significant portion of its range.

#### *Determination of Status Throughout All of Deseret Milkvetch’s Range*

We conducted a review of the status of Deseret milkvetch and assessed the five factors to evaluate whether Deseret milkvetch is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range. We also consulted with species experts and land management staff with UDWR and UDOT who are actively managing for the conservation of the species. We carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the species. We considered all of the stressors identified at the time of listing (1999) as well as newly identified potential stressors such as mineral development, transmission lines, and climate change. As previously described, the stressors considered in our five-factor analysis fall into one or more of the following categories:

- Stressors including residential development, highway widening, and livestock grazing and trampling have not occurred to the extent anticipated at the time of listing, and existing information indicates that the extent of the impact will not change in the future.

- Stressors including highway maintenance, livestock grazing, transmission lines, and mineral development are adequately managed through the Conservation Agreement.

- The species is tolerant of stressors including climate change, rarity, stochastic events, and cumulative effects, and existing information indicates that this tolerance will not change in the future.

These conclusions are supported by the available information regarding species abundance, distribution, and trends, and are in agreement with information presented in our advance notice of proposed rulemaking (72 FR

3379; January 25, 2007), in our 5-year review (U.S. Fish and Wildlife Service 2011), and in our proposed delisting rule (82 FR 45779; October 2, 2017). Thus, after assessing the best available information, we conclude that Deseret milkvetch is not in danger of extinction throughout all of its range, nor is it likely to become so in the foreseeable future.

Because we determined that Deseret milkvetch is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we will consider whether the Deseret milkvetch is in danger of extinction or likely to become so in the foreseeable future within any significant portions of its range.

#### *Determination of Status Throughout a Significant Portion of Deseret Milkvetch’s Range*

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The Act defines “endangered species” as any species which is “in danger of extinction throughout all or a significant portion of its range,” and “threatened species” as any species which is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The term “species” includes “any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.” We published a final policy interpreting the phrase “significant portion of its range” (SPR) (79 FR 37578; July 1, 2014). The final policy states that: (1) If a species is found to be in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range, the entire species is listed as an endangered species or a threatened species, respectively, and the Act’s protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is “significant” if the species is not currently in danger of extinction or likely to become so in the foreseeable future throughout all of its range, but the portion’s contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that

species can be found at the time the Service or the National Marine Fisheries Service makes any particular status determination; and (4) if a vertebrate species is in danger of extinction or likely to become so in the foreseeable future throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR policy is applied to all status determinations, including analyses for the purposes of making the listing, delisting, and reclassification determinations. However, we acknowledge the recent adverse ruling by the United States District Court for the Northern District of California, which has vacated the “significant portion” part of the Services’ SPR Policy (*Desert Survivors, et al. v. U.S. Department of the Interior, et al.*, No. 16-cv-01165-JCS (Northern District of California, Aug. 24, 2018)). The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making. The first step in our analysis of the status of a species is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered (or threatened) species, and no SPR analysis will be required.

When we conduct an SPR analysis, we first identify any portions of the species’ range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose in analyzing portions of the range that are not reasonably likely to be significant and either in danger of extinction or likely to become so in the foreseeable future. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are



affecting it uniformly throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that clearly do not meet the biologically based definition of “significant” (*i.e.*, the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions will not warrant further consideration.

If we identify any portions that may be both (1) significant and (2) in danger of extinction or likely to become so in the foreseeable future, we engage in a more detailed analysis to determine whether both of these standards are indeed met. The identification of an SPR does not create a presumption, prejudgment, or other determination as to whether the species in that identified SPR is in danger of extinction or likely to become so in the foreseeable future. To determine whether a species is in danger of extinction or likely to become so in the foreseeable future throughout an SPR, we will use the same standards and methodology that we use to determine if a species is in danger of extinction or likely to become so in the foreseeable future throughout its range.

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address the “significant” question first, or the status question first. Thus, if we determine that a portion of the range is not “significant,” we do not need to determine whether the species is in danger of extinction or likely to become so in the foreseeable future. If we determine that the species is not in danger of extinction or likely to become so in the foreseeable future in a portion of its range, we do not need to determine if that portion is “significant.”

Applying the process described above, to identify whether any portions warrant further consideration for Deseret milkvetch, we determine whether there is substantial information indicating that (1) particular portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. To identify portions that may be significant, we consider whether any natural divisions within the range might be of biological or conservation importance. To identify portions where the species may be in danger of extinction or likely to become so in the foreseeable future, we consider whether the threats are geographically

concentrated in any portion of the species’ range.

We evaluated the range of Deseret milkvetch to determine if any area may be a significant portion of the range. Based on the small range of Deseret milkvetch—approximately 345 ac (140 ha) in an area 2.8 mi (4.5 km) by 0.3 mi (0.5 km)—we determined that the species is a single, contiguous population and that no separate areas of the range are significantly different from others or likely to be of greater biological or conservation importance than any other areas due to natural biological reasons alone. Therefore, there is not substantial information that logical, biological divisions exist within the species’ range.

After determining no natural biological divisions are delineating separate portions of the Deseret milkvetch population, we next examined whether any threats are geographically concentrated in some way that would indicate the species could be in danger of extinction, or likely to become so, in that area. There is some difference in livestock grazing between State and private lands, with little or no grazing on the 67 percent of habitat occurring on State lands and occasional potential grazing on the remaining private lands. However, steep topography limits grazing everywhere, and no fences are separating State and private lands (U.S. Fish and Wildlife Service 2011, p. 17). We have reviewed other potential threats and conclude that none of them is concentrated in any portion of the species’ range to affect the representation, redundancy, or resiliency of the species.

We did not identify any portions of the species’ range that are likely to be both significant and in danger of extinction or likely to become so in the foreseeable future. Therefore, no portion warrant further consideration to determine whether the species is in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range. We conclude that the species is, therefore, not an endangered species or threatened species based on its status in a significant portion of its range.

#### *Determination of Status*

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to Deseret milkvetch. After review and analysis of the information regarding stressors as related to the five statutory factors, we find that the ongoing stressors are not of sufficient imminence, intensity, or magnitude to indicate that this species

is presently in danger of extinction throughout all or a significant portion of its range. Additionally, no threats exist currently, nor are any potential stressors expected to rise to the level that would likely cause the species to become in danger of extinction in the foreseeable future, throughout all or a significant portion of the species’ range. Because the species is not in danger of extinction now or the foreseeable future throughout all of its range or any significant portion of its range, it does not meet the definition of an endangered species or threatened species. Therefore we find that Deseret milkvetch no longer requires the protection of the Act, and we are removing the species from the List of Endangered and Threatened Plants.

#### **Effects of the Rule**

This final rule revises 50 CFR 17.12(h) by removing Deseret milkvetch from the Federal List of Endangered and Threatened Plants. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, no longer apply to this species. Federal agencies will no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect Deseret milkvetch. There is no critical habitat designated for this species; therefore, this rule does not affect 50 CFR 17.96.

#### **Post-Delisting Monitoring**

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than five years for all species that have been delisted due to recovery. The purpose of this requirement is to verify that a species remains secure from risk of extinction after it has been removed from the protection of the Act. The monitoring is designed to detect the failure of any delisted species to sustain itself without the protective measures provided by the Act. If at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires us to cooperate with the States in development and implementation of post-delisting monitoring programs, but we remain responsible for compliance with section 4(g) of the Act and, therefore, must remain actively engaged in all phases of post-delisting monitoring. We also seek active participation of other entities that are

expected to assume responsibilities for the species' conservation post-delisting.

We are delisting Deseret milkvetch based on new information we have received as well as recovery actions taken. Since delisting will be due in part to recovery, we have prepared the post-delisting monitoring (PDM) plan for Deseret milkvetch. The PDM plan was prepared in coordination with the Utah Department of Natural Resources (UDNR) and UDWR. Monitoring will be a joint effort between UDNR and the Service. The PDM plan discusses the current status of the species and describes the methods proposed for monitoring if the species is removed from the Federal List of Endangered and Threatened Plants. Monitoring will occur annually for at least five years, beginning in 2019. At the end of 5 years, the species' population status will be evaluated, with three possible outcomes: (1) If the population is stable or increasing with no new or increasing stressors, PDM will conclude; (2) if the population is decreasing, but may be correlated with precipitation levels and remains above 20,000 plants on the WMA, PDM will be extended for an additional 3 to 5 years and then the population status will be reevaluated; or (3) if the population is decreasing without correlation to precipitation levels, and fewer than 20,000 plants exist on the WMA, a formal status review will be initiated.

A final PDM plan is available (see **ADDRESSES**). We will work closely with our partners to maintain the recovered status of Deseret milkvetch and ensure post-delisting monitoring is conducted and future management strategies are implemented (as necessary) to benefit Deseret milkvetch.

## Required Determinations

### *National Environmental Policy Act*

We have determined that we do not need to prepare an environmental assessment or environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribes will be affected by this rule because no tribal lands are within or adjacent to Deseret milkvetch habitat.

## References Cited

A complete list of all references cited in this final rule is available at [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov) under Docket No. FWS-R6-ES-2016-0013, or upon request from the Utah Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## Authors

The primary authors of this final rule are staff members of the Service's Mountain-Prairie Region and the Utah Ecological Services Field Office.

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

### § 17.12 [Amended]

■ 2. Amend § 17.12(h) by removing the entry for “*Astragalus desereticus*” under FLOWERING PLANTS from the List of Endangered and Threatened Plants.

Dated: August 22, 2018.

**James W. Kurth,**

*Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2018–22718 Filed 10–17–18; 8:45 am]

**BILLING CODE 4333–15–P**

# Proposed Rules

Federal Register

Vol. 83, No. 202

Thursday, October 18, 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.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2018-0577; FRL-9984-21]

### Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of filing of petitions and request for comment.

**SUMMARY:** This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before November 19, 2018.

**ADDRESSES:** Submit your comments, identified by the docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, 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:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 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:** Michael Goodis, Registration Division

(7505P), main telephone number: (703) 305-7090, email address:

[RDfRNotices@epa.gov](mailto:RDfRNotices@epa.gov); or Robert McNally, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305-7090, email address: [BPPDFRNotices@epa.gov](mailto:BPPDFRNotices@epa.gov). The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. 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:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT** for the division listed at the end of the pesticide petition summary of interest.

###### 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](http://www.regulations.gov) or email. Clearly mark the 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>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

##### II. What action is the Agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included

in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at <http://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit.

#### A. Amended Tolerance For Inerts

*PP IN-11139.* (EPA-HQ-OPP-2018-0243). Monsanto Company, 1300 I Street, NW, Washington, DC 20005, requests to amend tolerances 40 CFR 180.471 for residues of furilazole (3-dichloroacetyl-5-(2-furanyl)-2,2-dimethylloxazolidine; CAS Reg. No. 121776-33-8) when used as an inert ingredient (herbicide safener) in or on the raw agricultural commodities corn, sweet, forage at 0.01 ppm, corn, sweet, kernel plus cob with husks removed at 0.01 parts per million (ppm), and, corn, sweet, stover at 0.01 ppm. The gas liquid chromatography/mass spectrometry with selected ion monitoring method is used to measure and evaluate the chemical furilazole. *Contact:* RD.

#### B. Amended Tolerances for Non-Inerts

1. *PP 8E8684.* (EPA-HQ-OPP-2018-0514). Interregional Research Project Number 4 (IR-4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540, proposes upon establishment of the tolerances referenced in this document under “New Tolerances” for PP 8E8684, to remove existing tolerances in 40 CFR 180.585 for residues of the herbicide pyraflufen-ethyl, ethyl 2-[2-chloro-5-(4-chloro-5-difluoromethoxy)-1-methyl-1H-pyrazol-3-yl]-4-fluorophenoxy] acetate, and its acid metabolite, E-1, 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetic acid, calculated as the stoichiometric equivalent of pyraflufen-ethyl in or on cotton, undelinted seed at 0.04 ppm; fruit, stone, group 12 at 0.01 ppm; grape at 0.01 ppm; nut, tree, group 14 at 0.01 ppm; olive at 0.01 ppm; and pistachio at 0.01 ppm. *Contact:* RD.

2. *PP 8E8689.* (EPA-HQ-OPP-2018-0560). IR-4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540, proposes upon establishment of the tolerances referenced in this document under “New Tolerances” for

PP 8E8689, to remove existing tolerances in 40 CFR 180.553 for residues of the fungicide fenhexamid (N-2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide in or on the raw agricultural commodities: Bushberry subgroup 13B at 5.0 ppm; caneberry subgroup 13A at 20.0 ppm, cilantro, leaves at 30.0 ppm, fruit, stone, group 12, except plum, prune, fresh, postharvest at 10.0 ppm; grape at 4.0 ppm; junberry at 5.0 ppm; kiwifruit, postharvest at 15.0 ppm; leafy greens subgroup 4A, except spinach at 30.0 ppm; lingonberry at 5.0 ppm; salal at 5.0 ppm; strawberry at 3.0 ppm; and vegetable, fruiting, group 8, except nonbell pepper at 2.0 ppm. The “Method for the Determination of KBR 2738 (TM-402) Residues in Plant Material by HPLC” is used to measure and evaluate the chemical fenhexamid. *Contact:* RD.

#### C. New Tolerance Exemptions for Inerts (Except PIPs)

1. *IN-11109.* (EPA-HQ-OPP-2018-0201). Exponent, Inc. (1150 Connecticut Ave, Suite 1100, NW, Washington, DC 20036) on behalf of Croda, Inc. (315 Cherry Lane, New Castle, DE 19720) requests to establish an exemption from the requirement of a tolerance for residues of C1-C4 linear and branched chain alkyl d-glucitol dianhydro alkyl ethers (C1-C4 Linear and Branched Chain AD-GDAE) cluster (D-glucitol, 1,4:3,6-dianhydro-2,5-di-O-methyl- (CAS Reg. No. 5306-85-4), D-glucitol, 1,4:3,6-dianhydro-2,5-di-O-ethyl- (CAS Reg. No. 30915-81-2), D-glucitol, 1,4:3,6-dianhydro-2,5-di-O-propyl) (CAS Reg. No. 107644-13-3), D-glucitol, 1,4:3,6-dianhydro-2,5-bis-O-(1-methylethyl)-, (iso-propyl diether) (CAS Reg. No. 103594-41-8), D-glucitol, 1,4:3,6-dianhydro-2,5-di-O-butyl- (CAS Reg. No. 103594-41-9), D-glucitol, 1,4:3,6-dianhydro-2,5-di-O-(1-methylpropyl)-, (CAS Reg. No. not assigned) and D-glucitol, 1,4:3,6-dianhydro-2,5-di-O-(2-methylpropyl)-, (CAS Reg. No. not assigned) when used as an inert ingredient (solvent, co-solvent, viscosity modifier and adjuvant) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest under 40 CFR 180.910, applied in/on animals under 40 CFR 180.930, in antimicrobial formulations used in food contact surfaces in public eating places, dairy processing equipment, and food-processing equipment and utensils under 40 CFR 180.940(a) and in antimicrobial formulations used for dairy processing equipment, and food-processing equipment and utensils under 40 CFR 180.940(b). The petitioner believes no analytical method is needed

because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

2. *PP IN-11126.* (EPA-HQ-OPP-2018-0191). Spring Trading Company on behalf of Clariant, 4000 Monroe Rd., Charlotte, NC 28205, requests to establish an exemption from the requirement of a tolerance for residues of N,N-Dimethylnonanamide (CAS Reg. No. 6225-08-7) when used as a pesticide inert ingredient in pesticide formulations applied to growing crops and raw agricultural commodities after harvest under 40 CFR 180.910 and in pesticide formulations applied to animals under 40 CFR 1280.930. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

3. *PP IN-11175.* (EPA-HQ-OPP-2018-0545). SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192, on behalf of Eden Research plc, 6 Priory Court, Priory Court Business Park, Poulton, Cirencester GL7 5JB, United Kingdom, requests to establish an exemption from the requirement of a tolerance for residues of cell walls of *Saccharomyces cerevisiae* when used as a pesticide inert ingredient in pesticide formulations applied to growing crops only under 40 CFR 180.920. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

4. *PP IN-11189.* (EPA-HQ-OPP-2018-0546). Keller and Heckman LLP, 1001 G Street, NW, Suite 500 West, Washington, DC 20001, on behalf of Synthomer USA LLC, requests to establish an exemption from the requirement of a tolerance for residues of Polyvinyl acetate—polyvinyl alcohol copolymer (CAS Reg. No. 25213-24-5) when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

#### D. New Tolerances for Non-Inerts

1. *PP 8E8684.* (EPA-HQ-OPP-2018-0514). IR-4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180.585 for residues of the herbicide pyraflufen-ethyl, including its metabolites and degradates in or on the raw agricultural commodities (RACs). Compliance with the plant commodity tolerance levels specified below is to be determined by measuring only the sum of the parent

pyraflufen-ethyl, ethyl 2-[2-chloro-5-(4-chloro-5-difluoromethoxy)-1-methyl-1H-pyrazol-3-yl]-4-fluorophenoxy] acetate, and its acid metabolite, E-1, 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetic acid, calculated as the stoichiometric equivalent of pyraflufen-ethyl in or on the following RACs: Cottonseed subgroup 20C at 0.04 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13-07F at 0.01 ppm; fruit, stone, group 12-12 at 0.01 ppm; hop, dried cones at 0.02 ppm; nut, tree, group 14-12 at 0.01 ppm; tropical and subtropical, small fruit, edible peel, subgroup 23A at 0.01 ppm; and vegetable, tuberous and corm, subgroup 1C at 0.02 ppm. Available analytical methodology involves multiple-step extractions of the chemical residues from plants and using Gas Chromatograph-Mass Spectrometry (GC-MS) to measure and evaluate pyraflufen-ethyl residues. *Contact:* RD.

2. *PP 8E8689.* (EPA-HQ-OPP-2018-0560). IR-4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180.553 for residues of the fungicide fenhexamid (N-2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide in or on the raw agricultural commodities: Arugula at 30.0 ppm; berry, low growing, subgroup 13-07G at 3.0 ppm; bushberry subgroup 13-07B at 5.0 ppm; caneberry subgroup 13-07A at 20.0 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13-07F at 4.0 ppm; fruit, stone, group 12-12, except plum, prune, fresh, postharvest at 10.0 ppm; garden cress at 30.0 ppm; kiwifruit, fuzzy at 30.0 ppm; leafy greens subgroup 4-16A, except spinach at 30.0 ppm; onion, bulb, subgroup 3-07A at 2.0 ppm; onion, green, subgroup 3-07B at 30.0 ppm; upland cress at 30.0 ppm; and vegetable, fruiting, group 8-10, except nonbell pepper at 2.0 ppm. The "Method for the Determination of KBR 2738 (TM-402) Residues in Plant Material by HPLC" is used to measure and evaluate the chemical fenhexamid. *Contact:* RD.

**Authority:** 21 U.S.C. 346a.

Dated: October 1, 2018.

**Delores Barber,**

*Director, Information Technology and Resources Management Division, Office of Pesticide Programs.*

[FR Doc. 2018-22659 Filed 10-17-18; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 403

[CMS-4187-P]

RIN 0938-AT87

### Medicare and Medicaid Programs; Regulation To Require Drug Pricing Transparency

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the Federal Health Insurance Programs for the Aged and Disabled by amending the Medicare Parts A, B, C and D programs, as well as the Medicaid program, to require direct-to-consumer (DTC) television advertisements of prescription drugs and biological products for which payment is available through or under Medicare or Medicaid to include the Wholesale Acquisition Cost (WAC, or "list price") of that drug or biological product. We are proposing this regulation to improve the efficient administration of the Medicare and Medicaid programs by ensuring that beneficiaries are provided with relevant information about the costs of prescription drugs and biological products so they can make informed decisions that minimize not only their out-of-pocket costs, but also expenditures borne by Medicare and Medicaid, both of which are significant problems.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 17, 2018.

**ADDRESSES:** In commenting, please refer to file code CMS-4187-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-4187-P, P.O. Box 8013, Baltimore, MD 21244-8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-4187-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Cheri Rice, (410) 786-6499.

**SUPPLEMENTARY INFORMATION:** *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that website to view public comments.

## I. Background

### A. Purpose

The purpose of this proposed rule is to reduce the price to consumers of prescription drugs and biological products. This rule would require direct-to-consumer (DTC) television advertisements for prescription drug and biological products for which reimbursement is available, directly or indirectly, through or under Medicare or Medicaid to include the list price of that product. We are proposing this regulation to improve the efficient administration of the Medicare and Medicaid programs by ensuring that beneficiaries are provided with relevant information about the costs of prescription drugs and biological products so they can make informed decisions that minimize not only their out-of-pocket costs, but also unreasonable expenditures borne by Medicare and Medicaid, both of which are significant problems.

Markets operate more efficiently when consumers have relevant information about a product, including its price, as well as alternative products and their prices, before making an informed decision whether to buy that product or, instead, a competing one. Consumers price shop when looking to purchase a new car, a new house, or even a new coffee maker. Price shopping is the mark of rational

economic behavior. To facilitate price shopping, sellers invariably provide potential buyers with the prices of their products; consumers gauge the reasonableness of these prices against alternatives. Even automobile dealerships, as result of federal law, post the retail or “sticker” price on the side window of each new car offered for sale.

That has not been the case with prescription drugs or biological products, where consumers often need to make decisions without information about a product’s price. Price transparency is a necessary element of an efficient market that allows consumers to make informed decisions when presented with relevant information, but for consumers of prescription drugs, including those whose drugs are covered through Medicare or Medicaid, both the list price and actual price to the consumer remain hard to find. Third-party payment, a dominant feature of health care markets, is not a prominent feature of other markets and causes distortions, such as an absence of meaningful prices and the information and incentives that prices provide. In many cases prescription drug coverage is provided by an employer to its employees, or by the federal government to Medicare and Medicaid beneficiaries. These entities providing prescription drug coverage are known as payors.

List price plays a role in negotiations between payors, Pharmacy Benefit Managers (PBMs), and manufacturers, which all impact beneficiary cost sharing. Payors hire third party providers such as PBMs to manage the payor’s prescription drug benefit for the payor’s employees and negotiate improved drug pricing for medications based on the level of utilization management a payor is willing to apply to the benefit. Prescription drug benefit designs are typically based on the manufacturer’s list price, however, in many cases the PBM can negotiate a lower price than a manufacturer’s list price if there is high deductible plans, copay or coinsurance, formulary either tiered or closed, utilization management including step therapy and prior authorizations. The willingness of a payor to apply varying degrees of utilization control impacts savings for each individual payor and beneficiary. A PBM could have ten different clients with ten different benefit designs and it would be possible that an employee from each client could get the exact same product and all ten could pay a different price.

A number of factors make list price relevant across a variety of drug benefit

designs, even though the PBM may have negotiated a lower price for the product dispensed to the beneficiary. First, in the commercial market, over 40% of beneficiaries are in high deductible plans. Under such plans, beneficiaries pay the full list price of the product until they meet their deductible, which can be thousands of dollars. Second, benefit designs are built off of list price, because the negotiated rebate rate is not paid until months after the product was dispensed. Third, co-insurance has become a standard payor mechanism applicable to high cost drugs, requiring the patient to pay a percentage of the list price. All of the top 10 PDPs use coinsurance rather than fixed dollar copayments for medications on nonpreferred drug tiers, charging 30 percent to 50 percent of each prescription’s full price in 2017.<sup>1</sup> Finally, very few drugs have coverage on all the formularies in the country. If a plan does not cover a particular drug requested by a patient, then the patient may have to pay the full list price to access the medication.

Due at least in part to the market-distorting effects of third-party payors, pharmaceutical manufacturers tend not to compete based on list price, and hence there is little to no market pressure voluntarily to disclose a product’s list price. Not only does transparency promote a more competitive environment, but data indicate that it will likely motivate manufacturers to be less willing to raise prices, which have dramatically increased over the past decade. *See, e.g.,* John F. Cady, “An Estimate of the Price Effects of Restrictions on Drug Advertising,” 44 *Economic Inquiry*, 493–510 (Dec. 1976) (finding that prescription drug prices were 4.3% higher on average in states restricting advertising of prices than in states allowing such advertising.). While study results vary depending on the design, the population studied, and product at issue, according to the Congressional Research Service

[m]ost research suggests that when better price information is available prices for goods sold to consumers fall. The largest and most straightforward body of evidence relates to the effect of advertising, where nearly all research indicates advertising prices is associated with lower prices. This reduction in prices suggests that advertising’s increased information on prices and increases in competition outweigh any tendency to increase prices through increasing demand and brand identification.<sup>2</sup>

<sup>1</sup> MEDPAC Report to the Congress: Medicare Payment Policy. March 2017. 383.

<sup>2</sup> D. Andrew Austin and Jane G. Gravelle, “Does Price Transparency Improve Market Efficiency?

This proposed rule seeks to fill this informational gap by adding a new subpart L to part 403 to title 42 that would require that for prescription drug and biological products that can be reimbursed directly or indirectly through or under Medicare or Medicaid, DTC ads on television (including broadcast, cable, streaming, and satellite communication) for such products must include the product’s current list price, defined as the Wholesale Acquisition Cost.<sup>3</sup> CMS is proposing this rule in the context of broadcast advertisements, an area in which the Supreme Court historically has recognized that the government may take special steps to help ensure that viewers receive appropriate information. *See Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 390, 394 (1969) (“It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.”).

#### B. Legal Authority

HHS recognizes that “an administrative agency’s power to regulate . . . must always be grounded in a valid grant of authority from Congress.” *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 161 (2000). Thus, in proposing new regulations HHS must pay close attention to the text and structure of the legislation granting an agency authority. “Agencies are . . . bound, not only by the ultimate purposes Congress has selected, but by the means it has deemed appropriate, and prescribed, for the pursuit of those purposes.” *Colorado River Indian Tribes v. Nat’l Indian Gaming Comm’n*, 466 F.3d 134, 139–40 (D.C. Cir. 2006) (quoting *MCI Telecomms. Corp. v. AT&T*, 512 U.S. 218, 231 n.4, (1994)). This proposed rule is issued pursuant to sections 1102 and 1871 of the Social Security Act. Section 1102(a) of the Social Security Act authorizes the Secretary to issue “such rules and regulations, not inconsistent with this Act, as may be necessary to the efficient administration of the functions . . . under this Act[.]” The Secretary has “broad rule-making authority” under section 1102, for both Medicare and Medicaid. *See, e.g., Thorpe v. Housing Authority of City of Durham*, 393 U.S. 268, 277 n.28 (1969). Under Section 1871(a), which instructs “[t]he Secretary [to] prescribe such regulations as may be necessary to carry out the administration of the insurance programs under this title [XVIII],” the

Implications of Empirical Evidence in Other Markets for the Health Sector, CRS Report 46 (July 24, 2007).

<sup>3</sup> Over-the-counter drugs covered by Medicaid, to the extent that they cost more than \$35 per month, are not within the scope of this rule.

Secretary similarly possesses broad rulemaking authority with respect to the Medicare program. *See, e.g., Cottage Health Sys. v. Sebelius*, 631 F. Supp. 2d 80, 92 (D.D.C. 2009). Rules issued under such broad rulemaking authorities must be “sustained so long as [they are] ‘reasonably related to the purposes of the enabling legislation.’” and do not contradict or undermine that legislation. *Mourning v. Family Publ’ns Servs., Inc.*, 411 U.S. 356, 369 (1973) (quoting *Thorpe*, 393 U.S. at 280–81).

HHS has concluded that the proposed rule has a clear nexus to the Social Security Act. In numerous places in the Act, Congress recognized the importance of administering the Medicare and Medicaid programs in a manner that minimizes unreasonable expenditures. *See, e.g.*, Sections 1842(b)(8) and (9), 1860D–4(c)(3), 1860D–4(c)(5)(H), 1866(j)(2)(A), 1893(g), 1902(a)(64), 1902(a)(65), 1936(b)(2). In addition, Congress recognized the value of disclosures about drug prices. In section 1927(b)(3)(A) of the Act, manufacturers with Part B rebate agreements must disclose pricing information to the government, including the average manufacturer price, the manufacturer’s average sales price, and at times the manufacturer’s wholesale acquisition cost as well as the manufacturer’s best price for certain drugs. And in the Part D program, section 1860(k)(1) compels certain sponsors offering prescription drug plans to disclose the difference between the price of a dispensed drug and the price of the lowest priced generic available that is therapeutically equivalent and bioequivalent. This rule uses means that Congress has generally endorsed—disclosures about drug prices—to advance an end that Congress endorsed—minimizing unreasonable expenditures—and thus there is a clear nexus between HHS’s proposed actions and the Act.

In addition, although Congress has not explicitly provided HHS with authority to compel the disclosure of list prices to the public, Congress has explicitly directed HHS to operate Medicare and Medicaid programs efficiently. Promoting pricing transparency, and thus efficient markets, for drugs funded through those programs falls within the scope of that mandate. Drugs and biological products are covered under the Medicare Part B benefit (authorized by various provisions including sections 1832, 1861(s)(2) of the Social Security Act (the Act)), the Medicare Part D benefit (authorized by section 1860D–1 *et seq.* of the Act), and as part of hospital inpatient admissions under Medicare

Part A’s prospective payment system (authorized by Sections 1814, 1886 of the Act). The Medicaid drug benefit is authorized by sections 1902(a)(54) and 1905(a)(12).

The Secretary has determined that the proposed regulation is necessary to the efficient administration of the Medicare and Medicaid programs. The Secretary has an obligation to ensure the wise expenditure of federal trust fund dollars, and may promulgate regulations to advance these goals. *See, e.g., Sid Peterson Mem’l Hosp. v. Thompson*, 274 F.3d 301, 313 (5th Cir. 2001); *see also* 42 U.S.C. 1395i (Medicare Part A trust fund); 42 U.S.C. 1395t (Medicare Parts B and D trust fund). Efficient administration of both Medicare and Medicaid encompasses federal efforts to achieve good value for funds spent in the Medicare and Medicaid programs. Toward that end, the agency has issued regulations that promote the responsible use of federal funds. *See, e.g.*, 42 CFR part 413, subpart C (limitations on reasonable cost reimbursement), § 421.122 (oversight of contractors), § 424.5 (conditions for payment), § 438.4 *et seq.* (actuarial soundness of capitation rates). Nonetheless, the cost to the federal government, Medicare beneficiaries, and State Medicaid programs of prescription drugs and biological products has been increasing at an alarming rate due both to increasing prices and increasing utilization. *See, e.g., https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Information-on-Prescription-Drugs/*. As discussed further below, DTC advertising without price transparency has a direct nexus to these trends of increasing price and utilization. This proposed regulation combats these trends by ensuring that beneficiaries are provided with relevant information about the costs of prescription drugs and biological products, so they can make informed decisions. Based on a combination of all of these reasons, the Act authorizes HHS to issue this proposed rule.

#### *C. The Cost of Prescription Pharmaceuticals to Medicare and Medicaid and Their Beneficiaries Has Been Rising Annually*

The cost of drugs and biological products over the past decade has increased dramatically, and are projected to continue to rise faster than overall health spending, thereby increasing this sector’s share of health care spending. The HHS Office of the Assistant Secretary for Planning and Evaluation estimates that prescription drug spending in the United States was

about \$457 billion in 2015, or 16.7 percent of overall personal health care services. Of that \$457 billion, \$328 billion (71.9 percent) was for retail drugs and \$128 billion (28.1 percent) was for non-retail drugs. Factors underlying the rise in prescription drug spending from 2010 to 2014 can be roughly allocated as follows: 10 percent of that rise was due to population growth; 30 percent to an increase in prescriptions per person; 30 percent to overall, economy-wide inflation; and 30 percent to either changes in the composition of drugs prescribed toward higher price products or price increases for drugs that together drove average price increases in excess of general inflation.<sup>4</sup>

Manufacturers of prescription drugs in competitive classes often offer price concessions in the form of rebates that are paid after the prescription is filled. Manufacturer rebates have grown approximately 10% of gross Part D drug costs in 2008 to 20% of gross Part D drug costs in 2016. The CMS Office of the Actuary projects rebates will exceed 28% of gross Part D drug costs over the next ten years.<sup>5</sup>

Because the list price of a drug does not reflect manufacturer rebates paid to a PBM, insurer, health plan, or government program, obscuring these discounts can shift costs to consumers in commercial health plans and Medicare beneficiaries. Many incentives in the current system reward higher list prices, all participants in the chain of distribution, *e.g.*, manufacturers, wholesalers, pharmacy benefit managers, and even private insurers, gain as the list price of any given drug increases. These financial gains come at the expense of increased costs to patients and public payors, such as Medicare and Medicaid, which ultimately fall on the backs of American taxpayers.

Furthermore, consumers who have not met their deductible or are subject to coinsurance, pay based on the pharmacy list price, which is not reduced by the substantial drug manufacturer rebates paid to PBMs and health plans. As a result, the growth in list prices, and the widening gap between list and net prices, markedly increases consumer out-of-pocket spending, particularly for high-cost drugs not subject to negotiation.

The Centers for Medicare & Medicaid Services (CMS) is the single largest drug

<sup>4</sup> ASPE Issue Brief. Observations on Trends in Prescription Drug Spending. March 8, 2016.

<sup>5</sup> 2018 ANNUAL REPORT OF THE BOARDS OF TRUSTEES OF THE FEDERAL HOSPITAL INSURANCE AND FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUNDS.



payor in the nation. In 2016, CMS and its beneficiaries spent \$174 billion on drugs covered under Parts B and D, and \$64 billion on drugs covered under Medicaid. An additional sum was spent on drugs furnished by hospitals under Part A's inpatient prospective payment system, but the precise amount is difficult to isolate because hospitals receive a single payment for all non-physician services provided during an inpatient stay (including drugs). In 2016, CMS and its beneficiaries spent more than \$238 billion on prescription drugs, approximately 53 percent of the \$448.2 billion spent on retail and non-retail prescription drugs in the United States that year. Each year overall expenditures on drugs by both the Medicare and Medicaid programs and their beneficiaries have increased at rates greater than inflation both in the aggregate and on a per beneficiary basis.

For Part D, according to the 2018 Trustees' Report, CMS's costs have grown,

[o]ver the past 10 years, Part D benefit payments have increased by an annual rate of 7.4 percent in aggregate and by 3.8 percent on a per enrollee basis. These results reflect the rapid growth in enrollment, together with multiple prescription drug cost and utilization trends that have varying effects on underlying costs. For example, there has been a substantial increase in the proportion of prescriptions filled with low-cost generic drugs that has helped constrain cost growth, while there has also been a significant increase in the cost of specialty drugs that has increased cost growth.<sup>6</sup>

In other words, the per beneficiary cost of drugs through Part D has increased nearly 40% over the past decade, while the consumer price index has increased only 19% during this same period.<sup>7</sup>

Over the period 2013–2016, Medicare Parts D and B, and Medicaid expenditures on a per beneficiary basis increased by 22%, 32%, and 42% respectively. Drug price inflation accounts for some of this growth. Between 2006 and 2015, Part D brand drug prices rose by an average 66% cumulatively.<sup>8</sup> Since 2009, Medicare Part B drug spending grew at an average rate of about 9% per year. About half of the growth in Part B drug spending

between 2009 and 2013 was accounted for by price growth, which reflects increased prices for existing products and shifts in the mix of drugs, including the adoption of new drugs.<sup>9</sup> Medicaid drug spending grew 25% in 2015 and 13% in 2015.<sup>10</sup>

Price transparency will help improve the efficiency of Medicare and Medicaid programs by reducing wasteful and abusive increases in drug and biological list prices—spiraling drug costs that are then passed on to federal healthcare program beneficiaries and American taxpayers more broadly. First, it will provide manufacturers with an incentive to reduce their list prices by exposing overly costly drugs to public scrutiny. Second, it will provide some consumers with more information to better position them as active and well-informed participants in their health care decision-making. As discussed further below, consumers make a series of critical health care decisions related to their treatment with prescription drugs, and the list price of those drugs may be informative to those decisions. Even where the consumer may be insured, and therefore will be paying substantially less than the list price, the coinsurance borne by some consumers will necessarily increase as the prices negotiated by PBMs increase.

#### *D. Direct-to-Consumer Advertising and Its Role, in Part, in Fueling the Demand for Higher Cost Drugs*

Prescription drugs, by definition, cannot be accessed directly by the consumer; they must be prescribed by a licensed health care practitioner. We know, however, that consumers are responsible for critical choices related to their treatment with prescription drugs. For example, consumers decide whether to make the initial appointment with a physician; whether to ask the physician about a particular drug or drugs; whether to fill a prescription; whether to take the drug; and whether to continue taking it in adherence to the prescribed regimen. Drug manufacturers, therefore, spend billions of dollars annually promoting their prescription drugs directly to consumers through television advertisements and other media. In 2017, over \$5.5 billion was spent on prescription drug advertising, including nearly \$4.2 billion on television advertising.<sup>11</sup>

DTC advertising appears to directly affect drug utilization.<sup>12</sup> Studies show how consumers exposed to drug advertisements can exert sufficient pressure on their physicians to prescribe the advertised product.<sup>13</sup> In one recent survey, one in eight adults (12%) said they were prescribed a specific drug after asking a doctor about it as a result of seeing or hearing an advertisement.<sup>14</sup> When manufacturers direct their DTC advertising to consumers, such messaging can help facilitate more informed discussions between consumers and their health care providers in making decisions about treatment. But it can also result in increased utilization through patients demanding costly drugs and biological products based on advertising messaging, with a resulting increase in government spending—a problem if less costly alternatives are available, or would be available through market pressures resulting from greater price transparency.

To have the necessary information in making critical decisions related to prescription drugs, consumers need some idea of the magnitude of the cost of the advertised drug. More informed consumer decision making will impact not only each individual beneficiary's own finances, but also positively affect the shared taxpayer responsibility to fund the Medicare and Medicaid drug benefit programs.

#### *E. Transparency in Drug Pricing Promotes Lower Prices and More Informed Purchasing by Beneficiaries*

Both Titles XVIII and XIX of the Act reflect the importance of administering the Medicare and Medicaid programs in a manner that minimizes unreasonable expenditures. *See, e.g.*, Sections 1842(b)(8) and (9), 1860D–4(c)(3), 1860D–4(c)(5)(H), 1866(j)(2)(A), 1893(g), 1902(a)(64), 1902(a)(65), 1936(b)(2). In order to enable consumers to make good health care choices, which will in turn improve the efficiency of the Medicare and Medicaid programs, it is critical that they understand the costs associated with various medications. This is especially important where

<sup>12</sup> Dhaval Dave & Henry Saffer, Impact of Direct-to-Consumer Advertising on Pharmaceutical Prices and Demand, 79 Southern Economic Journal 97–126 (2012); Balaji Datti & Mary W. Carter, The Effect of Direct-to-Consumer Advertising on Prescription Drug Use by Older Adults, 23 Drugs Aging 71–81 (2006).

<sup>13</sup> Barbara Mintzes et al., Influence of direct to consumer pharmaceutical advertising and patients' requests on prescribing decisions: Two site cross sectional survey, 324 The BMJ 278–79 (2002).

<sup>14</sup> Kaiser Health Tracking Poll (October 2015) <https://www.kff.org/health-costs/poll-finding/kaiser-health-tracking-poll-october-2015/>.

<sup>6</sup> 2018 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds at 106, available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/Downloads/TR2018.pdf>.

<sup>7</sup> [https://data.bls.gov/pdq/SurveyOutputServlet?request\\_action=wh&graph\\_name=CU\\_cpibrief](https://data.bls.gov/pdq/SurveyOutputServlet?request_action=wh&graph_name=CU_cpibrief).

<sup>8</sup> MEDPAC. Report to the Congress: Medicare Payment Policy. March 2018. 415.

<sup>9</sup> MEDPAC. Report to the Congress: Medicare and the Health Care Delivery System. June 2017. 37.

<sup>10</sup> CMS National Health Expenditure Data. 2016.

<sup>11</sup> Kantar Media Advertising Intelligence—2013 to 2017 Prescription Medications Ad Spend Data.



consumers have cost sharing obligations that may be significant.

As discussed above, DTC advertisements that do not provide pricing information may contribute to rising drug prices and rising premiums. Consumers of pharmaceuticals are currently missing information that consumers of other products can more readily access, namely the list price of the product, which acts as a point of comparison when judging the reasonableness of prices offered for potential substitute products. In an age where price information is ubiquitous, the prices of pharmaceuticals remain shrouded and limited to those who subscribe to expensive drug price reporting services.

Consumers may be able to obtain some pricing information by going on-line to the websites of larger chain pharmacies. However, there are several reasons consumers are not likely to do this. First, while consumers make many critical decisions that bring about the ultimate writing of the prescription—making the appointment, asking the doctor about particular drugs, etc.—the physician, rather than the patient, ultimately controls the writing of the prescription, and the patient may not even know exactly which drug is prescribed. Second, meaningful price shopping is further hindered because the average consumer has no anchor price, such as an MSRP for automobiles, to gauge the reasonableness of the various price quotes.

Arming a beneficiary with basic price information will provide him or her with an anchor price, in other words, a reference comparison to be used when making decisions about therapeutic options. Triggering conversations about a particular drug or biological and its substitutes may lead to conversations not only about price, but also efficacy and side effects, which in turn may cause both the consumer and the prescriber to consider the cost of various alternatives (after taking into account the safety, efficacy, and advisability of each treatment for the particular patient). Ultimately, providing consumers with basic price information may result in the selection of lesser cost alternatives, all else being equal relative to the patient's care. We seek comment on how providing consumers with the list price of a medication may influence interactions with prescribers, the selection of drug products, and the perceived efficacy of the prescribed drug. We also seek comment about how benefit design influences these choices.

Requiring DTC television ads to disclose pricing information to consumers, as proposed in this rule, is

consistent with First Amendment jurisprudence. Rules, such as this one, that require certain factual commercial disclosures pass muster under the First Amendment where the disclosure advances a government interest and does not unduly burden speech.

When the government requires accurate disclosures in the marketing of regulated products under appropriate circumstances, it does not infringe on protected First Amendment interests. As the United States Supreme Court recognized in *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985) and recently confirmed in *Nat'l Inst. of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361, 2372, 2376 (2018) ("*NIFLA*"), required disclosures of factual, noncontroversial information in commercial speech may be subject to more deferential First Amendment scrutiny. Under the approach articulated in *Zauderer*, courts have upheld required disclosures of factual information in the realm of commercial speech where the disclosure requirement reasonably relates to a government interest and is not unjustified or unduly burdensome such that it would chill protected speech. See *Zauderer*, 471 U.S. at 651; *Milavetz v. United States*, 559 U.S. 229, 250, 252–53 (2010); *NIFLA*, 138 S. Ct. at 2376 ("[W]e do not question the legality of . . . purely factual and uncontroversial disclosures about commercial products."). In addition, the United States Supreme Court has long recognized that broadcast viewers and listeners have a significant First Amendment interest in receiving information about matters of public concern. See *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 390, 394 (1969).

In this proposed rule, the required disclosure consists of purely factual and uncontroversial information about a firm's own product, namely the list price of the drug or biological product. The required disclosure here advances the government's substantial interest in the efficient administration of both Medicare and Medicaid programs by minimizing unreasonable expenditures. Increased price transparency will help reduce unreasonable expenditures associated with soaring drug costs by providing manufacturers with an incentive to reduce their list prices by exposing overly costly drugs compared to alternatives to public scrutiny, and providing consumers with price information to facilitate more informed health care decisions. See generally *Pharm. Care Mgmt. Ass'n v. Rowe*, 429 F.3d 294, 310 (1st Cir. 2005) (recognizing that the government interest in cost-effective health care

justified disclosure of financial interests of pharmacy benefit managers); *N.Y. State Rest. Ass'n v. N.Y. City Bd. of Health*, 556 F.3d 114, 134 (2d Cir. 2009) (recognizing that the government interest in "promot[ing] informed consumer decision-making" justified posting of calories on menus in chain restaurants). Indeed, the United States Supreme Court has long recognized a strong societal interest in the free flow of information about prescription drug prices:

Those whom the suppression of prescription drug price information hits the hardest are the poor, the sick, and particularly the aged. A disproportionate amount of their income tends to be spent on prescription drugs; yet they are the least able to learn, by shopping from pharmacist to pharmacist, where their scarce dollars are best spent. When drug prices vary as strikingly as they do, information as to who is charging what becomes more than a convenience. It could mean the alleviation of physical pain or the enjoyment of basic necessities.

*Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 763–64 (1976).

Furthermore, these price disclosures would neither "drown[ ] out the [speaker's] own message" or "effectively rule[ ] out" a mode of communication. *NIFLA*, 138 S. Ct. at 2378. Indeed, the requirement to add certain information to an advertisement is not unduly burdensome where, as here, the manufacturer has the ability to convey other information of its choosing in the remainder of the advertisement. See, e.g., *Spirit Airlines, Inc. v. United States Dep't of Transp.*, 687 F.3d 403, 414 (D.C. Cir. 2012) (requirement for airlines to make total price the most prominent cost figure does not significantly burdens airlines' ability to advertise); *Discount Tobacco City & Lottery, Inc. v. United States*, 674 F.3d 509, 524 (6th Cir. 2012) (size of required warnings is not unduly burdensome where remaining portions of their packaging are available for other information). Indeed, there are many regulatory schemes that require the disclosure of price information to consumers. See 12 CFR 1026.33(b)(2) (2018) (mortgage lenders must disclose to consumers total annual loan cost rates for reverse mortgages); 12 CFR 226.18 (2018) (creditors must disclose to borrowers multiple terms including the annual percentage rate); 12 CFR 1030.4(a) and (b) (2018) (depository institutions must provide to a consumer, before an account is opened or service provided, account information including fixed or variable interest rates); Mass. Ann. Laws ch. 94 Section 295C (2018) (retail

dealers of motor fuel must publicly display and maintain on each pump a sign on which the price per gallon per grade is clearly visible); Minn. Stat. Section 239.751 (2017) (retail dealers of petroleum must clearly display the price of per gallon and the price cannot be obscured in any way).<sup>15</sup>

## II. Provisions of Proposed Regulation (§§ 403.1200, 403.1201, 403.1202, 403.1203, and 403.1204)

As discussed at length above, we are proposing this regulation to improve the efficient administration of the Medicare and Medicaid programs by ensuring that beneficiaries are provided with relevant information about the costs of prescription drugs and biological products so they can make informed decisions that minimize not only their out-of-pocket costs, but also unreasonable Medicare and Medicaid expenditures, both of which are significant problems.

Keeping these principles in mind, we are proposing to amend subchapter A, part 403 by adding a new subpart L. Proposed § 403.1202 sets forth the requirement that advertisements for certain prescription drug or biological products on television (including broadcast, cable, streaming, and satellite), must contain a statement or statements indicating the Wholesale Acquisition Cost (referred to as the “list price”) for a typical 30-day regimen or for a typical course of treatment, whichever is most appropriate, as determined on the first day of the quarter during which the advertisement is being aired or otherwise broadcast, as follows: “The list price for a [30-day supply of ] [typical course of treatment with] [name of prescription drug or biological product] is [insert list price]. If you have health insurance that covers drugs, your cost may be different.” Manufacturers set the Wholesale Acquisition Cost, also known as list price, for their products. The Department recognizes that other prices may be paid by distributors, pharmacies, patients, and others in the supply chain. Because these other prices vary by contracts established by payors

or others, only the Wholesale Acquisition Cost is certain to be known by the manufacturer when creating DTC ads.

The price stated in the advertisement must be current as of the date of publication or broadcast. This provision would specify that where the price is related to the “typical course of treatment,” and the course of treatment varies depending on the indication for which the drug is prescribed, the list price used should be the one for the “course of treatment” associated with the primary indication addressed in the advertisement. To the extent permissible under current laws, manufacturers would be permitted to include an up-to-date competitor product’s list price, so long as they do so in a truthful, non-misleading way. In § 403.1200(b) we are proposing an exception to the requirement at proposed § 403.1202(a) to provide that an advertisement for any prescription drug or biological product and that has a list price, as defined herein, of less than \$35 per month for a 30-day supply or typical course of treatment will be exempt from these transparency requirements.

We are also proposing that § 403.1200 set forth the scope of applicability to specify that this requirement will apply to any advertisement for a prescription drug or biological product distributed in the United States, for which payment is available, directly or indirectly, under titles XVIII or XIX of the Social Security Act.

We are further proposing in § 403.1203 that the required price disclosure set forth in proposed § 403.1202 be conveyed in a legible textual statement at the end of the advertisement, meaning that it is placed appropriately and is presented against a contrasting background for sufficient duration and in a size and style of font that allows the information to be read easily. We seek comment on whether the final rule should include more specific requirements with respect to the textual statement, such as specific text size, contrast requirements, and/or duration and specifically what those requirements should be.

We are proposing in § 403.1204(a) that the Secretary shall maintain a public list that will include the drugs and biological products identified by the Secretary to be advertised in violation of this rule. We expect that this information will be posted publicly on a CMS internet website no less than annually. No other HHS-specific enforcement mechanism is proposed in this rule. However, we anticipate that the primary enforcement mechanism

will be the threat of private actions under the Lanham Act Section 43(a), 15 U.S.C. 1125(a), for unfair competition in the form of false or misleading advertising. *See, e.g., POM Wonderful LLC v. Coca-Cola Co.*, 134 S. Ct. 2228, 2234 (2014); *In re McCormick & Co., Inc., Pepper Prod. Mktg. & Sales Practices Litig.*, 215 F. Supp. 3d 51, 59 (D.D.C. 2016). Since Lanham Act cases normally involve sophisticated parties doing business in the same sector, the likelihood of meritless lawsuits is acceptably low. We seek comment on the primary enforcement mechanism and other approaches to enforcing compliance.

Under principles of implied preemption, to the extent State law makes compliance with both Federal law and State law impossible or would frustrate Federal purposes and objectives, the State requirement would be preempted. *See, e.g., Murphy v. NCAA*, 138 S. Ct. 1461, 1480–81 (2018); *Mutual Pharm. Co. v. Bartlett*, 570 U.S. 472, 480 (2013); *Geier v. American Honda Motor Co.*, 529 U.S. 861, 872–86 (2000). Obstacle preemption is not limited to examining the *accomplishment* of certain objectives; the *execution* is relevant as well. *Geier*, 529 U.S. 881–82. A state law is therefore preempted “if it interferes with the methods by which the federal statute was designed to reach that goal.” *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 103 (1992) (quoting *Int’l Paper Co. v. Ouellette*, 479 U.S. 481, 494 (1987)).

Because this proposed rule is part of a broader initiative to reduce the price to consumers of prescription drugs and biological products, it would be counterproductive if this rule were to increase transactional costs in defending meritless litigation. We believe that the existing authority cited above, namely the Lanham Act, is the appropriate mechanism for enforcing against deceptive trade practices. Accordingly, consistent with our not including any HHS-specific enforcement mechanism in this proposal, we are proposing at § 403.1204(b) that this rule preempt any state-law-based claim which depends in whole or in part on any pricing statement required by this rule.

In publishing this proposed rule, we are seeking comment on the specifics of the proposal. In particular, we seek comment on whether Wholesale Acquisition Cost is the amount that best reflects the “list price” for the stated purposes of price transparency and comparison shopping under this proposed regulation. We also seek comment on whether 30-day supply and typical course of treatment are

<sup>15</sup> In addition, regulated entities are required to report price information to the government in a variety of settings. *See, e.g.,* 7 CFR 59.301(a) and (b) (2018) (packer processing plants must daily report to the Secretary of Agriculture the sale price for lambs which the Secretary of Agriculture then makes public); 7 CFR 59.104(a)(1) (2018) (packer processing plants must report to the Secretary of Agriculture twice a day the sale price of each lot of “boxed beef” which the Secretary of Agriculture then makes public); 17 CFR 229.1204(b)(1) (2018) (oil and gas producers must report to the SEC the average sale price per unit of oil, gas, or other product by geographic area for three preceding fiscal years).

appropriate metrics for a consumer to gauge the cost of the drug. We further seek comment on how to treat an advertised drug that must be used in combination with another non-advertised drug or device.

We also seek comment as to whether the cost threshold of \$35 to be exempt from compliance with this rule is the appropriate level and metric for such an exemption. This threshold was selected because it approximates the average copayment for a preferred brand drug. Given that the public is already accustomed to pay roughly this amount for drugs—and thus, in the absence of new information, may presume that patients will pay this amount for a drug—the public's interest in being informed of prices that are equal to or less than this amount is less strong than for prices in excess of this amount. We also considered incorporating a range for exempted drugs defined as less than \$20 per month for a chronic condition or less than \$50 for a course of treatment for an acute condition. In particular, we considered whether “chronic condition” and “acute condition” are sufficiently distinguishable to accomplish the stated regulatory purpose. These prices are also well below the lowest list price of advertised drugs. We seek comment on alternative approaches to determining a cost threshold, whether or not the threshold should be updated periodically, and if so, how the threshold should be updated.

We also seek comment on the content of the proposed pricing information statement as described herein, including whether other specifications should be incorporated. For example, we seek comment as to whether a statement expressing an expiration date of the current price reflected in the advertisement should be incorporated into the required disclosure language so that consumers are informed that drug prices are subject to frequent changes and a drug price may differ from the date the advertisement is broadcast to the date that the drug is dispensed.

We considered whether this regulation should apply to advertisements that are in other media forums such as radio, magazines, newspapers, internet websites and other forms of social media, but concluded that the purpose of this regulation is best served by limiting the requirements to only those identified herein. We seek comment as to whether we should apply this regulation to other media formats and, if so, what the presentation requirements should be.

We further seek comment as to whether compliance with this rule

should be a condition of payment, directly or indirectly, from these federal health programs.

We are also considering additional solutions to provide beneficiaries with relevant information about the costs of prescription drugs and biological products so they can make informed decisions that minimize not only their out-of-pocket costs but also expenditures borne by Medicare and Medicaid. We seek comment on whether the following approaches could support price transparency and informed decision making, either in addition to or in lieu of the measures proposed in this notice of proposed rulemaking: (1) Kan enhanced CMS drug pricing dashboard, (2) a new payment code for drug pricing counseling, and (3) intelligent plan selection or use of intelligent assignment. We are also interested in other approaches to price transparency and informed decision making that we have not contemplated.

CMS has released several information products that provide greater transparency on spending for drugs in the Medicare and Medicaid programs. The CMS Drug Spending Dashboards are interactive, web-based tools that provide spending information for drugs in the Medicare Part B and D programs as well as Medicaid. The Dashboards focus on average spending per dosage unit and change in average spending per dosage unit over time. The tools also include additional manufacturer-level drug spending information as well as consumer-friendly descriptions of the drug uses and clinical indications. We seek comment on whether manufacturers or others submitting additional information such as list price, typical out-of-pocket cost, therapeutic alternatives, pharmacoeconomic research, and other data could be helpful for consumers and what information would be most useful. We are also interested in feedback about the ease of which CMS dashboard data could be used by a non-government entity creating and maintaining such a price transparency resource for consumers and others. Additionally, CMS could announce updated information when a new DTC ad campaign is launched and public service announcements could be made to draw attention to the dashboard.

In an effort to incentivize provider engagement with patients on their prescription drug out-of-pocket costs, CMS could create a new payment code, in a budget neutral manner, for doctors to dialogue with patients on the benefits of drugs and drug alternatives. This would likely decrease the number of

prescriptions that go unfilled because of unexpected high out-of-pocket costs, thus improving adherence, but also could increase provider awareness of drug pricing which may influence prescribing when appropriate cheaper options are available.

Through intelligent plan selection or use of intelligent assignment, beneficiaries could be provided with an auto-generated list of plans each year, based upon their most recent drug utilization, that would highlight opportunities for savings through competitor plans or alternative drugs (e.g., generics or biosimilars). This intelligent plan selection would help alleviate beneficiary anxiety associated with plan selection and encourage annual plan review by beneficiaries. Enrollment in suggested plans would be voluntary.

### III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In this proposed rule, we are soliciting public comment on the issues in this document that contain information collection requirements (ICRs).

#### A. Wage Data

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' (BLS') May 2016 National Occupational Employment and Wage Estimates for all salary estimates ([http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm)). In this regard, the following table presents the mean hourly wage, the cost of fringe benefits and overhead (calculated at 100 percent of salary), and the adjusted hourly wage.

TABLE F1—NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

BLS occupation title	Occupation code	Mean hourly wage (\$/hr)	Adjusted hourly wage (\$/hr)
Office and Administrative Support Occupations .....	43-0000	\$18.24	\$36.48
Marketing Managers .....	11-2021	63.57	127.14

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, there is no practical alternative and we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

#### B. ICRs Regarding Pricing Information (§ 403.1202)

Proposed § 403.1202 would require that advertisements for certain prescription drug or biological products on television (including broadcast, cable, streaming, and satellite), contain a statement or statements indicating the Wholesale Acquisition Cost (referred to as the “list price”) for a typical 30-day regimen or for a typical course of treatment, whichever is most appropriate, as determined on the first day of the quarter during which the advertisement is being aired or otherwise broadcast. The presentation of this information must appear in a specific format. As stated earlier in Section II of this notice of proposed rulemaking, the notification must be presented as follows, “The list price for a [30-day supply of ] [typical course of treatment with] [name of prescription drug or biological product] is [insert list price]. If you have health insurance that covers drugs, your cost may be different.”

We estimate that 25 pharmaceutical companies will run an estimated 300 distinct pharmaceutical ads that appear on television each quarter and will be affected by this rule. For these ads, we estimate that administrative support staff and marketing managers will need to verify the prescribed language and that the correct price appears in each advertisement each quarter. We estimate that this will require 10 minutes and \$24.08 (\$34.48/hr × .66) per advertisement for administrative support staff. We also estimate 5 minutes and \$41.96 (\$127.14/hr × .33) per advertisement for marketing managers, for a total of 15 minutes (0.25 hours) and \$66.04 (\$24.08 + \$41.96) per

advertisement per quarter or 300 hours per year across all pharmaceutical companies running affected televised advertisements ((300 ads/quarter) × (4 quarters/year) × (.25 hours/ad). As a result, using wage information provided in Table 1, we estimate costs of \$19,812 (300 ads × \$66.04/ad) per quarter or \$79,248 in each year following publication of the final rule after adjusting for overhead and benefits.

#### C. Submission of PRA-Related Comments

We have submitted a copy of this proposed rule to OMB for its review of the rule’s information collection and recordkeeping requirements. These requirements are not effective until they have been approved by the OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections discussed above, please visit CMS’ website at website address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html> or call the Reports Clearance Office at 410-786-1326.

We invite public comments on these potential information collection requirements. If you wish to comment, please submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule and identify the rule (CMS-4187-P) and where applicable the ICR’s CFR citation, CMS ID number, and OMB control number.

See the **DATES** and **ADDRESSES** sections of this proposed rule for further information.

#### IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

#### V. Regulatory Impact Analysis

##### A. Statement of Need

This proposed rule aims to improve the quality, accessibility and affordability of the Medicare Part C and Part D programs and to improve the CMS customer experience by providing transparency into drug prices with the goal of reducing the price to beneficiaries of certain prescription drugs and biological products. Currently, consumers have incomplete information regarding the cost of pharmaceutical products. As a result, they lack important information needed to inform their decisions, which likely leads to inefficient utilization of prescription drugs. This proposal will require disclosure of prescription drug prices to the general public for products advertised on television. This may improve awareness and allow the general public to respond, potentially increasing the efficiency of prescription drug utilization.

##### B. Overall Impact

We acknowledge that examination of the impact of this proposed rule is required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the (RFA) (September 19, 1980, Pub. L. 96-354), Section 1102(b) of the Social Security Act, Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (March 22, 1995; Pub. L., Pub. L. 104-4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

The Regulatory Flexibility Analysis (RFA), as amended, requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions.

In addition, section 1102(b) of the Act requires us to prepare a regulatory analysis for any rule or regulation proposed under Title XVIII, Title XIX,

or Part B of the Act that may have significant impact on the operations of a substantial number of small rural hospitals. We are not preparing an analysis for section 1102(b) of the Act because the Secretary certifies that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending that may result in expenditures in any one year of \$100 million in 1995 dollars, updated annually for inflation. In 2018, that threshold is approximately \$150 million. This proposed rule is not anticipated to have an effect only on State, local, or tribal governments, in the aggregate, of \$150 million or more, adjusted for inflation. We believe that the proposed rule would impose mandates on the private sector that would result in an expenditure of \$150 million in at least one year.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirements or costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since reviewing this rule does not impose any substantial costs on state or local governments, under the requirements threshold criteria of Executive Order 13132 are not applicable, we have determined that this proposed rule would not significantly affect the rights, roles, and responsibilities of State or local governments.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Office of Management and Budget has determined that this is an economically significant regulatory action. In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget.

Executive Order 13771 (January 30, 2017) requires that the costs associated with significant new regulations “to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.” The Department believes that this proposed rule is a significant regulatory action as defined by Executive Order 12866

which imposes costs, and therefore is considered a regulatory action under Executive Order 13771.

### C. Anticipated Effects

This proposed rule would affect the operations of prescription drug manufacturers. According to the U.S. Census, there were 1,775 pharmaceutical and medicine manufacturing firms operating in the U.S. in 2015.<sup>16</sup> We estimate that this rule will require individuals employed by these entities to spend time in order to comply with these regulations. We estimate the hourly wages of individuals affected by this proposed rule using the May 2016 National Occupational Employment and Wage Estimates provided by the U.S. Bureau of Labor Statistics. We assume that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate. We note that, throughout, estimates are presented in 2016 dollars. We use the wages of Lawyers as a proxy for legal staff, the wages of Marketing and Sales Managers as a proxy for marketing management staff, and Office and Administrative Support Occupations as a proxy for administrative support staff. Estimated hourly rates for all relevant categories are included below.

TABLE 1—HOURLY WAGES

Marketing and Sales Managers .....	\$66.52
Lawyers .....	67.25
Office and Administrative Support Occupations .....	17.91

In order to comply with the regulatory changes proposed in this proposed rule, affected businesses would first need to review the rule. We estimate that this would require an average of 2 hours for affected businesses to review, divided evenly between marketing managers and lawyers, in the first year following publication of the final rule. As a result, using wage information provided in Table 1, this implies costs of \$0.47 million in the first year following publication of a final rule after adjusting for overhead and benefits.

After reviewing the rule, prescription drug manufacturers will review their marketing strategies in the context of these new requirements, and determine how to respond. For some affected entities, this may mean substantially changing their advertising paradigm or pricing strategy. For others, much more modest changes are likely needed. We estimate that this would result in affected businesses spending an average

of 20 hours reviewing their policies and determining how to respond, with 5 hours spent by lawyers and 15 hours spent by marketing managers, in the first year following publication of the final rule. In subsequent years, we estimate this would result in marketing managers at affected businesses spending an average of 10 hours implementing policy changes. As a result, using wage information provided in Table 1, we estimate costs of \$4.74 million in the first year and \$2.36 million in subsequent years following publication of the final rule after adjusting for overhead and benefits.

We estimate that 25 pharmaceutical companies will run an estimated 300 distinct pharmaceutical ads that appear on television each quarter and will be affected by this rule. For these ads, we estimate that administrative support staff and marketing managers will need to verify the prescribed language and that the correct price appears in each advertisement each quarter. We estimate that this will require 10 minutes and \$24.08 (\$34.48/hr × .66) per advertisement for administrative support staff. We also estimate 5 minutes and \$41.96 (\$127.14/hr × .33) per advertisement for marketing managers, for a total of 15 minutes (0.25 hours) and \$66.04 (\$24.08 + \$41.96) per advertisement per quarter or 300 hours per year across all pharmaceutical companies running affected televised advertisements ((300 ads/quarter) × (4 quarters/year) × (.25 hours/ad). As a result, using wage information provided in Table 1, we estimate costs of \$19,812 (300 ads × \$66.04/ad) per quarter or \$79,248 in each year following publication of the final rule after adjusting for overhead and benefits.

In markets for prescription drugs and biological products, consumers often need to make decisions with incomplete information about prices. As a result, consumers are unable to make market decisions that best suit their needs. This rule may improve price transparency for consumers in order to ensure that their decisions better align with their preferences and their budget, potentially improving the allocation of resources in the prescription drug market. On the other hand, consumers, intimidated and confused by high list prices, may be deterred from contacting their physicians about drugs or medical conditions. Consumers might believe they are being asked to pay the list price rather than a co-pay or co-insurance and wonder why they are paying so much when they already paid a premium for their drug plan. This could discourage patients from using beneficial medications, reduce access, and

<sup>16</sup> <https://www.census.gov/data/tables/2015/econ/susb/2015-susb-annual.html>.

potentially increase total cost of care. We lack data to quantify these effects, and seek public comment on these impacts, including comment on the best methods for extrapolating, to the prescription drug market, estimates of consumer response to the inclusion of prices in advertising that may have been developed in other contexts.

In addition, we believe that this rule may provide a moderating force to counteract prescription drug increases. This rule will provide direct evidence of prescription drug prices to the general public, potentially improving awareness and allowing the general public to signal in some cases that prescription drug prices have risen beyond their willingness to pay. We believe that this, in turn, may further improve the rule's effect on the efficient utilization of prescription drugs. We lack data to quantify these effects, and seek public comment on these impacts.

We believe that this rule may also have impacts along other dimensions. In particular, it may affect the number of televised DTC advertisements, the rate at which televised DTC advertisements are updated, prices for prescription drugs, the set of pharmaceutical products available for sale, and utilization of various prescription drugs. A possibility not reflected in the quantitative estimates above is that, with this proposed rule, drug companies would find the cost of revising their ads to be prohibitively expensive (for example, if they change their WACs so frequently that there is extensive monitoring and revision necessary to ensure that ads airing on a particular day match the WAC for that day). In this case, TV drug advertising would be reduced. However, we think this is unlikely as prices are usually changed on a twice-a-year cycle, and manufacturers may already frequently revise their ads to align with quarterly marketing plans. We therefore request comment on the following questions:

- What is the frequency with which WACs are changed?
- What would be the effect of this potential advertising reduction on patient behavior, including as regards the information they seek out from their medical providers?

- How might patient outcomes vary depending on advertising choices among competitor drug companies? For example, if only some producers of drugs that treat a particular condition cease advertising on television, are patients likely to switch between drug brands—from the no-longer-advertised to the advertised? If all producers of drugs for a condition cease advertising on television, to what extent are patients likely to switch to other forms of treatment—such as surgery—or to forgo treatment?

- To what extent will drug companies, in order to increase the feasibility of continuing to advertise on television, reduce the frequency of changing their WACs? What would be the consequences for drug supply chains and the prices experienced by patients and other payers?

Furthermore, the Department recognizes that some studies indicate direct-to-consumer advertising increases disease awareness, and that if this rule decreases disease awareness such that untreated illness occurs, there may be other impacts. We lack data to quantify the effects of this rule along these dimensions, and we seek public comment on these impacts. In addition, we acknowledge that we may not have considered all areas in which the rule may have effects, and we seek public comment on impacts of the rule in areas we have not discussed here.

As discussed above, the RFA requires agencies that issue a regulation to analyze options for regulatory relief of small entities if a proposed rule has a significant impact on a substantial number of small entities. HHS considers a rule to have a significant economic impact on a substantial number of small entities if at least 5 percent of small entities experience an impact of more than 3 percent of revenue. As discussed below, we calculate the costs of the proposed changes per affected business over 2020–2024. The estimated average costs of the rule per business peak in 2020 at approximately \$2,900, and are approximately \$1,300 in subsequent years. We note that relatively large entities are likely to experience proportionally higher costs. As discussed below, total costs of the rule are estimated to be \$5.2 million in 2020

and \$2.4 million in subsequent years. According to the U.S. Census, 1,775 pharmaceutical and medicine manufacturing firms operating in the U.S. in 2015 had annual payroll of \$23.2 billion. Since the estimated costs of this proposed rule are a tiny fraction of this payroll for covered entities, the Department anticipates that the proposed rule will not have a significant economic impact on a substantial number of small entities. We seek public comment on this determination, and the rule's impact on small entities.

#### *D. Alternatives Considered*

We carefully considered the alternative of maintaining the status quo and not pursuing regulatory action. However, we believe that the price transparency is fundamental to ensuring that prescription drug and biological product markets function properly. This rule may improve price transparency in order for consumers to make better decisions. As a result, we have determined that the benefits of the rule justify the costs imposed on industry, and as a result we chose to pursue this regulatory action.

We also carefully considered requiring the disclosure of alternative or additional prices. If an alternative definition were used for list price, burden imposed by the rule would likely be higher. For example, manufacturers set the Wholesale Acquisition Cost, also known as list price, for their products. The Department recognizes that other prices may be paid by distributors, pharmacies, patients, and others in the supply chain. Because these other prices vary by contracts established by payors or others, only the Wholesale Acquisition Cost is certain to be known by the manufacturer when creating DTC ads. As such, it would be harder for manufacturers to report prices other than Wholesale Acquisition Cost. We believe that requiring the disclosure of WAC minimizes administrative burden among feasible alternatives and balances the need to provide information to the general public. We seek comments on these regulatory alternatives.

#### *E. Accounting Statement*

TABLE 2—ACCOUNTING TABLE OF BENEFITS AND COSTS OF ALL PROPOSED CHANGES

Benefits:	Present value over 2020–2024 by discount rate (millions of 2016 dollars)		Annualized value over 2020– 2024 by discount rate (millions of 2016 dollars)	
	3 Percent	7 Percent	3 Percent	7 Percent
Quantified Benefits .....	0	0	0	0
Non-quantified Benefits: Improved transparency for prescription drug and biological product prices.				
Costs:	3 Percent		7 Percent	
	3 Percent	7 Percent	3 Percent	7 Percent
Quantified Costs .....	12.1	9.4	2.6	2.3
Non-quantified Costs: See narrative discussion.				

**List of Subjects in 42 CFR Part 403**

Grant programs—health, Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

**PART 403—SPECIAL PROGRAMS AND PROJECTS**

■ 1. The authority citation for part 403 is revised to read as follows:

**Authority:** 42 U.S.C. 1302, and 1395hh.

■ 2. Add subpart L to read as follows:

**Subpart L—Requirements for Direct to Consumer Television Advertisements of Drugs and Biological Products To Include the List Price of That Advertised Product**

- Sec.  
403.1200 Scope.  
403.1201 Definitions.  
403.1202 Pricing information.  
403.1203 Specific presentation requirements.  
403.1204 Compliance.

**Subpart L—Requirements for Direct to Consumer Television Advertisements of Drugs and Biological Products To Include the List Price of That Advertised Product**

**§ 403.1200 Scope.**

(a) *Covered pharmaceuticals.* Except as specified in paragraph (b) of this section, this subpart applies to advertisements for a prescription drug or biological product distributed in the United States for which payment is available, directly or indirectly, under titles XVIII or XIX of the Social Security Act.

(b) *Excepted pharmaceuticals.* An advertisement for any prescription drug or biological product that has a list price, as defined in § 403.1201, less than \$35 per month for a 30-day supply or

typical course of treatment shall be exempt from the requirements of this subpart.

**§ 403.1201 Definitions.**

(a) *Biological product.* Biological product means any biological product, as that term is defined in Public Health Service Act (“PHS Act”) section 351(i), that is licensed by the Food and Drug Administration pursuant to section 351 and is subject to the requirements of Federal Food, Drug, and Cosmetic Act (FDCA) section 503(b)(1).

(b) *Prescription drug.* Prescription drug means any drug, as defined in the FDCA section 201(g), that has been approved by the Food and Drug Administration pursuant to FDCA section 505 and is subject to the requirements of FDCA section 503(b)(1).

(c) *List price.* List price means the wholesale acquisition cost, as defined in paragraph (d) of this section.

(d) *Wholesale acquisition cost.* Wholesale acquisition cost means, with respect to a drug or biological, the manufacturer’s list price for the drug or biological to wholesalers or direct purchasers in the United States, not including prompt pay or other discounts, rebates or reductions in price, for the most recent month for which the information is available, as reported in wholesale price guides or other publications of drug or biological pricing data.

**§ 403.1202 Pricing information.**

Any advertisement for any prescription drug or biological product on television (including broadcast, cable, streaming, or satellite) must contain a textual statement indicating the current list price for a typical 30-day regimen or for a typical course of treatment, whichever is most appropriate, as determined on the first day of quarter during which the advertisement is being aired or otherwise broadcast, as follows: “The

list price for a [30-day supply of] [typical course of treatment with] [name of prescription drug or biological product] is [insert list price]. If you have health insurance that covers drugs, your cost may be different.” Where the price is related to the “typical course of treatment” and that course of treatment varies depending on the indication for which a drug is prescribed, the list price to be used is the one for the “course of treatment” associated with the primary indication addressed in the advertisement.

**§ 403.1203 Specific presentation requirements.**

The textual statement described in § 403.1202 shall be presented at the end of an advertisement in a legible manner, meaning that it is placed appropriately and is presented against a contrasting background for sufficient duration and in a size and style of font that allows the information to be read easily.

**§ 403.1204 Compliance.**

(a) *Identification of non-compliant products.* The Secretary shall maintain a public list that will include the drugs and biological products identified by the Secretary to be advertised in violation of this subpart.

(b) *State or local requirements.* No State or political subdivision of any State may establish or continue in effect any requirement that depends in whole or in part on any pricing statement required by this subpart.

Dated: October 11, 2018.

**Seema Verma,**  
Administrator, Centers for Medicare & Medicaid Services.

Dated: October 11, 2018.

**Alex M. Azar II,**  
Secretary, Department of Health and Human Services.

[FR Doc. 2018–22698 Filed 10–15–18; 4:15 pm]

**BILLING CODE 4120–01–P**



# Notices

Federal Register

Vol. 83, No. 202

Thursday, October 18, 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

### U.S. Codex Office

#### U.S. Codex Program: FY2019–2023 Strategic Plan

**AGENCY:** U.S. Codex Office, Department of Agriculture.

**ACTION:** Notice of public meeting and request for comments.

**SUMMARY:** The U.S. Codex Office is finalizing the U.S. Codex Program's FY–2019–2023 Strategic Plan and is sponsoring a public meeting on November 2, 2018. The objective of the public meeting is to provide briefing information and receive public comments on the Plan's Goals and Objectives. The U.S. Manager for Codex Alimentarius and the Under Secretary, Office of Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to provide comments.

**DATES:** The public meeting is scheduled for Friday, November 2, 2018, at 10:00 a.m. to 12:00 p.m.

**ADDRESSES:** The public meeting will take place at the United States Department of Agriculture (USDA), Jamie L. Whitten Building, 1400 Independence Avenue SW, Room 107–A, Washington, DC 20250.

**Call-In-Number:** If you wish to participate in the public meeting please use the call-in-number: 1–888–844–9904. The participant code will be posted on the following web page: <http://www.usda.gov/codex>.

**Registration and Comments:** Attendees may register to attend the public meeting by emailing [uscodex@osec.usda.gov](mailto:uscodex@osec.usda.gov) by October 24th, 2018, and submit their comments electronically to that email address. Early registration is encouraged because it will expedite entry into the building. The meeting will take place in a Federal building. Attendees should bring photo

identification and plan for adequate time to pass through the security screening systems. Attendees who are not able to attend the meeting in person, but who wish to participate, may do so by phone, as discussed above. *For Further Information about the Public Meeting Contact:* Sarah Lynch, U.S. Codex Office, 1400 Independence Avenue SW, Room 4861, South Agriculture Building, Washington, DC 20250. Phone: (202) 708–9515, Email: [sarah.lynch@osec.usda.gov](mailto:sarah.lynch@osec.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The U.S. Codex Program is a U.S. Government interagency partnership that engages stakeholders in advancing science-based international food standards to protect the health of consumers and ensure fair practices in the food trade. The U.S. Codex Office (USCO), housed in USDA's Trade and Foreign Agricultural Affairs mission area, acts as the national focal point for the U.S. Program. USCO manages the planning, support, policy development, and coordination of U.S. involvement in Codex, develops strategies to accomplish U.S. objectives, and serves as secretariat for U.S.-hosted committees.

##### Public Meeting

At the November 2, 2018, public meeting, U.S. Codex Program Goals and Objectives will be discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the public meeting, or submitted after the meeting (by November 6, 2018) to [sarah.lynch@osec.usda.gov](mailto:sarah.lynch@osec.usda.gov) (see **ADDRESSES**). Written comments should state that they relate to the FY2019–2023 U.S. Codex Program Strategic Plan.

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA web page located at: <http://www.usda.gov/codex/>, a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscription themselves, and have the option to password protect their accounts.

#### USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

#### How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at [http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain\\_combined\\_6\\_8\\_12.pdf](http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf), or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email.

**Mail:** U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

**Fax:** (202) 690–7442, Email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

Persons with disabilities who require alternative means for communication (Braille, large print, audiotope, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington DC on October 16, 2018.

**Mary Lowe,**

*U.S. Manager for Codex Alimentarius.*

[FR Doc. 2018–22688 Filed 10–17–18; 8:45 am]

**BILLING CODE P**



**ARCHITECTURAL AND  
TRANSPORTATION BARRIERS  
COMPLIANCE BOARD****Meetings**

**AGENCY:** Architectural and Transportation Barriers Compliance Board

**ACTION:** Notice of meetings.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC,

Monday through Wednesday, November 5–7, 2018 at the times and location listed below.

**DATES:** The schedule of events is as follows:

**Monday, November 5, 2018**

10:00 a.m.–11:00 a.m. Planning and Evaluation Committee  
11:00 a.m.–Noon Technical Programs Committee  
1:30 p.m.–2:00 p.m. Ad Hoc Committee on Design Guidance  
2:00 p.m.–4:00 p.m. Ad Hoc Committee on Frontier Issues

**Wednesday, November 7, 2018**

9:30 a.m.–10:00 a.m. Budget Committee  
10:00 a.m.–Noon Closed Session (training for Board members)  
1:30 p.m.–3:00 p.m. Board Meeting

**ADDRESSES:** Meetings will be held at the Access Board Conference Room, 1331 F Street NW, Suite 800, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice); (202) 272–0054 (TTY).

**SUPPLEMENTARY INFORMATION:** At the Board meeting scheduled on the

afternoon of Wednesday, November 7, the Access Board will consider the following agenda items:

- Approval of July 11, 2018 draft meeting minutes (vote)
- Ad Hoc Committee Reports: Design Guidance; Frontier Issues
- Planning and Evaluation Committee
- Technical Programs Committee
- Budget Committee
- Election Assistance Commission Report
- Executive Director's Report
- Public Comment (final 15 minutes of the meeting)

Members of the public can provide comments either in-person or over the telephone during the final 15 minutes of the Board meeting on Wednesday, November 7, 2018. Any individual interested in providing comment is asked to pre-register by sending an email to [bunales@access-board.gov](mailto:bunales@access-board.gov) with the subject line "Access Board meeting—Public Comment" with your name, organization, state, and topic of comment included in the body of your email. All emails to register for public comment must be received by Wednesday, October 31. Commenters will be provided with a call-in number and passcode before the meeting. Commenters will be called on in the order by which they are pre-registered. Due to time constraints, each commenter is limited to two minutes. Commenters on the telephone will be in a listen-only capacity until they are called on.

All meetings are accessible to persons with disabilities. An assistive listening system, Communication Access Realtime Translation (CART), and sign language interpreters will be available at the Board meeting and committee meetings.

Persons attending Board meetings are requested to refrain from using perfume,

cologne, and other fragrances for the comfort of other participants (see [www.access-board.gov/the-board/policies/fragrance-free-environment](http://www.access-board.gov/the-board/policies/fragrance-free-environment) for more information).

You may view the Wednesday, November 7, 2018 meeting through a live webcast from 1:30 p.m. to 3:00 p.m. at: [www.access-board.gov/webcast](http://www.access-board.gov/webcast).

**David M. Capozzi,**  
Executive Director.

[FR Doc. 2018–22689 Filed 10–17–18; 8:45 am]

**BILLING CODE** 8150–01–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:****LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE**

[10/2/2018 through 10/11/2018]

Firm name	Firm address	Date accepted for investigation	Product(s)
Susan Jablon Mosaics, LLC .....	12 Alice Street, Binghamton, NY 13904	10/4/2018	The firm manufactures ceramic and glass tiles and mirrored glass.
Daniels Business Services, Inc., d/b/a Daniels Graphics.	131 Sweeten Creek Road, Asheville, NC 28803.	10/9/2018	The firm manufactures packaging materials for the textile industry.
Pure & Secure, LLC .....	4511 NW 42nd Street, Lincoln, NE 68524.	10/10/2018	The firm manufactures water distillation products.

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. 2018-22684 Filed 10-17-18; 8:45 am]

BILLING CODE 3510-WH-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Corporation for Travel Promotion Board of Directors

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Second notice of an opportunity for travel and tourism industry leaders to apply for membership on the Board of Directors of the Corporation for Travel Promotion.

**SUMMARY:** The Department of Commerce is again seeking applications from travel and tourism leaders from specific industries for membership on the Board of Directors (Board) of the Corporation for Travel Promotion (doing business as Brand USA). The purpose of the Board is to guide the Corporation for Travel Promotion on matters relating to the promotion of the United States as a travel destination and communication of travel facilitation issues, among other tasks. On July 19, 2018, the Department published in the **Federal Register** a "Notice of an opportunity for travel and tourism industry leaders to apply for membership on the Board of Directors of the Corporation for Travel Promotion" (83 FR 34112), announcing membership opportunities on the Board of Directors of the Corporation for Travel Promotion. The application period closed on August 17, 2018. The Department is now reopening the application period to solicit additional applications. This notice supplements the notice of July 19, 2018.

Interested parties who have already applied in response to that **Federal Register** notice do not need to re-apply.

**DATES:** All applications must be received by the National Travel and Tourism Office by close of business on Friday, October 26, 2018.

**ADDRESSES:** Please submit application information by email to [CTPBoard@trade.gov](mailto:CTPBoard@trade.gov).

**FOR FURTHER INFORMATION CONTACT:** Julie Heizer, National Travel and Tourism Office, U.S. Department of Commerce, 1401 Constitution Avenue NW, MS10003, Washington, DC 20230; telephone: 202-482-0140; email: [CTPBoard@trade.gov](mailto:CTPBoard@trade.gov).

**SUPPLEMENTARY INFORMATION:** The Travel Promotion Act of 2009 (TPA) was signed into law on March 4, 2010 and was amended in July 2010 and December 2014. The TPA established the Corporation for Travel Promotion (the Corporation), as a non-profit corporation charged with the development and execution of a plan to (A) provide useful information to those interested in traveling to the United States; (B) identify and address perceptions regarding U.S. entry policies; (C) maximize economic and diplomatic benefits of travel to the United States through the use of various promotional tools; (D) ensure that international travel benefits all States and the District of Columbia, and (E) identify opportunities to promote tourism to rural and urban areas equally, including areas not traditionally visited by international travelers.

The Corporation is governed by a Board of Directors, consisting of 11 members with knowledge of international travel promotion or marketing, broadly representing various regions of the United States. The TPA directs the Secretary of Commerce (after consultation with the Secretary of Homeland Security and the Secretary of State) to appoint the Board of Directors for the Corporation.

On July 19, 2018, the Department published in the **Federal Register** a "Notice of an opportunity for travel and tourism industry leaders to apply for membership on the Board of Directors of the Corporation for Travel Promotion" (83 FR 34112), announcing membership opportunities on the Board of Directors of the Corporation for Travel Promotion. The application period closed on August 17, 2018. The Department is now reopening the application period to solicit additional applications. This notice supplements the notice of July 19, 2018. Interested parties who have already applied in response to that **Federal Register** notice do not need to re-apply.

At this time, the Department will be selecting four individuals with the appropriate expertise and experience from specific sectors of the travel and tourism industry to serve on the Board as follows:

(A) 1 shall have appropriate expertise and experience in the hotel accommodations sector;

(B) 1 shall have appropriate expertise and experience as an official of a city convention and visitors' bureau;

(C) 1 shall have appropriate expertise and experience in the restaurant sector; and

(D) 1 shall have appropriate expertise and experience as an official of a state tourism office.

To be eligible for Board membership, individuals must have international travel and tourism marketing experience, be a current or former chief executive officer, chief financial officer, or chief marketing officer or have held an equivalent management position. Additional consideration will be given to individuals who have experience working in U.S. multinational entities with marketing budgets, and/or who are audit committee financial experts as defined by the Securities and Exchange Commission (in accordance with 15 U.S.C. 7265). Individuals must be U.S. citizens, and in addition, cannot be federally registered lobbyists or registered as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Those selected for the Board must be able to meet the time and effort commitments of the Board.

Board members serve at the discretion of the Secretary of Commerce (who may remove any member of the Board for good cause). The terms of office of each member of the Board appointed by the Secretary shall be three (3) years. Board members can serve a maximum of two consecutive full three-year terms. Board members are not considered Federal government employees by virtue of their service as a member of the Board and will receive no compensation from the Federal government for their participation in Board activities. Members participating in Board meetings and events may be paid actual travel expenses and per diem by the Corporation when away from their usual places of residence.

Individuals who want to be considered for appointment to the Board should submit the following information by the Friday, October 26, 2018 deadline to the address listed in the **ADDRESSES** section above:

1. Name, title, and personal resume of the individual requesting consideration, including address, email address and phone number.

2. A brief statement of why the person should be considered for appointment to the Board. This statement should also address the individual's relevant international travel and tourism marketing experience and audit committee financial expertise, if any, and indicate clearly the sector or sectors

enumerated above in which the individual has the requisite expertise and experience. Individuals who have the requisite expertise and experience in more than one sector can be appointed for only one of those sectors. Appointments of members to the Board will be made by the Secretary of Commerce.

3. An affirmative statement that the applicant is a U.S. citizen and further, is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Dated: October 12, 2018.

Julie Heizer,

Deputy Director, National Travel and Tourism Office.

[FR Doc. 2018-22673 Filed 10-17-18; 8:45 am]

BILLING CODE 3510-DR-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-580-868]

#### Large Residential Washers From the Republic of Korea: Final Results of the First Five-Year Sunset Review of the Antidumping Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on large residential washers from the Republic of Korea (Korea) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Sunset Review" section of this notice.

**DATES:** Applicable October 18, 2018.

**FOR FURTHER INFORMATION CONTACT:** David Goldberger, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202-482-4136.

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 26, 2018, Commerce published the *Preliminary Results* of the sunset review,<sup>1</sup> finding that dumping was likely to continue or recur if the *Order*<sup>2</sup> were revoked and determined

that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping at the magnitude of weighted-average margins up to 82.41 percent.<sup>3</sup> We invited interested parties to comment on the *Preliminary Results*. We received a case brief from LG Electronics Inc. (LGEKR), LG Electronics U.S.A., Inc. (LGEUS), and LG Electronics Alabama, Inc. (LGEAI) (collectively LGE), representing the respondent interested parties on May 29, 2018, and a rebuttal brief from the domestic interested party, Whirlpool Corporation (Whirlpool), on June 4, 2018.

#### Scope of the Order

The products covered by the *Order* are all large residential washers and certain subassemblies thereof from Korea. The products are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to this order may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.<sup>4</sup>

#### Analysis of Comments Received

All issues raised for the final results of this sunset review are addressed in the Issues and Decision Memorandum, dated concurrently with this final notice, which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum include the likelihood of the continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail. A list of the issues addressed in the Issues and Decision Memorandum is included in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the

Issues and Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

#### Final Results of Sunset Review

We determine that revocation of the AD *Order* on large residential washers from Korea would be likely to lead to a continuation or recurrence of dumping at weighted-average margins up to 82.41 percent.

#### Notification to Interested Parties

This notice also serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the final results of this full sunset review, in accordance with sections 751(c)(5)(A), 752(c), and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.218(f)(3).

Dated: September 4, 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 Issues and Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Discussion of the Issues

##### Comment 1: Whether Commerce's

Preliminary Conclusion that Revocation of the Antidumping Order Would be Likely to Lead to Continuation or Recurrence of Dumping is Contradicted by the Evidentiary Record and Contrary to Law

##### Comment 2: Whether Commerce's

Preliminary Conclusion that, Upon Revocation, LGE Would Engage in Dumping of 82.41 Percent is Contrary to Law and Contradicted by the Evidentiary Record

5. Recommendation

[FR Doc. 2018-22635 Filed 10-17-18; 8:45 am]

BILLING CODE 3510-DS-P

<sup>1</sup> See *Large Residential Washers from the Republic of Korea: Preliminary Results of the First Five-Year Sunset Review of the Antidumping Duty Order*, 83 FR 18275 (April 26, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See *Large Residential Washers from Mexico and the Republic of Korea: Antidumping Duty Orders*, 78 FR 11148 (February 15, 2013) (*Order*).

<sup>3</sup> See *Preliminary Results*, 83 FR at 18276.

<sup>4</sup> For a complete description of the Scope of the Order, see Memorandum, "Issues and Decision Memorandum for the Final Results of First Sunset Review of the Antidumping Duty Order on Large Residential Washers from the Republic of Korea," dated concurrently with this notice (Issues and Decision Memorandum).

**DEPARTMENT OF COMMERCE****International Trade Administration****[A-351-842]****Certain Uncoated Paper From Brazil: Final Results of Antidumping Duty Administrative Review; 2015–2017**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that certain uncoated paper (uncoated paper) from Brazil is being sold at less than normal value during the period of review (POR), August 27, 2015, through February 28, 2017.

**DATES:** Applicable October 18, 2018.

**FOR FURTHER INFORMATION CONTACT:** Jerry Huang, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4047.

**SUPPLEMENTARY INFORMATION:****Background**

On April 10, 2018, Commerce published the preliminary results of the antidumping duty administrative review on uncoated paper from Brazil.<sup>1</sup> The review covers one producer/exporter of the subject merchandise, Suzano Papel e Celulose S.A. (Suzano). For a discussion of events since the *Preliminary Results* were published, see the accompanying Issues and Decision Memorandum.<sup>2</sup>

**Scope of the Order**

The product covered by this review is uncoated paper from Brazil. For a full description of the scope, see the Issues and Decision Memorandum dated concurrently with and hereby adopted by this notice.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum.<sup>3</sup> A list of the issues that parties raised and to which we responded is attached to this notice as an Appendix. The

Issues and Decision Memorandum is a public document and is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov> and in the Central Records Unit (CRU), room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/index.html>. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

Based on a review of the record and comments received from interested parties, we have recalculated Suzano's weighted-average dumping margin and, based on our findings at verification, we have made certain changes to Suzano's margin calculation. For further discussion, see the Issues and Decision Memorandum.

**Final Results of the Administrative Review**

We determine that the following weighted-average dumping margin exists for the period August 27, 2015 through February 28, 2017.

Exporter/producer	Weighted-average margin (percent)
Suzano Papel e Celulose S.A ..	18.80

**Assessment Rate**

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. For entries of subject merchandise during the period of review produced by Suzano for which they did not know their 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. We intend to issue liquidation 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 this review for all shipments of

uncoated paper from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for companies subject to this review will be equal to the weighted-average dumping margins established in the final results of the review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 27.11 percent, the all-others rate established in the less-than-fair-value investigation.<sup>4</sup> These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

**Administrative Protective Order**

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

<sup>1</sup> See *Certain Uncoated Paper from Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2015–2017*, 83 FR 15368 (April 10, 2018) (*Preliminary Results*).

<sup>2</sup> See Memorandum, "Certain Uncoated Paper from Brazil: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review; 2015–2017," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>3</sup> *Id.*

<sup>4</sup> See *Certain Uncoated Paper from Australia, Brazil, Indonesia, the People's Republic of China, and Portugal: Amended Final Affirmative Antidumping Determinations for Brazil and Indonesia and Antidumping Duty Orders*, 81 FR 11173 (March 3, 2016).

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: October 9, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties for the Assistant Secretary for Enforcement and Compliance.*

## Appendix

### List of Topics Discussed in the Final Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. List of Comments
- V. Discussion of Comments
  - Comment 1: Treatment of Suzano's Sales to an U.S. Foreign Trade Zone (FTZ)
  - Comment 2: Treatment of Suzano's Credit Expenses
  - Comment 3: Treatment of INSS Taxes
  - Comment 4: Suzano's Liquidation Instructions
  - Comment 5: Programming Issue in Suzano's Margin Calculation
- VI. Recommendation

[FR Doc. 2018-22720 Filed 10-17-18; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-096]

### Aluminum Wire and Cable From the People's Republic of China: Initiation of Countervailing Duty Investigation

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Applicable October 11, 2018.

**FOR FURTHER INFORMATION CONTACT:** Nancy Decker at (202) 482-0196 or Mark Hoadley at (202) 482-3148, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

### SUPPLEMENTARY INFORMATION:

#### The Petition

On September 21, 2018, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) Petition concerning imports of aluminum wire and cable from the People's Republic of China (China), filed in proper form on behalf of Encore Wire Corporation and Southwire Company, LLC (the petitioners), which are domestic producers of aluminum

wire and cable.<sup>1</sup> The CVD Petition was accompanied by an antidumping duty (AD) Petition concerning imports of aluminum wire and cable from China.

On September 25 and 26, 2018, Commerce requested supplemental information pertaining to certain aspects of the Petition in two separate supplemental questionnaires, one dealing with general issues with the Petition and the other with issues related to Volume III of the Petition (*i.e.*, the CVD allegation).<sup>2</sup> The petitioners filed their combined response to the supplemental questionnaires on September 28, 2018.<sup>3</sup>

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of aluminum wire and cable in China and that imports of such products are materially injuring, or threatening material injury to, the domestic industry producing aluminum wire and cable in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petition on behalf of the domestic industry because the petitioners are an interested party as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support necessary for the initiation of the requested CVD investigation.<sup>4</sup>

#### Period of Investigation

Because the Petition was filed on September 28, 2018, the period of investigation is January 1, 2017, through December 31, 2017.

<sup>1</sup> See letter from the petitioners, "Aluminum Wire and Cable from China: Antidumping and Countervailing Duty Petitions," dated September 21, 2018 (the Petition).

<sup>2</sup> See letters from Commerce, "Petition for the Imposition of Countervailing Duties on Imports of Aluminum Wire and Cable from the People's Republic of China: Supplemental Questions" (CVD Deficiency Questionnaire), dated September 25, 2018, and "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Aluminum Wire and Cable from the People's Republic of China: Supplemental Questions" (General Issues Deficiency Questionnaire), dated September 26, 2018.

<sup>3</sup> See letter from the petitioners, "Aluminum Wire and Cable from China: Amendment of Petitions and Response to Commerce's Supplemental Questions" dated September 28, 2018 (Petition Supplement).

<sup>4</sup> See "Determination of Industry Support for the Petition" section, *infra*.

## Scope of the Investigation

The product covered by this investigation is aluminum wire and cable from China. For a full description of the scope of this investigation, see the Appendix to this notice.

## Scope Comments

During our review of the Petition, Commerce contacted the petitioners regarding the proposed scope language to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.<sup>5</sup> As a result of the petitioners' submission, the scope of the Petition was modified to clarify the description of merchandise covered by the Petition. The description of the merchandise covered by this initiation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).<sup>6</sup> Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,<sup>7</sup> all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on October 31, 2018, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on November 13, 2018.<sup>8</sup>

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request

<sup>5</sup> See Supplemental Questionnaire Response at 7-8 and Exhibit I (Revised Scope).

<sup>6</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

<sup>7</sup> See 19 CFR 351.102(b)(21) (defining "factual information").

<sup>8</sup> See 19 CFR 351.303(b). Rebuttal comments are normally due 10 days after the comment deadline. In this case, 10 calendar days from the initial comments deadline falls on Saturday, November 10, 2018. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

### Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).<sup>9</sup> An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

### Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified representatives of the GOC of the receipt of the Petition and provided them the opportunity for consultations with respect to the CVD Petition.<sup>10</sup> The GOC did not request consultations.

### Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for

more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,<sup>11</sup> they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.<sup>12</sup>

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigation.<sup>13</sup> Based on our analysis of the information submitted on the record, we have determined that aluminum wire and cable, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.<sup>14</sup>

In determining whether the petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of the Investigation," in the Appendix to this notice. To establish industry support, the petitioners provided their own shipment values of the domestic like product in 2017 and compared this to the estimated total shipment value of the domestic like product for the entire industry.<sup>15</sup> Because total 2017 production volume data for the domestic like product for the entire domestic industry are not reasonably available to the petitioners, and the petitioners have established that shipment values are a reasonable proxy for production data,<sup>16</sup> we have relied on the data the petitioners provided for purposes of measuring industry support.<sup>17</sup>

Our review of the data provided in the Petition, the Petition Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petition.<sup>18</sup> First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).<sup>19</sup> Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.<sup>20</sup> Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or

(China CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Aluminum Wire and Cable from the People's Republic of China (Attachment II). This checklist is dated concurrently with, and hereby adopted by, this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

<sup>15</sup> See Volume I of the Petition, at 5–6 and Exhibits GEN–02 through GEN–04; *see also* Petition Supplement, at 8–11 and Exhibit K.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* For further discussion, *see* China CVD Initiation Checklist, at Attachment II.

<sup>18</sup> *See* China CVD Initiation Checklist, at Attachment II.

<sup>19</sup> *Id.*; *see also* section 702(c)(4)(D) of the Act.

<sup>20</sup> *See* China CVD Initiation Checklist, at Attachment II.

<sup>9</sup> *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011). *See also Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx>, and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

<sup>10</sup> *See* Commerce letter, "Countervailing Duty Petition on Aluminum Wire and Cable from the People's Republic of China: Invitation for Consultations to Discuss the Countervailing Duty Petition," dated September 24, 2018.

<sup>11</sup> *See* section 771(10) of the Act.

<sup>12</sup> *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

<sup>13</sup> *See* Volume I of the Petition, at 87–89.

<sup>14</sup> For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Aluminum Wire and Cable from the People's Republic of China

workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.<sup>21</sup> Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Commerce finds that the petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the CVD investigation that they are requesting that Commerce initiate.<sup>22</sup>

### Injury Test

Because China is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

### Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.<sup>23</sup>

The petitioner contends that the industry’s injured condition is illustrated by a significant and increasing volume of subject imports; underselling and price depression or suppression; depressed absolute level of capacity utilization; decline in the domestic industry’s financial performance; and lost sales and revenues.<sup>24</sup> We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.<sup>25</sup>

### Initiation of CVD Investigation

Based on the examination of the Petition, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of aluminum wire and cable from China benefit from countervailable subsidies conferred by the GOC. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on all of the subsidy programs alleged in the Petition, with certain limitations. For a full discussion of the basis for our decision to initiate on each program, see China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

### Respondent Selection

The petitioners named 27 producers/exporters as accounting for the majority of exports of aluminum wire and cable to the United States from China.<sup>26</sup> In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce’s resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of aluminum wire and cable from China during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the “Scope of the Investigation,” in the Appendix. On October 9, 2018, we released CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of this CVD investigation.<sup>27</sup> Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b).

Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Aluminum Wire and Cable from the People’s Republic of China (Attachment III).

<sup>26</sup> See Volume I of the Petition at 13–18.

<sup>27</sup> See memorandum, “Aluminum Wire and Cable from the People’s Republic of China; Release of Customs Data from U.S. Customs and Border Protection,” dated October 9, 2018.

Instructions for filing such applications may be found on the Commerce’s website at <http://enforcement.trade.gov/apo>.

Comments regarding respondent selection must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date established by Commerce. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

### Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petition have been provided to the GOC via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

### ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

### Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of aluminum wire and cable from China are materially injuring, or threatening material injury to, a U.S. industry.<sup>28</sup> A negative ITC determination will result in the investigation being terminated.<sup>29</sup> Otherwise, this investigation will proceed according to statutory and regulatory time limits.

### Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted<sup>30</sup> and, if the information is submitted to rebut, clarify, or correct

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> See Volume I of the Petition, at 90–91 and Exhibit GEN–19.

<sup>24</sup> *Id.*, at 85–86, 90–101 and Exhibits GEN–16, GEN–19 and GEN–26 through GEN–29; see also Petition Supplement, at 11–14 and Exhibit L.

<sup>25</sup> See China CVD Initiation Checklist, at Attachment III, Analysis of Allegations and

<sup>28</sup> See section 703(a)(2) of the Act.

<sup>29</sup> See section 703(a)(1) of the Act.

<sup>30</sup> See 19 CFR 351.301(b).



factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.<sup>31</sup> Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

#### Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in this investigation.

#### Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.<sup>32</sup> Parties must use the certification formats provided in 19 CFR 351.303(g).<sup>33</sup> Commerce intends to reject factual submissions if the submitting party does not comply with

the applicable certification requirements.

#### Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: October 11, 2018.

Gary Taverman,

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

#### Appendix I

##### Scope of the Investigation

The scope of the investigation covers aluminum wire and cable, which is defined as an assembly of one or more electrical conductors made from 8000 Series Aluminum Alloys (defined in accordance with ASTM B800), Aluminum Alloy 1350 (defined in accordance with ASTM B230/B230M or B609/B609M), and/or Aluminum Alloy 6201 (defined in accordance with ASTM B398/B398M), provided that: (1) At least one of the electrical conductors is insulated; (2) each insulated electrical conductor has a voltage rating greater than 80 volts and not exceeding 1000 volts; and (3) at least one electrical conductor is stranded and has a size not less than 16.5 thousand circular mil (kcmil) and not greater than 1000 kcmil. The assembly may: (1) Include a grounding or neutral conductor; (2) be clad with aluminum, steel, or other base metal; or (3) include a steel support center wire, one or more connectors, a tape shield, a jacket or other covering, and/or filler materials.

Most aluminum wire and cable products conform to National Electrical Code (NEC) types THHN, THWN, THWN-2, XHHW-2, USE, USE-2, RHH, RHW, or RHW-2, and also conform to Underwriters Laboratories (UL) standards UL-44, UL-83, UL-758, UL-854, UL-1063, UL-1277, UL-1569, UL-1581, or UL-4703, but such conformity is not required for the merchandise to be included within the scope.

The scope of the investigation specifically excludes conductors that are included in equipment already assembled at the time of importation. Also excluded are aluminum wire and cable products in actual lengths less than six feet.

The merchandise covered by the investigation is currently classifiable under subheading 8544.49.9000 of the Harmonized Tariff Schedule of the United States

(HTSUS). Products subject to the scope may also enter under HTSUS subheading 8544.42.9090. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

[FR Doc. 2018–22655 Filed 10–17–18; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Applicable October 18, 2018.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Moore, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230, telephone: (202) 482–3692.

**SUPPLEMENTARY INFORMATION:** On August 8, 2018, the Department of Commerce (Commerce), pursuant to section 702(h) of the Trade Agreements Act of 1979 (as amended) (the Act), published the quarterly update to the annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty covering the period January 1, 2018, through March 31, 2018.<sup>1</sup> In the *First Quarter 2018 Update*, we requested that any party that has information on foreign government subsidy programs that benefit articles of cheese subject to an in-quota rate of duty submit such information to Commerce.<sup>2</sup> We received no comments, information or requests for consultation from any party.

Pursuant to section 702(h) of the Act, we hereby provide Commerce's update of subsidies on articles of cheese that were imported during the period April 1, 2018, through June 30, 2018. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

Commerce will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed. Commerce encourages any person having

<sup>1</sup> See *Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty*, 83 FR 39061 (August 8, 2018) (*First Quarter 2018 Update*).

<sup>2</sup> *Id.*

<sup>31</sup> See 19 CFR 351.301(b)(2).

<sup>32</sup> See section 782(b) of the Act.

<sup>33</sup> See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (“*Final Rule*”); see also frequently asked questions regarding the *Final Rule*, available at [http://enforcement.trade.gov/tlei/notices/factual\\_info\\_final\\_rule\\_FAQ\\_07172013.pdf](http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf).



information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, 1401

Constitution Ave. NW, Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: October 11, 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

### SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross <sup>3</sup> subsidy (\$/lb)	Net <sup>4</sup> subsidy (\$/lb)
28 European Union Member States <sup>5</sup>	European Union Restitution Payments	0.00	0.00
Canada	Export Assistance on Certain Types of Cheese	0.45	0.45
Norway	Indirect (Milk) Subsidy	0.00	0.00
	Consumer Subsidy	0.00	0.00
	Total	0.00	0.00
Switzerland	Deficiency Payments	0.00	0.00

[FR Doc. 2018-22613 Filed 10-17-18; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-983]

### Drawn Stainless Steel Sinks From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review; 2017–2018

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) is partially rescinding its administrative review of the antidumping duty (AD) order on drawn stainless steel sinks (drawn sinks) from the People's Republic of China (China) for the period of review (POR) April 1, 2017, through March 31, 2018.

**DATES:** Applicable October 18, 2018.

**FOR FURTHER INFORMATION CONTACT:** Joshua Tucker, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2044.

### SUPPLEMENTARY INFORMATION:

<sup>3</sup> Defined in 19 U.S.C. 1677(5).

<sup>4</sup> Defined in 19 U.S.C. 1677(6).

<sup>5</sup> The 28 member states of the European Union are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

### Background

On April 2, 2018, Commerce published in the **Federal Register** a notice of “Opportunity to Request Administrative Review” of the AD order on drawn sinks from China for the POR.<sup>1</sup>

In April 2018, Commerce received multiple timely requests to conduct an administrative review of the AD order on drawn sinks from China.

On June 6, 2018, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), Commerce published in the **Federal Register** a notice of initiation of an administrative review of the AD order.<sup>2</sup> The administrative review was initiated with respect to 31 companies, and covers the period April 1, 2017, through March 31, 2018. Subsequent to the initiation of the administrative review, the petitioner in this proceeding, Elkay Manufacturing Company, timely withdrew its review requests for 18 of these companies, as discussed below.

### Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party that requested a review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. The petitioner withdrew its request for an administrative review of the following companies within 90 days of the date of

publication of the *Initiation Notice*:<sup>3</sup> Foshan Shunde MingHao Kitchen Utensils Co., Ltd.; Foshan Zhaoshun Trade Co., Ltd.; Franke Asia Sourcing Ltd.; Grand Hill Work Company; Guandong Dongyuan Kitchenware Industrial Co., Ltd.; Guandong Yingao Kitchen Utensils Co., Ltd.; Hangzhou Heng's Industries Co., Ltd.; Hubei Foshan Success Imp & Exp Co. Ltd.; J&C Industries Enterprise Limited; Jiangmen Hongmao Trading Co., Ltd.; Jiangxi Zoje Kitchen & Bath Industry Co., Ltd.; Ningbo Oulin Kitchen Utensils Co., Ltd.; Primy Cooperation Limited; Shenzhen Kehuaxing Industrial Ltd.; Shunde Foodstuffs Import & Export Company Limited of Guangdong; Shunde Native Produce Import and Export Co., Ltd. of Guangdong; Zhongshan Newecan Enterprise Development Corporation; and Zhongshan Silk Imp. & Exp. Group Co., Ltd. of Guangdong. Accordingly, Commerce is rescinding this review, in part, with respect to these companies, in accordance with 19 CFR 353.213(d)(1).<sup>4</sup>

The instant review will continue with respect to the following companies: B&R Industries Limited; Elkay (China) Kitchen Solutions, Co., Ltd.; Feidong Import and Export Co., Ltd.; Guangdong G-Top Import and Export Co., Ltd.; Guangdong New Shichu Import & Export Company Limited; Jiangmen

<sup>3</sup> See Letter from the Petitioner, “Re: Drawn Stainless Steel Sinks from the People's Republic of China: Notice of Partial Withdrawal of Request for Administrative Review,” dated August 2, 2018.

<sup>4</sup> Commerce no longer considers the non-market economy entity as an exporter conditionally subject to administrative reviews. See *Antidumping Proceedings; Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 3, 2013).

<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 13949 (April 2, 2018).

<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 26258 (June 6, 2018) (*Initiation Notice*).

New Star Hi-Tech Enterprise Ltd.; Jiangmen Pioneer Import & Export Co., Ltd.; KaiPing Dawn Plumbing Products, Inc.; Ningbo Afa Kitchen and Bath Co., Ltd.; Xinhe Stainless Steel Products Co., Ltd.; Yuyao Afa Kitchenware Co., Ltd.; Zhongshan Superte Kitchenware Co., Ltd.; and Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd.

#### Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

#### Notification to Importers

This notice serves as the only reminder to importers whose entries will be liquidated as a result of this rescission notice, 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 may result in the presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

#### Notification Regarding Administrative Protective Order

This notice serves as 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 return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: October 12, 2018.

**James Maeder,**

*Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2018-22719 Filed 10-17-18; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-471-807]

#### Certain Uncoated Paper From Portugal: Final Results of Antidumping Duty Administrative Review; 2015–2017

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) is amending its final results of the administrative review of the antidumping duty (AD) order on certain uncoated paper from Portugal to correct a ministerial error.

**DATES:** Applicable October 18, 2018.

**FOR FURTHER INFORMATION CONTACT:** Carrie Bethea, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1491.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 13, 2018, the Department of Commerce (Commerce) published its *Final Results* of the first administrative review of the antidumping duty order on certain uncoated paper from Portugal.<sup>1</sup> Also on August 13, 2018, The Navigator Company, S.A. (Navigator), the respondent in this administrative review, submitted comments alleging ministerial errors in Commerce's *Final Results*.<sup>2</sup> On August 22, 2018, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Service Workers International Union, AFL-CIO, CLC (USW); and the Packaging Corporation of America (PCA) (collectively, the petitioners), submitted a reply rebutting Navigator's ministerial error allegation.<sup>3</sup> Following

<sup>1</sup> See *Certain Uncoated Paper from Portugal: Final Results of Antidumping Duty Administrative Review; 2015–2017*, 83 FR 39982 (August 13, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

<sup>2</sup> See Navigator's Letter, "Ministerial Error Allegation," dated August 13, 2018 (Navigator Ministerial Error Allegation).

<sup>3</sup> See Petitioners' Letter, "Petitioners' Response to Navigator's Ministerial Error Allegation," dated

the comment period, Navigator contested Commerce's *Final Results* before the Court of International Trade. As such, Commerce obtained leave of court to consider Navigator's ministerial allegations.

#### Amendment to Final Results

Commerce reviewed the record and agrees in part with Navigator that it committed a ministerial error in our application of AFA.<sup>4</sup> In our *Final Results*, Commerce committed an inadvertent error within the meaning of section 735(e) of the Tariff Act of 1930 (the Act) and 19 CFR 351.224(f).<sup>5</sup> Therefore, pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Results* to reflect the correction of this ministerial error in the calculation of the final margin assigned to Navigator, which changes from 37.34 percent to 1.75 percent.<sup>6</sup>

Commerce also agrees with Navigator that we incorrectly published the period of review (POR) in the "Final Results of Review" section in the *Final Results*, which should have been stated as the period of August 26, 2015, through February 28, 2017. These amended final results of the review reflect the correct POR throughout.

#### Amended Final Results of the Review

We determine that, for the period of August 26, 2015, through February 28, 2017, the following weighted-average dumping margin exists:

Exporter/producer	Weighted-average dumping margin (percent)
The Navigator Company, S.A	1.75

#### Disclosure

We intend to disclose the calculation performed for these amended final results in accordance with 19 CFR 351.224(b).

#### Duty Assessment

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.

August 22, 2018 (Petitioners' Ministerial Error Response).

<sup>4</sup> See Memorandum, "Ministerial Error Memorandum for the Amended Final Results of the First Administrative Review," signed concurrently with this notice.

<sup>5</sup> *Id.*

<sup>6</sup> See Memorandum, "Amended Final Determination Calculations for the Navigator Company, S.A.," dated October XX, 2018.

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by Navigator for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after the publication date 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 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 Navigator will be the rate 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 manufacturers or exporters will continue to be 7.80 percent, the all-others rate established in the investigation.<sup>7</sup> These cash deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent

assessment of doubled antidumping duties.

### Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with section 735(e) of the Act and 19 CFR 351.224(e) and (f).

Dated: October 9, 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. 2018-22575 Filed 10-17-18; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-095]

### Aluminum Wire and Cable From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Applicable October 11, 2018.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Turlo at (202) 482-3870 or Mark Hoadley at (202) 482-3148; AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC, 20230.

### SUPPLEMENTARY INFORMATION:

#### The Petition

On September 21, 2018, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) petition concerning imports of aluminum wire and cable from the People's Republic of China (China), filed in proper form on behalf of Encore Wire Corporation (Encore) and Southwire Company, LLC (the

petitioners), domestic producers of aluminum wire and cable.<sup>1</sup> The AD Petition was accompanied by a countervailing duty (CVD) Petition concerning imports of aluminum wire and cable from China.

On September 25 and 26, 2018, Commerce requested supplemental information pertaining to certain aspects of the Petition in two separate supplemental questionnaires, one dealing with general issues with the Petition and the other with issues related to Volume I and Volume II of the Petition (*i.e.*, the AD allegation).<sup>2</sup> The petitioners filed their combined response to the supplemental questionnaires on September 28, 2018.<sup>3</sup>

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of aluminum wire and cable from China are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV) within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing aluminum wire and cable in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioners supporting their allegation.

Commerce finds that the petitioners filed the Petition on behalf of the domestic industry because the petitioners are interested parties as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support with respect to the initiation of the requested AD investigation.<sup>4</sup>

### Period of Investigation

Because China is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) is January 1, 2018, through June 30, 2018.

<sup>1</sup> See letter from the petitioners, "Aluminum Wire and Cable from China: Antidumping and Countervailing Duty Petitions," dated September 21, 2018 (the Petition).

<sup>2</sup> See letters from Commerce, "Petition for the Imposition of Antidumping Duties on Imports of Aluminum Wire and Cable from the People's Republic of China: Supplemental Questions," dated September 25, 2018 (AD Supplemental Questionnaire), and "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Aluminum Wire and Cable from the People's Republic of China: Supplemental Questions," dated September 26, 2018 (General Issues Supplemental Questionnaire).

<sup>3</sup> See letter from the petitioners, "Aluminum Wire and Cable from China: Amendment of Petitions and Response to Commerce's Supplemental Questions" dated September 28, 2018 (Petition Supplement).

<sup>4</sup> See the "Determination of Industry Support for the Petition" section, *infra*.

<sup>7</sup> See *Certain Uncoated Paper from Portugal: Final Determination of Sales at Less than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 3105 (January 20, 2016).

### Scope of the Investigation

The product covered by this investigation is aluminum wire and cable from China. For a full description of the scope of this investigation, see the Appendix to this notice.

### Scope Comments

During our review of the Petition, Commerce contacted the petitioners regarding the proposed scope language to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.<sup>5</sup> As a result of the petitioners' submission, the scope of the Petition was modified to clarify the description of merchandise covered by the Petition. The description of the merchandise covered by this initiation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).<sup>6</sup> Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,<sup>7</sup> all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on October 31, 2018, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on November 13, 2018.<sup>8</sup>

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request

permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

### Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).<sup>9</sup> An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

### Comments on Product Characteristics for AD Questionnaire

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of aluminum wire and cable to be reported in response to Commerce's AD questionnaire. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant factors of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all product characteristics comments must be filed by 5:00 p.m. ET on October 31, 2018, which is 20 calendar days from the signature date of this notice.<sup>10</sup> Any rebuttal comments must be filed by 5:00 p.m. ET on November 12, 2018. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on

the record of the China LTFV investigation.

### Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,<sup>11</sup> they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.<sup>12</sup>

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is

<sup>5</sup> See Petition Supplement, at 7–8 and Exhibit I (Revised Scope).

<sup>6</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>7</sup> See 19 CFR 351.102(b)(21) (defining "factual information").

<sup>8</sup> See 19 CFR 351.303(b). Rebuttal comments are normally due 10 days after the comment deadline. In this case, 10 calendar days from the initial comments deadline falls on Saturday, November 10, 2018. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

<sup>9</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

<sup>10</sup> See 19 CFR 351.303(b).

<sup>11</sup> See section 771(10) of the Act.

<sup>12</sup> See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

“the article subject to an investigation” (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the Petition.<sup>13</sup> Based on our analysis of the information submitted on the record, we have determined that aluminum wire and cable, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.<sup>14</sup>

In determining whether the petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in the Appendix to this notice. To establish industry support, the petitioners provided their own shipment values of the domestic like product in 2017, and compared this to the estimated total shipment value of the domestic like product for the entire domestic industry.<sup>15</sup> Because total 2017 production volume data for the domestic like product for the entire domestic industry are not reasonably available to the petitioners, and the petitioners have established that shipment values are a reasonable proxy for production data,<sup>16</sup> we have relied on the data the petitioners provided for purposes of measuring industry support.<sup>17</sup>

Our review of the data provided in the Petition, the Petition Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petition.<sup>18</sup> First, the Petition established support from domestic

producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (e.g., polling).<sup>19</sup> Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.<sup>20</sup> Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.<sup>21</sup> Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Commerce finds that the petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the AD investigation that they are requesting that Commerce initiate.<sup>22</sup>

### **Allegations and Evidence of Material Injury and Causation**

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.<sup>23</sup>

The petitioners contend that the industry’s injured condition is illustrated by a significant and increasing volume of subject imports; underselling and price depression or suppression; depressed absolute level of capacity utilization; decline in the domestic industry’s financial performance; and lost sales and

revenues.<sup>24</sup> We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.<sup>25</sup>

### **Allegations of Sales at LTFV**

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate an AD investigation of imports of aluminum wire and cable from China. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the China AD Initiation Checklist.

### **Export Price**

The petitioners based U.S. export price (EP) on price sheets for aluminum wire and cable offered for sale in the United States. The price sheet was from a U.S. distributor of aluminum wire and cable in the United States who is the leading U.S. distributor of aluminum wire and cable produced by a Chinese producer/exporter of subject merchandise.<sup>26</sup> The petitioners made deductions from the U.S. prices for estimated distributor’s markup and international freight and customs duties.<sup>27</sup>

### **Normal Value**

Commerce considers China to be an NME country.<sup>28</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of this investigation. Accordingly, NV in China is appropriately based on factors of production (FOPs) valued in a

<sup>13</sup> See Volume I of the Petition, at 87–89.

<sup>14</sup> For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, see Antidumping Duty Investigation Initiation Checklist: Aluminum Wire and Cable from the People’s Republic of China (China AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Aluminum Wire and Cable from the People’s Republic of China (Attachment II). This checklist is dated concurrently with, and hereby adopted by, this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

<sup>15</sup> See Volume I of the Petition, at 5–6 and Exhibits GEN–02 through GEN–04; see also Petition Supplement, at 8–11 and Exhibit K.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* For further discussion, see China AD Initiation Checklist, at Attachment II.

<sup>18</sup> See China AD Initiation Checklist, at Attachment II.

<sup>19</sup> See section 732(c)(4)(D) of the Act; see also China AD Initiation Checklist, at Attachment II.

<sup>20</sup> See China AD Initiation Checklist, at Attachment II.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> See Volume I of the Petition, at 90–91 and Exhibit GEN–19.

<sup>24</sup> *Id.* at 85–86, 90–101 and Exhibits GEN–16, GEN–19 and GEN–26 through GEN–29; see also Petition Supplement, at 11–14 and Exhibit L.

<sup>25</sup> See China AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Aluminum Wire and Cable from the People’s Republic of China (Attachment III).

<sup>26</sup> See Volume I of the Petition, at 20–23 and Exhibit GEN–13; see also Petition Supplement, at Exhibit D.

<sup>27</sup> *Id.*

<sup>28</sup> See *Antidumping Duty Investigation of Certain Aluminum Foil from the People’s Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum to Gary Taverman, “China’s Status as a Non-Market Economy,” dated October 26, 2017), unchanged in *Certain Aluminum Foil from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

surrogate market economy country, in accordance with section 773(c) of the Act.<sup>29</sup>

The petitioners claim that Mexico is an appropriate surrogate country for China because (1) Mexico is a market economy and at a comparable level of economic development as China, based on per capita gross national income,<sup>30</sup> (2) Mexico is a significant producer of comparable merchandise,<sup>31</sup> and (3) public information from Mexico is available to value all material input factors.<sup>32</sup> The petitioners provided publicly available information from Mexico to value all FOPs.<sup>33</sup> Therefore, based on the information provided by the petitioners, we determine that it is appropriate to use Mexico as the primary surrogate country for initiation purposes.<sup>34</sup>

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

#### Factors of Production

Based on their assertion that the specifications for aluminum wire and cable products are standard across all producers in the United States and China, the petitioners used Encore's own consumption rates to estimate FOPs of Chinese producers/exporters.<sup>35</sup> In addition, the petitioners valued the estimated FOPs using surrogate values from Mexico in U.S. dollars.<sup>36</sup>

#### Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of aluminum wire and cable from China are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for aluminum wire and cable from China are 53.54–63.47 percent.<sup>37</sup>

#### Initiation of LTFV Investigation

Based upon the examination of the Petition, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of aluminum wire and cable from China are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

#### Respondent Selection

The petitioners named 27 producers/exporters as accounting for the majority of exports of aluminum wire and cable to the United States from China.<sup>38</sup> In accordance with our standard practice for respondent selection in AD cases involving NME countries, we intend to issue quantity and value (Q&V) questionnaires to producers/exporters of merchandise subject to this investigation. In the event Commerce determines that it cannot individually examine each company, where appropriate, Commerce intends to select mandatory respondents based on the responses received to its Q&V questionnaire. Commerce will request Q&V information from known exporters and producers identified with complete contact information in the Petition. In addition, Commerce will post the Q&V questionnaires along with filing instructions on Enforcement and Compliance's website at <http://www.trade.gov/enforcement/news.asp>.

Producers/exporters of aluminum wire and cable from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Enforcement & Compliance's website. The Q&V questionnaire response must be submitted by the relevant Chinese exporters/producers no later than 5:00 p.m. ET on October 25, 2018, which is two weeks from the signature date of this notice. All Q&V responses must be filed electronically via ACCESS.

#### Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.<sup>39</sup> The specific requirements

for submitting a separate-rate application in this investigation are outlined in detail in the application itself, which is available on Commerce's website at <http://enforcement.trade.gov/nme/nme-sep-rate.html>. The separate-rate application will be due 30 days after publication of this initiation notice.<sup>40</sup> Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V questionnaire response will not receive separate-rate consideration.

#### Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.<sup>41</sup>

#### Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the government of China *via* ACCESS. To the extent practicable, we will

<http://enforcement.trade.gov/policy/bull05-1.pdf> (Policy Bulletin 05.1).

<sup>40</sup> Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that "the Secretary may request any person to submit factual information at any time during a proceeding," this deadline is now 30 days.

<sup>41</sup> See Policy Bulletin 05.1 at 6 (emphasis added).

<sup>29</sup> See China AD Initiation Checklist, at 8–9.

<sup>30</sup> See Volume II of the Petition, at Exhibit GEN–17.

<sup>31</sup> See Volume II of the Petition, at Exhibits GEN–18 and GEN–19.

<sup>32</sup> See Volume I of the Petition, at 24.

<sup>33</sup> See Volume II of the Petition, at GEN–21 and GEN–22.

<sup>34</sup> See China AD Initiation Checklist, at 8.

<sup>35</sup> See Volume I of the Petition, at 24; see also Volume II of the Petition, at Exhibits GEN–16 and GEN–20.

<sup>36</sup> See Volume I of the Petition, at 24–25; see also Volume II of the Petition, at Exhibits GEN–20, GEN–21 and GEN–22.

<sup>37</sup> See Petition Supplement, at 7 and Exhibit G.

<sup>38</sup> See Volume I of the Petition, at 24; see also Volume II of the Petition, at Exhibits GEN–16 and GEN–20.

<sup>39</sup> See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation Involving Non-Market Economy Countries (April 5, 2005), available at

attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

### ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

### Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of aluminum wire and cable from China are materially injuring or threatening material injury to a U.S. industry.<sup>42</sup> A negative ITC determination will result in the investigation being terminated.<sup>43</sup> Otherwise, the investigation will proceed according to statutory and regulatory time limits.

### Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted<sup>44</sup> and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.<sup>45</sup> Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

### Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension

request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in this investigation.

### Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.<sup>46</sup> Parties must use the certification formats provided in 19 CFR 351.303(g).<sup>47</sup> Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

### Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

<sup>46</sup> See section 782(b) of the Act.

<sup>47</sup> See also *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at [http://enforcement.trade.gov/tlei/notices/factual\\_info\\_final\\_rule\\_FAQ\\_07172013.pdf](http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf).

Dated: October 11, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

### Appendix I

#### Scope of the Investigation

The scope of the investigation covers aluminum wire and cable, which is defined as an assembly of one or more electrical conductors made from 8000 Series Aluminum Alloys (defined in accordance with ASTM B800), Aluminum Alloy 1350 (defined in accordance with ASTM B230/B230M or B609/B609M), and/or Aluminum Alloy 6201 (defined in accordance with ASTM B398/B398M), provided that: (1) At least one of the electrical conductors is insulated; (2) each insulated electrical conductor has a voltage rating greater than 80 volts and not exceeding 1000 volts; and (3) at least one electrical conductor is stranded and has a size not less than 16.5 thousand circular mil (kcmil) and not greater than 1000 kcmil. The assembly may: (1) Include a grounding or neutral conductor; (2) be clad with aluminum, steel, or other base metal; or (3) include a steel support center wire, one or more connectors, a tape shield, a jacket or other covering, and/or filler materials.

Most aluminum wire and cable products conform to National Electrical Code (NEC) types THHN, THWN, THWN-2, XHHW-2, USE, USE-2, RHH, RHW, or RHW-2, and also conform to Underwriters Laboratories (UL) standards UL-44, UL-83, UL-758, UL-854, UL-1063, UL-1277, UL-1569, UL-1581, or UL-4703, but such conformity is not required for the merchandise to be included within the scope.

The scope of the investigation specifically excludes conductors that are included in equipment already assembled at the time of importation. Also excluded are aluminum wire and cable products in actual lengths less than six feet.

The merchandise covered by the investigation is currently classifiable under subheading 8544.49.9000 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to the scope may also enter under HTSUS subheading 8544.42.9090. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

[FR Doc. 2018–22656 Filed 10–17–18; 8:45 am]

**BILLING CODE 3510-DS-P**

### DEPARTMENT OF COMMERCE

#### National Institute of Standards and Technology

#### Open Meeting of the Information Security and Privacy Advisory Board

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

<sup>42</sup> See section 733(a) of the Act.

<sup>43</sup> *Id.*

<sup>44</sup> See 19 CFR 351.301(b).

<sup>45</sup> See 19 CFR 351.301(b)(2).



**ACTION:** Notice.

**SUMMARY:** The Information Security and Privacy Advisory Board (ISPAB) will meet Thursday, November 01, 2018 from 9:00 a.m. until 5:00 p.m., Eastern Time, and Friday, November 02, 2018 from 9:00 a.m. until 4:30 p.m. Eastern Time. All sessions will be open to the public.

**DATES:** The meeting will be held on Thursday, November 01, 2018, from 9:00 a.m. until 5:00 p.m., Eastern Time, and Friday, November 02, 2018, from 9:00 a.m. until 4:30 p.m. Eastern Time.

**ADDRESSES:** The meeting will be held at the American University Washington College of Law, 4300 Nebraska Ave. NW, Washington, DC, 20016.

**FOR FURTHER INFORMATION CONTACT:** Jeff Brewer, Information Technology Laboratory, NIST, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, Telephone: (301) 975–2489, Email address: [jeffrey.brewer@nist.gov](mailto:jeffrey.brewer@nist.gov).

**SUPPLEMENTARY INFORMATION:**

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the ISPAB will meet Thursday, November 01, 2018, from 9:00 a.m. until 5:00 p.m., Eastern Time, and Friday, November 02, 2018 from 9:00 a.m. until 4:30 p.m. Eastern Time. All sessions will be open to the public. The ISPAB is authorized by 15 U.S.C. 278g–4, as amended, and advises the National Institute of Standards and Technology (NIST), the Secretary of Homeland Security, and the Director of the Office of Management and Budget (OMB) on information security and privacy issues pertaining to Federal government information systems, including thorough review of proposed standards and guidelines developed by NIST. Details regarding the ISPAB's activities are available at <http://csrc.nist.gov/groups/SMA/ispab/index.html>.

The agenda is expected to include the following items:

- Deliberations and discussions by the ISPAB on security and privacy issues,
- Presentation and discussion on NIST cybersecurity standards and guidance,
- Briefings from the Department of Homeland Security National Risk Management Center,
- Presentation and discussion on supply chain risk management programs,
- Briefing from NIST on Internet of Things (IOT) guidance,
- Presentation and discussion on the draft roadmap from the *Report to the President on Enhancing the*

*Resilience of the internet and Communications Ecosystem Against Botnets and Other Automated, Distributed Threats* (May 22, 2018),

- Presentation and discussion on cybersecurity and privacy issues related to Quantum Computing,
- Presentation and discussion on the NIST privacy framework program, and
- Updates on NIST Information Technology Laboratory cybersecurity work.

Note that agenda items may change without notice. The final agenda will be posted on the website indicated above. Seating will be available for the public and media. Pre-registration is not required to attend this meeting.

**Public Participation:** The ISPAB agenda will include a period, not to exceed thirty minutes, for oral comments from the public (Thursday, November 01, 2018, between 4:30 p.m. and 5:00 p.m.). Speakers will be selected on a first-come, first-served basis. Each speaker will be limited to five minutes. Questions from the public will not be considered during this period. Members of the public who are interested in speaking are requested to contact Jeff Brewer at the contact information indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements. In addition, written statements are invited and may be submitted to the ISPAB at any time. All written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930.

**Kevin A. Kimball,**

*Chief of Staff.*

[FR Doc. 2018–22735 Filed 10–17–18; 8:45 am]

**BILLING CODE 3510–13–P**

## **BUREAU OF CONSUMER FINANCIAL PROTECTION**

### **Supervisory Highlights: Summer 2018**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Supervisory Highlights; notice.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is issuing its seventeenth edition of its

*Supervisory Highlights*. In this issue of *Supervisory Highlights*, we report examination findings in the areas of auto finance lending; credit card account management; debt collection; deposits; mortgage servicing; mortgage origination; service providers; short-term, small-dollar lending; remittances; and fair lending. As in past editions, this report includes information on the Bureau's use of its supervisory and enforcement authority, recently released examination procedures, and Bureau guidance.

**DATES:** The Bureau released this edition of the *Supervisory Highlights* on its website on September 06, 2018.

**FOR FURTHER INFORMATION CONTACT:** Adetola Adenuga, Consumer Financial Protection Analyst, Office of Supervision Policy, at (202) 435–9373. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

**SUPPLEMENTARY INFORMATION:****1. Introduction**

The Bureau of Consumer Financial Protection (Bureau) is committed to a consumer financial marketplace that is free, innovative, competitive, and transparent, where the rights of all parties are protected by the rule of law, and where consumers are free to choose the products and services that best fit their individual needs. To effectively accomplish this, the Bureau remains committed to sharing with the public key findings from its supervisory work to help industry limit risks to consumers and comply with Federal consumer financial law.

The findings included in this report cover examinations in the areas of automobile loan servicing, credit cards, debt collection, mortgage servicing, payday lending, and small business lending that were generally completed between December 2017 and May 2018 (unless otherwise stated).

It is important to keep in mind that institutions are subject only to the requirements of relevant laws and regulations. The information contained in *Supervisory Highlights* is disseminated to help institutions better understand how the Bureau examines institutions for compliance with those requirements. This document does not impose any new or different legal requirements. In addition, the legal violations described in this and previous issues of *Supervisory Highlights* are based on the particular facts and circumstances reviewed by the Bureau as part of its examinations. A conclusion that a legal violation exists on the facts and circumstances



described here may not lead to such a finding under different facts and circumstances. We invite readers with questions or comments about the findings and legal analysis reported in *Supervisory Highlights* to contact us at [cfpb\\_supervision@cfpb.gov](mailto:cfpb_supervision@cfpb.gov).

## 2. Supervisory Observations

Recent supervisory observations are reported in the areas of automobile loan servicing, credit cards, debt collection, mortgage servicing, payday lending, and, for the first time, small business lending.

### 2.1 Automobile Loan Servicing

The Bureau continues to examine auto loan servicing activities, primarily to assess whether servicers have engaged in unfair, deceptive, or abusive acts or practices prohibited by the Consumer Financial Protection Act of 2010 (CFPA). Recent auto loan servicing examinations identified deceptive and unfair acts or practices related to billing statements and wrongful repossessions.

#### 2.1.1 Billing Statements Showing Paid-Ahead Status After Applying Insurance Proceeds

One or more examinations observed instances in which notes required that insurance proceeds from a total vehicle loss be applied as a one-time payment to the loan with any remaining balance to be collected according to the consumer's regular billing schedule. However, in some instances after consumers experienced a total vehicle loss, the servicers sent billing statements showing that the insurance proceeds had been applied to the loan payments so that the loan was paid ahead and that the next payment on the remaining balance was due many months or years in the future. Servicers then treated consumers who failed to pay by the next month as late and in some cases also reported the negative information to consumer reporting agencies.

The examination found that servicers engaged in a deceptive practice by sending billing statements indicating that consumers did not need to make a payment until a future date when in fact the consumer needed to make a monthly payment.<sup>1</sup> The billing statements contained due dates inconsistent with the note and the servicer's insurance payment application. Such information would mislead reasonable consumers to think they did not need to make the next monthly payment. The misrepresentation is material because it likely affected consumers' conduct with

regard to auto loans. Consumers would have been more likely to make a monthly payment if they knew that not doing so would result in a late fee, delinquency notice, or adverse credit reporting. In response to examination findings, the servicers are sending billing statements that accurately reflect the account status of the loan after applying insurance proceeds from a total vehicle loss.

#### 2.1.2 Repossessions

Many auto servicers provide options to consumers to avoid repossession once a loan is delinquent or in default. Servicers may offer formal extension agreements that allow consumers to forbear payments for a certain period of time or may cancel a repossession order once a consumer makes a payment.

One or more recent examinations found that servicers repossessed vehicles after the repossession was supposed to be cancelled. In these instances, the servicers incorrectly coded the account as remaining delinquent or customer service representatives did not timely cancel the repossession order after the consumer's agreement with the servicers to avoid repossession. The examinations identified this as an unfair practice.<sup>2</sup> The practice of wrongfully repossessing vehicles causes substantial injury because it deprives borrowers of the use of their vehicles and potentially leads to additional associated harm, such as lost wages and adverse credit reporting. Such injury is not reasonably avoidable when consumers take action they believed would halt the repossession and there is no additional action the borrower can take to prevent it. Finally, the injury is not outweighed by countervailing benefits to the consumer or to competition. No benefits to competition are apparent from erroneous repossessions. And the expense to better monitor repossession activity is unlikely to be substantial enough to affect institutional operations or pricing. In response to the examination findings, the servicers are stopping the practice, reviewing the accounts of consumers affected by a wrongful repossession, and removing or remediating all repossession-related fees.

### 2.2 Credit Cards

The Bureau continues to examine the credit card account management operations of one or more supervised entities. Typically, examinations assess advertising and marketing, account origination, account servicing, payments

and periodic statements, dispute resolution, and the marketing, sale and servicing of credit card add-on products. With some notable exceptions, the examinations found that supervised entities generally are complying with applicable Federal consumer financial laws.

#### 2.2.1 Periodic Re-Evaluation of Rate Increases

Regulation Z, as revised to implement the Card Accountability Responsibility and Disclosure (CARD) Act, requires credit card issuers to periodically re-evaluate consumer credit card accounts subjected to certain increases in the applicable Annual Percentage Rate(s) (APR or rate) to assess whether it is appropriate to reduce the account's APR(s).<sup>3</sup> Issuers must first re-evaluate each such account no later than six months after the rate increase and at least every six months thereafter.<sup>4</sup> In re-evaluating each account, the issuer must apply either (a) the factors on which the rate increase was originally based or (b) the factors the issuer currently considers when determining the APR applicable to similar, new consumer credit card accounts.<sup>5</sup>

One or more examinations between January and July 2018 found that entities: (a) Failed to re-evaluate all eligible accounts, (b) failed to consider the appropriate factors when re-evaluating eligible accounts, or (c) failed to appropriately reduce the rates of accounts eligible for rate reduction. In one or more instances, the issuers failed to re-evaluate all eligible accounts because they inadvertently excluded some eligible accounts from the pool of accounts they re-evaluated. In one or more instances, the issuers failed to consider the appropriate factors because they inappropriately conflated re-evaluation factors, among other reasons. In one or more instances, the issuers failed to appropriately reduce the rates for eligible accounts because they effectively imposed additional criteria for a rate reduction. The issuers have undertaken, or developed plans to undertake, remedial and corrective actions in response to these examination findings.

### 2.3 Debt Collection

The Bureau's Supervision program has authority to examine certain entities that engage in consumer debt collection activities, including nonbanks that are larger participants in the consumer debt collection market. Recent examinations

<sup>1</sup> 12 U.S.C. 5531, 5536.

<sup>2</sup> *Id.*

<sup>3</sup> 12 CFR 1026.59(a).

<sup>4</sup> 12 CFR 1026.59(c).

<sup>5</sup> 12 CFR 1026.59(d)(1).

of larger participants identified one or more violations of the Fair Debt Collection Practices Act (FDCPA).<sup>6</sup>

### 2.3.1 Failure To Obtain and Mail Debt Verification Before Engaging in Further Collection Activities

Section 809(b) of the FDCPA requires a debt collector, upon receipt of a written debt validation request from a consumer, to cease collection of the debt until it obtains verification of the debt and mails it to the consumer.<sup>7</sup> Examinations found that one or more debt collectors routinely failed to mail debt verifications before engaging in further collections activities. Instead, one or more debt collectors forwarded consumer debt validation requests to originating creditors; the creditors then reviewed the debts and mailed responses directly to consumers. One or more debt collectors accepted creditor determinations that the debt was owed by the relevant consumer for the amount claimed without receiving information verifying the debt and without mailing the required verification to consumers. One or more debt collectors then continued collection activities on accounts in violation of section 809(b) of the FDCPA.<sup>8</sup> In response to these examination findings, one or more debt collectors are revising their debt validation policies, procedures, and practices to ensure both that they obtain appropriate verification of the debt when requested and that they mail the verification to consumers prior to engaging in further collection activities.

### 2.4 Mortgage Servicing

Bureau examinations continue to focus on the loss mitigation process and, in particular, on how servicers handle trial modifications where consumers are paying as agreed. One or more recent mortgage servicing examinations observed unfair acts or practices relating to conversion of trial modifications to permanent status and initiation of foreclosures after consumers accepted loss mitigation offers. Recent examinations also identified unfair acts or practices when institutions charged consumers amounts not authorized by modification agreements or by mortgage notes.

#### 2.4.1 Converting Trial Modifications to Permanent Status

Past editions of *Supervisory Highlights* discussed how one or more servicers failed to place consumers who successfully completed trial

modifications into permanent modifications in a timely manner.<sup>9</sup> Such delays may harm consumers when interest accrues at a higher non-modified rate or when servicers report consumers as delinquent or still in trial modifications to consumer reporting agencies during the delay. Where a servicer does not provide full financial remediation to the consumer for such a delay, one or more examinations have identified an unfair practice.

One or more recent examinations reviewed the practices of servicers with policies providing for permanent modifications of loans if consumers made four timely trial modification payments. However, for nearly 300 consumers who successfully completed the trial modification, the servicers delayed processing the permanent modification for more than 30 days. During these delays, consumers accrued interest and fees that would not have been accrued if the permanent modification had been processed. The servicers did not remediate all of the affected consumers nor did they have policies or procedures for remediating consumers in such circumstances. The servicers attributed the modification delays to insufficient staffing.

As a result, one or more examinations identified an unfair act or practice. Consumers experienced substantial injury that could not be reasonably avoided. The accrued fees and interest that the servicers failed to fully remediate were likely significant because the delays were more than 30 days. And consumers could not reasonably avoid these injuries. They could neither control the processing of their loan modifications nor compel remediation from the servicers. The harm to consumers outweighs the cost to consumers or to competition, given that the servicers acknowledged that the delay was in error and did not indicate that the cost of remediation was burdensome. In response to examination findings, the servicers are fully remediating affected consumers and developing and implementing policies and procedures to timely convert trial modifications to permanent modifications where the consumers have met the trial modification conditions.<sup>10</sup>

In September 2017, examinations also found that one or more servicers mitigated the potential consumer harm associated with trial conversion delays

by maintaining communication with consumers during the delay and by proactively remediating individual consumers for the costs associated with the delay after eventually making the consumers' modifications permanent.

#### 2.4.2 Charging Consumers Unauthorized Amounts

One or more examinations found instances in which mortgage servicers charged consumers more than the amounts authorized by their loan modification agreements. The overcharges were caused by data errors affecting the modified loan's starting balance, step-rate and interest-rate changes, deferred interest, and amortization maturity date when the loan was entered into the servicing system. The examinations identified this as an unfair practice.<sup>11</sup> The overcharges resulted in substantial injury to consumers when consumers made payments higher than those stipulated in the modification agreements or when they made payments for a term longer than stipulated in the modification agreements. Consumers could not reasonably avoid this injury, which was caused by errors in the servicers' systems. The injury to consumers is not outweighed by any countervailing benefits to consumers or to competition. No benefits to competition are apparent from the systemic errors that resulted in erroneous billing statements. And the expense of instituting validation procedures for loan-modification data is unlikely to be substantial enough to affect institutional operations or pricing. In response to the examination findings, the servicers are remediating affected consumers and correcting loan modification terms in their systems.

#### 2.4.3 Representations Regarding Initiation of Foreclosure

When one or more mortgage servicers approved borrowers for a loss mitigation option on a non-primary residence, the servicers represented to borrowers that the servicers would not initiate foreclosure if the borrower accepted loss mitigation offers in writing or by phone by a specified date. However, the servicers then initiated foreclosure even if borrowers had called or written to accept the loss mitigation offers by that date. Examinations identified this as a deceptive act or practice.

The misrepresentations were likely to mislead borrowers when the servicers expressly indicated that the servicers would not initiate foreclosure proceedings if borrowers accepted the

<sup>9</sup> See, e.g., Issue 11 of Supervisory Highlights, section 3.2, available at, [https://www.consumerfinance.gov/documents/509/Mortgage\\_Servicing\\_Supervisory\\_Highlights\\_11\\_Final\\_web\\_.pdf](https://www.consumerfinance.gov/documents/509/Mortgage_Servicing_Supervisory_Highlights_11_Final_web_.pdf).

<sup>10</sup> 12 U.S.C. 5531, 5536.

<sup>11</sup> 12 U.S.C. 5531, 5536.

<sup>6</sup> 15 U.S.C. 1692–1692p.

<sup>7</sup> 15 U.S.C. 1692g(b).

<sup>8</sup> *Id.*

loss mitigation offers. The borrowers' interpretation of the misrepresentations was reasonable in this circumstance, *i.e.*, that the servicers would not initiate foreclosure after the borrowers accepted the loss mitigation offers. The misrepresentations were material because they were likely to prompt borrowers to accept the loss mitigation offers to avoid the initiation of foreclosure proceedings.

#### 2.4.4 Representations Regarding Foreclosure Sales

Examinations observed that when borrowers submitted complete loss mitigation applications less than 37 days from a scheduled foreclosure sale date, one or more servicers sent the borrowers notices indicating that the applications were complete and stating that the servicer(s) would notify the borrowers of the decision on the applications in writing within 30 days. But after sending these notices, the servicers proceeded to conduct the scheduled foreclosure sales without making a decision on the borrowers' loss mitigation applications.

The examinations did not find that this conduct amounted to a legal violation but observed that it could pose a risk of a deceptive practice. The notices could potentially mislead borrowers by stating that the borrowers would receive a decision on their loss mitigation applications. Borrowers reasonably could take that statement to mean that foreclosure sales would be postponed until a decision was reached.

#### 2.5 Payday Lending

The Bureau's Supervision program covers entities that offer or provide payday loans. Examinations of payday lenders identified unfair and deceptive acts or practices as well as violations of Regulation E.<sup>12</sup>

##### 2.5.1 Misleading Collection Letters

Examinations observed one or more entities engaging in a deceptive act or practice in their collection letters. These entities represented in their letters that they will, or may have no choice but to, repossess consumers' vehicles if the consumers fail to make payments or contact the entities. This was despite the fact that these entities did not have business relationships with any party to repossess vehicles and, as a general matter, did not repossess vehicles. Given these facts, the examination concluded that the net impression of these representations in the context of each letter was to mislead consumers to believe that these entities would

repossess or were likely to repossess consumers' vehicles. The representations were material because they were likely to affect the behavior of consumers who were misled. The representations were likely to induce consumers to make payments to these entities, as opposed to allocating their funds toward other expenses. In response to the examination findings, the entity or entities are ensuring that their collection letters do not contain deceptive content.

##### 2.5.2 Debiting Consumers' Accounts Without Valid Authorization by Using Account Information Previously Provided for Other Purposes

Examinations observed one or more entities using debit card numbers or Automated Clearing House (ACH) credentials that consumers had not validly authorized the entities to use to debit funds in connection with a single-payment or installment loan in default. Upon a consumer's failure to repay the loan obligation as agreed, one or more entities attempted to initiate electronic fund transfers (EFTs) using debit card numbers or ACH credentials that borrowers had identified on authorization forms executed in connection with the defaulted loan at issue. If those attempts were unsuccessful, the entities would then seek to collect balances due and owing via EFTs using debit card numbers or ACH credentials that the borrowers had supplied to the entities for other purposes, such as when obtaining other loans or making one-time payments on other loans or the loan at issue. Through these invalidly authorized EFTs, the entities sought payment of up to the entire amount due on the loan.

The examinations identified these as unfair acts or practices and also, in some cases, as violations of Regulation E. With respect to unfairness, the invalidly authorized debits caused substantial injury in the form of debits that consumers could not anticipate, leading to potential fees. Because the credentials were provided to the entities for other purposes, such as account information consumers provided in previous credit applications, consumers could not anticipate that the entities would use them for the defaulted loan at issue and thus could not reasonably avoid such injury. Finally, the injury was not outweighed by any countervailing benefits to consumers, such as satisfying their debts, or to competition, such as passing on lower costs to consumers derived from easier debt collection. By giving an unfair advantage over other entities that obtain authorization to initiate debits from

consumers pursuant to clear and readily understandable terms, the unfair acts or practices likely harmed competition.<sup>13</sup>

With respect to loans for which the consumer entered into preauthorized EFTs that recurred at substantially regular intervals, the examinations identified this practice as a violation of Regulation E, which requires that preauthorized EFTs from a consumer's account be authorized only by a writing signed or similarly authenticated by the consumer.<sup>14</sup> Here, the loan agreements and EFT authorization forms failed to provide clear and readily

understandable terms regarding the entities' use of debit card numbers or ACH credentials that consumers provided for other purposes. Accordingly, the entities did not obtain valid preauthorized EFT authorizations for the debits they initiated using debit card numbers or ACH credentials consumers provided for other purposes.

In response to examination findings, the entity or entities are ceasing the violations, remediating borrowers impacted by the invalid EFTs, and revising loan agreement templates and ACH authorization forms.

#### 2.6 Small Business Lending

The Equal Credit Opportunity Act (ECOA) prohibition against discrimination is not limited to consumer transactions; it also applies to business-purpose credit transactions, including credit extended to small businesses. In 2016 and 2017, the Bureau began conducting supervision work to assess ECOA compliance in institutions' small business lending product lines, focusing in particular on the risks of an ECOA violation in underwriting, pricing, and redlining. The Bureau anticipates an ongoing dialogue with supervised institutions and other stakeholders as the Bureau moves forward with supervision work in small business lending.

##### 2.6.1 Supervisory Observations

In the course of conducting ECOA small business lending reviews, Bureau examination teams have observed instances in which one or more financial institutions effectively managed the risks of an ECOA violation in their small business lending programs.

Examinations at one or more institutions observed that the board of directors and management maintained active oversight over the institutions' compliance management system (CMS) framework. Institutions developed and

<sup>12</sup> 12 CFR 1005.10(b).

<sup>13</sup> 12 U.S.C. 5531, 5536.

<sup>14</sup> 12 CFR 1005.10(b).

implemented comprehensive risk-focused policies and procedures for small business lending originations and actively addressed the risks of an ECOA violation by conducting periodic reviews of small business lending policies and procedures and by revising those policies and procedures as necessary. Examinations also observed that one or more institutions maintained a record of policy and procedure updates to ensure that they were kept current.

With regard to self-monitoring, one or more institutions implemented small business lending monitoring programs and conducted semi-annual ECOA risk assessments that include assessments of small business lending. In addition, one or more institutions actively monitored pricing-exception practices and volume through a committee.

When examinations included file reviews of manual underwriting overrides at one or more institutions, they found that credit decisions made by the institutions were consistent with the requirements of ECOA, and thus the examinations did not find any violations of ECOA.

At one or more institutions, however, examinations observed that institutions collect and maintain (in useable form) only limited data on small business lending decisions. Limited availability of data could impede an institution's ability to monitor and test for the risks of ECOA violations through statistical analyses.

### 3. Remedial Actions

#### 3.1 Public Enforcement Actions

The Bureau's supervisory activities resulted in or supported the following public enforcement actions.

##### 3.1.1 Citibank N.A.

On June 29, 2018, the Bureau announced an enforcement action against Citibank, N.A., (Citibank or Bank). The Bureau found Citibank violated the Truth in Lending Act (TILA) and its implementing regulation, Regulation Z, by failing to properly periodically re-evaluate and reduce the Annual Percentage Rates (rates) applicable to credit card accounts that had been subject to certain rate increases between 2011 and 2017 and by failing to have in place reasonable written policies and procedures to do so.

In 2016, Citibank initiated a significant compliance review program across its credit cards line of business. That review led to Citibank's self-identifying several deficiencies and errors in its rate re-evaluation

methodologies. After the Bank promptly self-disclosed the violations, the Bureau ultimately found through its supervisory process that Citibank violated TILA by failing to reevaluate and reduce the APRs for approximately 1.75 million consumer credit card accounts and thereby imposed on those accounts excess interest charges of \$335 million.

Under the terms of the resulting consent order, Citibank was required to correct these practices and pay \$335 million in restitution to the impacted consumers.<sup>15</sup> The Bureau did not assess civil money penalties based on a number of factors, including Citibank's self-identifying and self-reporting the violations to the Bureau and its self-initiating remediation to affected consumers.

##### 3.1.2 Triton Management Group

On July 19, 2018, the Bureau entered into a consent order with Triton Management Group, Inc., a payday lender that operates in Alabama, Mississippi, and South Carolina under several names including "Always Money" and "Quik Pawn Shop." The Bureau found that Triton violated the CFPB and the disclosure requirements of TILA by failing to properly disclose finance charges associated with their auto title loans in Mississippi. The Bureau also found that Triton used advertisements that failed to disclose the annual percentage rate and other information in violation of TILA. The consent order bars Triton from misrepresenting the costs of its loans and requires Triton to remediate consumers \$1,522,298. Based on Triton's inability to pay, it will remediate consumers \$500,000.<sup>16</sup>

#### Supervision Program Developments

#### 3.2 Recent Bureau Rules and Guidance

##### 3.2.1 Mortgage Servicing Final Rule

On March 8, 2018, the Bureau issued a final rule to help mortgage servicers communicate with certain borrowers facing bankruptcy. The final rule gives mortgage servicers a clearer and more straightforward standard for providing periodic statements to consumers entering or exiting bankruptcy by amending the Bureau's 2016 mortgage servicing rule. Specifically, the final rule provides a clear single-statement exemption for servicers to make the

transition, superseding the single-billing-cycle exemption included in the 2016 rule. The effective date for the rule was April 19, 2018.<sup>17</sup>

##### 3.2.2 2017–2018 Amendments of the TILA–RESPA Integrated Disclosure Rule

On August 11, 2017, the Bureau published a final rule<sup>18</sup> in the **Federal Register** amending the Federal mortgage disclosure requirements under the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA) as implemented by Regulation Z (2017 TILA–RESPA Rule). These amendments are intended to provide greater certainty and clarity to the 2013 TILA–RESPA Rule, which went into effect on October 3, 2015. Changes and clarifications in the 2017 TILA–RESPA Rule include creating a tolerance for the total of payments disclosure, clarifying the partial exemption for housing assistance lending, expanding coverage of the disclosure rule to include operative units regardless of whether State law considers the units real property or personal property, and clarifying when disclosures may be shared with third parties. Additionally, the 2017 TILA–RESPA Rule includes several additional clarifications and technical changes addressing various parts of the 2013 TILA–RESPA Rule, including the calculating cash to close table, construction-to-permanent lending, principal reductions, rounding requirements, and simultaneous second lien loans. The 2017 TILA–RESPA Rule became effective October 10, 2017. However, compliance with the 2017 TILA–RESPA Rule is mandatory only with respect to transactions for which a creditor or mortgage broker receives an application on or after October 1, 2018 (except for compliance with the escrow cancellation notice<sup>19</sup> and compliance with the partial payment policy disclosure requirements,<sup>20</sup> which will become mandatory on October 1, 2018, regardless of when an application was received).

On May 2, 2018, the Bureau published a final rule in the **Federal Register** amending the Federal mortgage disclosure requirements to address when a creditor may use a Closing Disclosure to determine if an estimated closing cost was disclosed in good faith

<sup>17</sup> See Mortgage Service Rules under the Truth in Lending Act (Regulation Z), 83 FR 10553 (Mar. 8, 2018), [https://files.consumerfinance.gov/f/documents/cfpb\\_mortgage-servicing\\_final-rule\\_2018-amendments.pdf](https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing_final-rule_2018-amendments.pdf).

<sup>18</sup> Amendments to Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z), 82 FR (Aug. 11, 2017).

<sup>19</sup> 12 CFR 1026.20(e).

<sup>20</sup> 12 CFR 1026.39(d)(5).

<sup>15</sup> See Citibank Consent Order available at, <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-settles-citibank-na/>.

<sup>16</sup> See Triton Management Group Consent Order available at, <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-settles-triton-management-group/>.

and within tolerance (2018 TILA-RESPA Rule).<sup>21</sup> The 2013 TILA-RESPA Rule in effect as of October 3, 2015 included a timing restriction limiting the use of the Closing Disclosure to reset tolerances to a period relative to the date of consummation, resulting in a creditor's inability to pass through closing cost increases<sup>22</sup> to the consumer in certain limited circumstances. The 2018 TILA-RESPA Rule removes this timing restriction, permitting the use of the Closing Disclosure to establish good faith and reset tolerances regardless of when the Closing Disclosure is provided relative to consummation. The final rule took effect on June 1, 2018.

### 3.3 Fair Lending Developments

#### 3.3.1 HMDA Implementation and New Data Submission Platform

On December 21, 2017, the Bureau provided the following statement regarding HMDA implementation:

Recognizing the impending January 1, 2018 effective date of the Bureau's amendments to Regulation C and the significant systems and operational challenges needed to adjust to the revised regulation, for HMDA data collected in 2018 and reported in 2019 the Bureau does not intend to require data resubmission unless data errors are material. Furthermore, the Bureau does not intend to assess penalties with respect to errors in data collected in 2018 and reported in 2019. Collection and submission of the 2018 HMDA data will provide financial institutions an opportunity to identify any gaps in their implementation of amended Regulation C and make improvements in their HMDA CMS for future years. Any examinations of 2018 HMDA data will be diagnostic to help institutions identify compliance weaknesses and will credit good faith compliance efforts. The Bureau intends to engage in a rulemaking to reconsider various aspects of the 2015 HMDA Rule such as the institutional and transactional coverage tests and the rule's discretionary data points. For data collected in 2017, financial institutions will submit their reports in 2018 in accordance with the current Regulation C using the Bureau's HMDA Platform.<sup>23</sup>

On July 5, 2018, the Bureau provided the following statement regarding recent HMDA amendments:

The President signed the Economic Growth, Regulatory Relief, and Consumer Protection Act (the Act) on May 24, 2018, a section of which amends the Home Mortgage Disclosure Act (HMDA). The Act provides partial exemptions for some insured depository institutions and insured credit unions from certain HMDA requirements.<sup>24</sup> The partial exemptions are generally available to insured depository institutions and insured credit unions:

- For closed-end mortgage loans if the institution originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years.
- For open-end lines of credit if the institution originated fewer than 500 open-end lines of credit in each of the two preceding calendar years.

For closed-end mortgage loans or open-end lines of credit subject to the partial exemptions, the Act states that the "requirements of [HMDA section 304(b)(5) and (6)]" shall not apply. Accordingly, for these transactions, those institutions are exempt from the collection, recording, and reporting requirements for some, but not all, of the data points specified in current Regulation C.

The Bureau expects to provide further guidance soon on the applicability of the Act to HMDA data collected in 2018.<sup>25</sup>

For all institutions filing HMDA data collected in 2018, the Act will not affect the format of the LARs:

- LARs will be formatted according to the previously released 2018 Filing Instructions Guide for HMDA Data Collected in 2018 (2018 FIG).<sup>26</sup>
- If an institution does not report information for a certain data field due to the Act's partial exemptions, the institution will enter an exemption code for the field specified in a revised 2018 FIG that the Bureau expects to release later this summer.
- All LARs will be submitted to the same HMDA Platform. A beta version of the HMDA Platform for submission of data collected in 2018 will be available later this year for filers to test.

#### 3.3.2 Small Business Lending Review Procedures

Each ECOA small business lending review includes a fair lending assessment of the institution's CMS related to small business lending. To conduct this portion of the review, examinations use Module II of the ECOA Baseline Review Modules. CMS reviews include assessments of the institution's board and management oversight, compliance program (policies and procedures, training, monitoring and/or audit, and complaint response), and service provider oversight.

Examinations also use the Interagency Fair Lending Examination Procedures, which have been adopted in the Bureau's Supervision and Examination Manual. In some ECOA small business lending reviews, examination teams may evaluate an institution's fair lending risks and controls related to origination or pricing of small business lending products. Some reviews may include a geographic distribution analysis of small business loan applications, originations, loan officers, or marketing and outreach, in order to assess potential redlining risk.

As with other in-depth ECOA reviews, ECOA small business lending reviews may include statistical analysis of lending data in order to identify fair lending risks and appropriate areas of focus during the examination. Notably, statistical analysis is only one factor taken into account by examination teams that review small business lending for ECOA compliance. Reviews typically include other methodologies to assess compliance, including policy and procedure reviews, interviews with management and staff, and reviews of individual loan files.

#### 3.3.3 FFIEC HMDA Examiner Transaction Testing Guidelines Effective Date

On August 22, 2017, the Federal Financial Institutions Examination Council (FFIEC) members, including the Bureau, announced new FFIEC Home Mortgage Disclosure Act (HMDA) Examiner Transaction Testing Guidelines for all financial institutions that report HMDA data.<sup>27</sup> The Guidelines apply to the examination of HMDA data collected beginning in

<sup>21</sup> Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z), 83 FR 19159 (May 2, 2018).

<sup>22</sup> 12 CFR 1026.19(e)(3)(iv).

<sup>23</sup> CFPB Issues Public Statement on Home Mortgage Disclosure Act Compliance (December 21, 2017), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-public-statement-home-mortgage-disclosure-act-compliance/>.

<sup>24</sup> Public Law 115-174, section 104(a) (to be codified at 12 U.S.C. 2803).

<sup>25</sup> The partial exemptions are not available to insured depository institutions that do not meet certain Community Reinvestment Act performance evaluation rating standards. Guidance will include information on how this provision will be implemented.

<sup>26</sup> <https://s3.amazonaws.com/cfpb-hmda-public/prod/help/2018-hmda-fig.pdf>.

<sup>27</sup> The Guidelines were published by the FFIEC member agencies including the Bureau, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the State Liaison Committee. These new Guidelines are available at [https://files.consumerfinance.gov/f/documents/201708\\_cfpb\\_ffiec-hmda-examiner-transaction-testing-guidelines.pdf](https://files.consumerfinance.gov/f/documents/201708_cfpb_ffiec-hmda-examiner-transaction-testing-guidelines.pdf).

2018, which financial institutions must report to the Bureau by March 1, 2019.<sup>28</sup>

### 3.3.4 Upstart No-Action Letter

The Bureau is continuing to monitor Upstart Network, Inc. (Upstart) regarding its compliance with the terms of the no-action letter (NAL) it received from Bureau staff. As part of its request for a NAL, Upstart agreed to conduct ongoing fair lending testing of its underwriting model, notify the Bureau before new variables are considered eligible for use in production, and maintain a robust model-related compliance management system.

In addition to the ongoing fair lending testing discussed above, Upstart agreed as part of its request for a NAL to employ other consumer safeguards. These safeguards, which are described in the application materials posted on the Bureau's website, include ensuring compliance with requirements to provide adverse action notices under Regulation B and the Fair Credit Reporting Act and its implementing regulation, Regulation V, and ensuring that all of its consumer-facing communications are timely, transparent, and clear, and use plain language to convey to consumers the type of information that will be used in underwriting. Upstart has committed to monitoring the effectiveness of all safeguards and sharing the results of its testing, along with other relevant information, with the Bureau during the term of the NAL.

On July 18, 2018, the Bureau announced the creation of its Office of Innovation, to foster consumer-friendly innovation, which is now a key priority for the Bureau. The Office of Innovation is in the process of revising the Bureau's NAL and trial disclosure policies, in order to increase participation by companies seeking to advance new products and services.

### 4. Conclusion

The Bureau expects that the publication of *Supervisory Highlights* will continue to aid Bureau-supervised entities in their efforts to comply with Federal consumer financial law. The report shares information regarding general supervisory and examination findings (without identifying specific institutions, except in the case of public enforcement actions), communicates operational changes to the program, and provides a convenient and easily

accessible resource for information on the Bureau's guidance documents.

Dated: September 6, 2018.

**Mick Mulvaney,**

*Acting Director, Bureau of Consumer Protection.*

[FR Doc. 2018-22726 Filed 10-17-18; 8:45 am]

**BILLING CODE 4810-AM-P**

## DEPARTMENT OF ENERGY

### DOE/NSF Nuclear Science Advisory Committee

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Friday, November 2, 2018; 8:30 a.m.–4:30 p.m.

**ADDRESSES:** Crystal City Marriott at Reagan National Airport, 1999 Jefferson Davis Highway, Potomac Ballroom, Arlington, Virginia 22202, 703-413-5500.

**FOR FURTHER INFORMATION CONTACT:** Brenda L. May, U.S. Department of Energy; SC-26/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585-1290; Telephone: 301-903-0536 or email: [brenda.may@science.doe.gov](mailto:brenda.may@science.doe.gov).

The most current information concerning this meeting can be found on the website: <http://science.gov/np/nsac/meetings/>.

### SUPPLEMENTARY INFORMATION:

*Purpose of the Board:* The purpose of the Board is 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 basic nuclear science research.

*Tentative Agenda:* Agenda will include discussions of the following:

Friday, November 2, 2018

- Perspectives from Department of Energy and National Science Foundation
- Update from the Department of Energy and National Science Foundation's Nuclear Physics Office
- Presentation of the Mo-99 Charge
- Presentation of the Committee of Visitors Charge
- NSAC Business/Discussions

- Presentation on Physics Case for an Electron Ion Collider
- Presentation on Quantum Information Science and Nuclear Physics

**Note:** The NSAC Meeting will be broadcast live on the internet. You may find out how to access the broadcast by going to the following site prior to the start of the meeting. A video record of the meeting, including presentations that are made, will be archived at this site after the meeting ends: <http://www.tvworldwide.com/events/DOE/181102/>.

*Public Participation:* The meeting is open to the public. 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 Brenda L. May, 301-903-0536 or [Brenda.May@science.doe.gov](mailto:Brenda.May@science.doe.gov) (email). 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 Committee 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 for review after 60 days on the U.S. Department of Energy's Office of Nuclear Physics website at: <http://science.gov/np/nsac/meetings/>.

Signed in Washington, DC on October 4, 2018.

**LaTanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2018-22734 Filed 10-17-18; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Distribution of Residual Citronelle Settlement Agreement Funds

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) finalizes the procedures for the disbursement of residual funds (totaling approximately \$59,000) remaining in various Citronelle Settlement Agreement escrow accounts to the parties to the Agreement.

**DATES:** This plan is applicable October 18, 2018.

**ADDRESSES:** Inquiries should be sent to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585-0107, (202) 287-1550, Email: [kristin.martin@hq.doe.gov](mailto:kristin.martin@hq.doe.gov).

<sup>28</sup> For HMDA data collected in 2017 and submitted in 2018, the Bureau will follow the HMDA resubmission guidelines published on October 9, 2013 and available at [http://files.consumerfinance.gov/f/201310\\_cfpb\\_hmda\\_resubmission-guidelines\\_fair-lending.pdf](http://files.consumerfinance.gov/f/201310_cfpb_hmda_resubmission-guidelines_fair-lending.pdf).

**FOR FURTHER INFORMATION CONTACT:**

Kristin L. Martin, Attorney-Advisor, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585-0107, (202) 287-1550, Email: [kristin.martin@hq.doe.gov](mailto:kristin.martin@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** In this Notice, we announce the final procedures for the distribution of the remaining Citronelle Settlement Agreement Funds.

The Office of Hearings and Appeals published a Notice of proposed final procedures for the distribution of the Citronelle Settlement Agreement Funds in the **Federal Register** on September 11, 2018. 83 FR 45916 (September 11, 2018). In the September 11 Notice, we described the history of the Citronelle Settlement Agreement and its relevant contents. We then set forth a proposed plan to distribute the remaining Settlement Agreement funds.

The Office of Hearings and Appeals provided a 30 day opportunity for public comment on the proposed plan. No comments were submitted during that time. Accordingly, no changes have been made to the final plan.

### **Procedure for Final Distribution of Citronelle Settlement Agreement Funds**

The Citronelle Settlement Agreement funds will be distributed according to the following plan. Any funds remaining after the final distributions made in accordance with this plan will be considered unclaimed and will be transferred to the U.S. Treasury. Final distribution amounts will be calculated using the distribution percentages listed in an appendix to this Notice on October 18, 2018.

#### *A. The Non-Litigant Refiners Account*

The Agreement requires that the balance of the Non-Litigant Refiners account be distributed to the Refiner-Litigants through an escrow account established for that purpose for the initial distribution of Citronelle funds and managed by the law firm Miller & Chevalier. Miller & Chevalier no longer represents the Refiner-Litigants. Further, DOE has not been able to obtain documentation regarding how previous Citronelle distributions were made among the various firms comprising the Refiner-Litigants. In light of these facts and because the Citronelle distribution proportions agreed to by the Refiner-Litigants were not a part of the Agreement and thus not binding on DOE, we propose that the Refiner-Litigant portion of the funds be divided in equal proportions for the firms, or successor firms, listed in Exhibit A of the Agreement. A list of these firms is

included as an appendix to this Notice. If a listed firm, or successor firm, does not submit the Required Information described below by the specified deadline, the funds will be considered unclaimed and will be transferred to the U.S. Treasury.

#### *B. The Airlines Account*

The remaining Airlines account funds will be split according to the percentages prescribed in the Settlement Agreement. Two sevenths of the Airlines account funds will be distributed to the United States Treasury. Two sevenths of the Airlines account funds will be distributed to the Refiner-Litigants Escrow Account. Two sevenths of the Airlines account funds will be distributed to the States in the proportions listed in Exhibit L of the Agreement.

One seventh of the Airlines account funds will be allocated to the End-Users account, which will be distributed in the same proportions as the residual Subpart V funds were distributed pursuant to our notice in 72 FR 46461, 46462 (August 14, 2007). The funds will be split equally, with half distributed to the United States Treasury and half distributed to the States. The funds distributed to the States will be divided in the proportions used for the final distribution of the Subpart V funds, which are identical to those listed in Exhibit L of the Agreement. All funds distributed to the States are subject to the same restricted uses as those received by that State as a result of the settlement of the case known as *In Re: Stripper Well Litigation*, M.D.L. No. 378. A list of distribution percentages is included as an appendix to this Notice. If a State does not submit the Required Information described below by the specified deadline, the funds will be considered unclaimed and will be transferred to the U.S. Treasury.

#### *C. Required Information*

In order to receive its allotted funds, each Recipient, including State Recipients, must submit the following no later than January 16, 2019.

- *Statement of Intent:* The Statement should be brief and include the Recipient's name and the representative's authority to claim the Recipient's funds.

- *Information Required by the Agreement:* The Agreement requires that certain Releases of Claims be executed and submitted to DOE before Recipients may receive distributions.

- If a Recipient has not ever submitted the relevant Release of Claims, it should contact DOE at the below address to obtain a copy of the

release, and should submit the executed release with the other required information described in this section.

- If a Recipient has previously submitted the relevant Release of Claims, it should submit to DOE a notarized statement certifying that it has submitted the release. The notarized statement should be submitted with the other required information described in this section.

- *Electronic Funds Transfer (EFT) Information:* Each Recipient must submit all information necessary for DOE to make an electronic distribution of funds, including the name and contact information (phone number, email address, and mailing address) of a person designated to be the Point of Contact, banking information, and Tax ID number. DOE will not contact Recipients regarding problems, discrepancies, or other issues with EFT information. DOE will notify the designated Point of Contact when the EFT is initiated. If an EFT is unsuccessful and the Recipient does not contact DOE to correct the error by the 14th day following the EFT initiation, the amount not distributed will be considered unclaimed and will be transferred to the United States Treasury.

Submissions should in PDF format and must be submitted by email to [OHA.Filings@hq.doe.gov](mailto:OHA.Filings@hq.doe.gov). The subject line should include "Citronelle Settlement Agreement Recipient Documents" and the name of the State or other Recipient. The Releases of Claims contained in the Agreement's Exhibits may be obtained by contacting Kristin L. Martin, Attorney-Advisor, Office of Hearings and Appeals, by email at [Kristin.Martin@hq.doe.gov](mailto:Kristin.Martin@hq.doe.gov), or by telephone at 202-287-1550.

### **Appendix A—Proposed Distribution Percentages and List of Refiner-Litigants**

#### **A. Citronelle Airline Account Funds**

Refiner-Litigants 28.57142857142860000%

- Each Refiner-Litigant Entity is entitled to 0.865800865800867% of the total Airline Account Funds.

United States Treasury  
35.71428571428570000%  
Alabama 0.54804016064259400%  
Alaska 0.13818786523157600%  
American Samoa 0.00636083244822057%  
Arizona 0.36634454245826900%  
Arkansas 0.45449277491405100%  
California 3.26944016176838000%  
Colorado 0.38401187480512000%  
Connecticut 0.60652108584973400%  
Delaware 0.16956338168467300%  
District of Columbia 0.08531354824083700%  
Florida 1.65010975432690000%  
Georgia 0.79531816470797200%  
Guam 0.05263184468083650%



Hawaii 0.24538846523323400%  
 Idaho 0.14657787754978300%  
 Illinois 1.64040323767528000%  
 Indiana 0.87972416423889800%  
 Iowa 0.46535022190036900%  
 Kansas 0.40036549196707900%  
 Kentucky 0.45780595111052400%  
 Louisiana 0.84950225360465700%  
 Maine 0.26254694847105300%  
 Maryland 0.63946084248035600%  
 Massachusetts 1.2259929840854000%  
 Michigan 1.21688372104464000%  
 Minnesota 0.61974582045967800%  
 Mississippi 0.48769574322855100%  
 Missouri 0.70516872255815100%  
 Montana 0.16165040119813900%  
 Nebraska 0.26336705431455200%  
 Nevada 0.14466342873599700%  
 New Hampshire 0.16645300019308600%  
 New Jersey 1.31838653652643000%  
 New Mexico 0.23395138247190300%  
 New York 2.76553651908726000%  
 No. Mariana Islands 0.00329014604847478%  
 North Carolina 0.80159665169915200%  
 North Dakota 0.13090382462201500%  
 Ohio 1.3420299992372000%  
 Oklahoma 0.44109500817469100%  
 Oregon 0.35401620870755400%  
 Pennsylvania 1.66287802161090000%  
 Puerto Rico 0.34023415151078600%  
 Rhode Island 0.14160268359603600%  
 South Carolina 0.42578568669101500%  
 South Dakota 0.12770074547322300%  
 Tennessee 0.57787034891897200%  
 Texas 2.63486674686911000%  
 Utah 0.21069728945457100%  
 Vermont 0.08547809926032230%  
 Virgin Islands 0.16520939843142600%  
 Virginia 0.91659346391607800%  
 Washington 0.54540262288818800%  
 West Virginia 0.21344547509163300%  
 Wisconsin 0.62838735451951800%  
 Wyoming 0.14563871266099600%  
 Total 35.71428571428570000%

#### B. Non-Litigant Refiners Account Funds

Refiner-Litigants 100%

- Each Refiner-Litigant Entity is entitled to 3.03% of the Non-Litigant Refiners Account Funds.

#### C. List of Refiner-Litigants

Amoco Oil Company  
 Ashland Oil, Inc.  
 Atlantic Richfield Company  
 Axel Johnson, Inc.  
 BHP Petroleum Americas Refining, Inc.  
 Castle Oil Corporation  
 Charter International Oil Company  
 Charter Oil Company  
 Chevron U.S.A., Inc.  
 Clark Oil & Refining Corporation  
 The Coastal Corporation  
 Commonwealth Oil Refining Company  
 Conoco Inc.  
 Crown Central Petroleum corp.  
 Diamond Shamrock Refining & Marketing Company  
 Exxon Corporation  
 Fina Oil and Chemical Company  
 Gulf States Oil & Refining Co.  
 Kerr-McGee Refining Corporation  
 La Gloria Oil and Gas Company  
 Marathon Oil Company  
 Mobil Oil Corporation  
 New England Petroleum Corporation

Oxy USA Inc.  
 Shell Oil Company  
 Sprague Energy Corporation  
 Tesoro Petroleum Corporation  
 Texaco Inc.  
 Texaco Refining & Marketing Inc.  
 Tosco Corporation  
 Total Petroleum Inc.  
 Union Pacific Resources Company  
 Wyatt Energy Inc.

Signed in Washington, DC on: October 12, 2018.

**Poli A. Marmolejos,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 2018–22705 Filed 10–17–18; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER19–70–000]

#### Keystone Power Pass-Through Holders LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Keystone Power Pass-Through Holders 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 30, 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](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 10, 2018.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2018–22711 Filed 10–17–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 3023–014]

#### Blackstone Hydro, Inc.; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–3023–014.

c. *Date filed:* October 1, 2018.

d. *Applicant:* Blackstone Hydro, Inc.

e. *Name of Project:* Tupperware Hydroelectric Project.

f. *Location:* On the Blackstone River in Providence County, Rhode Island and Worcester County, Massachusetts. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Lewis C. Loon, General Manager, Operations and Maintenance—USA/QC, KEI USA Power Management Inc., 423 Brunswick Avenue, Gardiner, ME 04345; Phone at (207) 203–3027, or email at [lewis.loon@kruger.com](mailto:lewis.loon@kruger.com).



i. *FERC Contact*: Amy Chang at (202) 502–8250, or [amy.chang@ferc.gov](mailto:amy.chang@ferc.gov).

j. *Cooperating agencies*: Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status*: November 30, 2018.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–3023–014.

m. The application is not ready for environmental analysis at this time.

n. *Project Description*: The existing Tupperware Hydroelectric Project consists of: (1) A 210-foot-long, 12-foot-high arch-type masonry dam and spillway (Tupperware Dam) with 12-inch-high flashboards and a crest elevation of 192.8 feet above mean sea level (msl) at the top of the flashboards; (2) an approximately 2-mile-long impoundment with a normal maximum elevation of 192.8 feet msl; (3) water conveyance structures that consist of: (a) An 1,100-foot-long, 60- to 100-foot-wide power canal located 700 feet upstream of the Tupperware Dam; (b) an 11.5-acre headpond at a normal maximum elevation of 192.8 feet msl; (c) a 300-foot-long, 40-foot-wide headrace canal structure; (d) a 46-foot-long, 16-foot-high headgate dam structure with four 7-foot-high, 8-foot-wide intake gates; and (e) four 8-foot-diameter, 22-foot-long buried penstocks; (4) a concrete and brick powerhouse containing four vertical Francis turbine-generator units with a total authorized capacity of 1,724 kilowatts; (5) a 100-foot-long, 40-foot-wide tailrace channel that discharges into the Blackstone River; (6) outlet work structures located upstream of the headgate dam structure in the headrace canal that consist of: (a) A 37-foot-long, 12-foot-high emergency spillway with a crest elevation of 196 feet msl located at the north end of the headrace; (b) two 5-foot-wide, 5-foot-high outlet gates; (c) a 60-foot-long outlet channel; and (d) two 36-inch-diameter, 150-foot-long concrete conduits that empty into a 190-foot-long, 20-foot-wide channel that discharges into the Blackstone River downstream from the tailrace channel; (7) a 90-foot-long, 4.16-kilovolt (kV) transmission line, a 3,000 kV-amperes step-up transformer, and a 1,300-foot-long, 13.8-kV transmission line connecting the project generators to the

regional electric grid; and (8) appurtenant facilities.

The project bypasses approximately 1 mile of the Blackstone River, and there is currently no required minimum instream flow for the bypassed reach. Blackstone Hydro operates the project in a run-of-river (ROR) mode with an annual average generation of approximately 4,027 megawatt-hours.

*Blackstone Hydro proposes to*: (1) continue operating the project in a ROR mode; (2) provide a year-round minimum flow of 35 cubic feet per second into the bypassed reach; (3) provide upstream eel passage at the project, following installation of an upstream eel passage facility at the downstream Woonsocket Falls Project No. 2972; (4) implement nighttime turbine shutdowns to facilitate downstream eel passage; and (5) develop procedures for operating the outlet gates to address water quality in the power canal.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments*: The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary) .....	December 2018.
Request Additional Information .....	December 2018.
Issue Acceptance Letter .....	March 2019.
Issue Scoping Document 1 for comments .....	April 2019.
Request Additional Information (if necessary) .....	June 2019.
Issue Scoping Document 2 .....	July 2019.
Issue Notice of Ready for Environmental Analysis .....	July 2019.
Commission issues Environmental Assessment .....	January 2020.

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: October 12, 2018.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2018-22728 Filed 10-17-18; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER19-92-000]

#### GRP Madison, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of GRP Madison, 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 November 1, 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](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: October 12, 2018.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. 2018-22717 Filed 10-17-18; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC19-9-000.

*Applicants:* GE Capital Global Holdings, LLC, Arlington Valley Solar Energy II, LLC, CPV Fairview, LLC, Russell City Energy Company, LLC, Caledonia Generating, LLC, Apollo Global Management, LLC.

*Description:* Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Arlington Valley Solar Energy II, LLC, et al.

*Filed Date:* 10/11/18.

*Accession Number:* 20181011-5154.

*Comments Due:* 5 p.m. ET 11/1/18.

*Docket Numbers:* EC19-10-000.

*Applicants:* Clean Energy Future—Lordstown, LLC, Perennial Lordstown, LLC.

*Description:* Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Clean Energy Future—Lordstown, LLC, et al.

*Filed Date:* 10/11/18.

*Accession Number:* 20181011-5165.

*Comments Due:* 5 p.m. ET 11/1/18.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER13-821-012; ER12-281-011; ER10-1529-005.

*Applicants:* Scrubgrass Generating Company, L.P. Northampton Generating Company, L.P., Northern Iowa Windpower, LLC.

*Description:* Notice of Change in Status of Scrubgrass Generating Company, L.P., et al.

*Filed Date:* 10/10/18.

*Accession Number:* 20181010-5165.

*Comments Due:* 5 p.m. ET 10/31/18.

*Docket Numbers:* ER14-152-009; ER13-1143-006; ER13-1144-006; ER10-2196-005; ER17-1849-002; ER10-2740-013; ER15-1657-007; ER10-2742-012.

*Applicants:* Elgin Energy Center, LLC, Essential Power OPP, LLC, Essential Power Rock Springs, LLC, Lakewood Cogeneration, L.P., Nautilus Power, LLC, Rocky Road Power, LLC, SEPG Energy Marketing Services, LLC, Tilton Energy LLC.

*Description:* Notice of Non-Material Change in Status of Elgin Energy Center, LLC, et al.

*Filed Date:* 10/11/18.

*Accession Number:* 20181011-5177.

*Comments Due:* 5 p.m. ET 11/1/18.

*Docket Numbers:* ER18-2272-001.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Tariff Amendment: 2018-10-12 SA 3144 ETI-Liberty County-ETI MPFCA (J472 J483) Sub Original to be effective 8/7/2018.

*Filed Date:* 10/12/18.

*Accession Number:* 20181012-5022.

*Comments Due:* 5 p.m. ET 11/2/18.

*Docket Numbers:* ER18-2336-001.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Tariff Amendment: 2018-10-12 SA 3150 CMS Energy Resource-METC GIA (J571) Substitute Original to be effective 8/15/2018.

*Filed Date:* 10/12/18.

*Accession Number:* 20181012-5026.

*Comments Due:* 5 p.m. ET 11/2/18.

*Docket Numbers:* ER19-89-000.

*Applicants:* North Rosamond Solar, LLC.

*Description:* Baseline eTariff Filing: Market-Based Rate Authorization and Request for Waivers and Blanket Approvals to be effective 10/12/2018.

*Filed Date:* 10/11/18.

*Accession Number:* 20181011-5146.

*Comments Due:* 5 p.m. ET 11/1/18.

*Docket Numbers:* ER19-90-000.

*Applicants:* Clean Energy Future—Lordstown, LLC.

*Description:* Baseline eTariff Filing: Reactive Power Tariff Application to be effective 12/1/2018.

*Filed Date:* 10/11/18.

*Accession Number:* 20181011-5150.

*Comments Due:* 5 p.m. ET 11/1/18.

*Docket Numbers:* ER19-91-000.

*Applicants:* GRP Franklin, LLC.  
*Description:* Baseline eTariff Filing: Application for Market Based Rate to be effective 12/8/2018.

*Filed Date:* 10/10/18.

*Accession Number:* 20181010–5163.

*Comments Due:* 5 p.m. ET 10/31/18.

*Docket Numbers:* ER19–92–000.

*Applicants:* GRP Madison, LLC.

*Description:* Baseline eTariff Filing: Market Based Rate Application to be effective 12/8/2018.

*Filed Date:* 10/10/18.

*Accession Number:* 20181010–5164.

*Comments Due:* 5 p.m. ET 10/31/18.

*Docket Numbers:* ER19–93–000.

*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2018–10–12\_SA 3175 Deltas Edge—EMI GIA (J679) to be effective 9/27/2018.

*Filed Date:* 10/12/18.

*Accession Number:* 20181012–5028.

*Comments Due:* 5 p.m. ET 11/2/18.

*Docket Numbers:* ER19–94–000.

*Applicants:* Clear River Energy LLC,

Invenergy Energy Management LLC.

*Description:* Request for Limited Waiver, et al. of Clear River Energy LLC, et al.

*Filed Date:* 10/11/18.

*Accession Number:* 20181011–5176.

*Comments Due:* 5 p.m. ET 10/25/18.

*Docket Numbers:* ER19–95–000.

*Applicants:* North Rosamond Solar, LLC.

*Description:* § 205(d) Rate Filing: Filing of Shared Facilities Common Ownership Agreement (Rattlesnake substation) to be effective 10/14/2018.

*Filed Date:* 10/12/18.

*Accession Number:* 20181012–5053.

*Comments Due:* 5 p.m. ET 11/2/18.

*Docket Numbers:* ER19–96–000.

*Applicants:* North Rosamond Solar, LLC.

*Description:* § 205(d) Rate Filing: Certificates of Concurrence for Shared Facilities Agreements to be effective 10/14/2018.

*Filed Date:* 10/12/18.

*Accession Number:* 20181012–5054.

*Comments Due:* 5 p.m. ET 11/2/18.

*Docket Numbers:* ER19–97–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Reliability Penalty Cost Recovery, et al. of Southwest Power Pool, Inc.

*Filed Date:* 10/11/18.

*Accession Number:* 20181011–5178.

*Comments Due:* 5 p.m. ET 11/1/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and

385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 12, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–22713 Filed 10–17–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER19–66–000]

#### Conemaugh Power Pass-Through Holders LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Conemaugh Power Pass-Through Holders 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 30, 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](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 10, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–22710 Filed 10–17–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER19–89–000]

#### North Rosamond Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of North Rosamond 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 November 1, 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](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: October 12, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018-22715 Filed 10-17-18; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. CP16-454-000]

#### **Rio Grande LNG, LLC, Rio Bravo Pipeline Company, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Rio Grande LNG Project**

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the Rio Grande LNG Project (Project) proposed by Rio Grande LNG, LLC (RG LNG) and Rio Bravo Pipeline Company, LLC (RB Pipeline) (collectively referred to as the RG Developers) in the above-referenced dockets. RG LNG requests authorization pursuant to section 3(a) of

the Natural Gas Act (NGA) to construct and operate liquefied natural gas (LNG) export facilities in Cameron County, Texas, and RB Pipeline requests a Certificate of Public Convenience and Necessity pursuant to section 7(c) of the NGA to construct, operate, and maintain a new pipeline system in Jim Wells, Kleberg, Kenedy, Willacy, and Cameron Counties, Texas.

The draft EIS assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that construction and operation of the Rio Grande LNG Project would result in some adverse environmental impacts, but these impacts would be reduced to less than significant levels. However, the Rio Grande LNG Project, combined with other projects within the geographic scope, would result in certain significant cumulative impacts.

The U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Department of Energy, U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, the DOT's Federal Aviation Administration, the U.S. Fish and Wildlife Service, the National Park Service, the U.S. Environmental Protection Agency, and the National Oceanic and Atmospheric Administration—National Marine Fisheries Service participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. Although the cooperating agencies provided input to the conclusions and recommendations presented in the draft EIS, the agencies will present their own conclusions and recommendations in their respective Records of Decision for the Project.

The draft EIS addresses the potential environmental effects of the construction and operation of the following proposed facilities:

- Six liquefaction trains at the Rio Grande LNG Terminal, each with a nominal capacity of 4.5 million tons per annum of LNG for export, resulting in the total nominal capacity of 27.0 million tons per annum;
- four LNG storage tanks, each with a net capacity of 180,000 cubic meters;
- LNG truck loading facilities with four loading bays, each with the capacity to load 12 to 15 trucks per day;
- a refrigerant storage area and truck unloading facilities;

- a condensate storage area and truck loading facilities;

- a new marine slip with two LNG vessel berths to accommodate simultaneous loading of two LNG vessels, an LNG vessel and support vessel maneuvering area, and an LNG transfer system;

- a materials off-loading facility;

- 2.4 miles of 42-inch-diameter pipeline, including 0.8 mile of dual pipeline, to gather gas from existing systems in Kleberg and Jim Wells Counties (referred to as the Header System);

- 135.5 miles of parallel 42-inch-diameter pipelines originating in Kleberg County and terminating at the Rio Grande LNG Terminal in Cameron County (referred to as Pipelines 1 and 2);

- four stand-alone metering sites along the Header System;

- two new interconnect booster compressor stations, each with a metering site;

- three new compressor stations (one at the LNG Terminal site); and

- other associated utilities, systems, and facilities (yards, access roads, etc.).

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The draft EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website ([www.ferc.gov](http://www.ferc.gov)), on the Environmental Documents page (<https://www.ferc.gov/industries/gas/enviro/eis.asp>). In addition, the draft EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (<https://www.ferc.gov/docs-filing/elibrary.asp>), click on General Search, and enter the docket number in the Docket Number field, excluding the last three digits (*i.e.* CP16-454 or CP16-455). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Any person wishing to comment on the draft EIS may do so. Your comments should focus on draft EIS's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive

your comments on or before 5:00 p.m. Eastern Time on December 3, 2018.

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov). Please carefully follow these instructions so

that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's website ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on

eRegister. If you are filing a comment on a particular project, please select "Comment on a Filing" as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the Project docket numbers (CP16-454-000, CP16-455-000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426

(4) In lieu of sending written or electronic comments, the Commission invites you to attend one of the public comment sessions its staff will conduct in the Project area to receive comments on the draft EIS, scheduled as follows:

Date and time	Location
Tuesday, November 13, 2018: 5:00–8:00 p.m. local time .....	Texas A&M, 700 University Blvd., Kingsville, TX 78363, 361–593–4173.
Wednesday, November 14, 2018: 5:00–8:00 p.m. local time .....	La Quinta, 128 N Expressway 77, Raymondville, TX 78750, 956–689–4000.
Thursday, November 15, 2018: 5:00–9:00 p.m. local time .....	Port Isabel Convention Center, 309 E. Railroad Ave., Port Isabel, TX 78578, 956–433–7195.

The primary goal of these comment sessions is to have you identify the specific environmental issues and concerns with the draft EIS. Individual verbal comments will be taken on a one-on-one basis with a court reporter. This format is designed to receive the maximum amount of verbal comments in a convenient way during the timeframe allotted.

The Kingsville and Raymondville scoping sessions are scheduled from 5:00 p.m. to 8:00 p.m. local time, and the Port Isabel scoping session is scheduled from 5:00 p.m. to 9:00 p.m. local time. You may arrive at any time after 5:00 p.m. There will not be a formal presentation by Commission staff when the session opens. If you wish to speak, the Commission staff will hand out numbers in the order of your arrival. Comments will be taken until the closing hour for all scoping sessions. However, if no additional numbers have been handed out and all individuals who wish to provide comments have had an opportunity to do so, staff may conclude the session 30 minutes before the closing hour. Please see appendix 1 for additional information on the session format and conduct.<sup>1</sup>

Your verbal comments will be recorded by the court reporter (with FERC staff or representative present) and become part of the public record for this proceeding. Transcripts will be publicly available on FERC's eLibrary system (see below for instructions on using eLibrary). If a significant number of people are interested in providing verbal comments in the one-on-one settings, a time limit of 5 minutes may be implemented for each commentator.

<sup>1</sup> The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at [www.ferc.gov](http://www.ferc.gov) using the link called eLibrary or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

It is important to note that verbal comments hold the same weight as written or electronically submitted comments. Although there will not be a formal presentation, Commission staff will be available throughout the comment session to answer your questions about the environmental review process.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214). Motions to intervene are more fully described at <http://www.ferc.gov/resources/guides/how-to/intervene.asp>. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding that no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

#### Questions?

Additional information about the Projects is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website ([www.ferc.gov](http://www.ferc.gov)) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to [www.ferc.gov/docs-filing/esubscription.asp](http://www.ferc.gov/docs-filing/esubscription.asp).

Dated: October 12, 2018.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2018-22727 Filed 10-17-18; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER19-91-000]

#### GRP Franklin, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of GRP Franklin, 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 November 1, 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](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: October 12, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018-22716 Filed 10-17-18; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

#### Filings Instituting Proceedings

*Docket Number:* PR18-84-000.

*Applicants:* Comanche Trail Pipeline, LLC.

*Description:* Tariff filing per 284.123(b), (e) + (g): Comanche Trail Pipeline, LLC Statement of Operating Conditions, October 1, 2018 to be effective 10/1/2018.

*Filed Date:* 9/28/18.

*Accession Number:* 201809285065.

*Comments Due:* 5 p.m. ET 10/19/18.

*284.123(g) Protests Due:* 5 p.m. ET 11/27/18.

*Docket Number:* PR18-85-000.

*Applicants:* Trans-Pecos Pipeline, LLC.

*Description:* Tariff filing per 284.123(b), (e) + (g): Trans-Pecos Pipeline, LLC Statement of Operating Conditions, October 1, 2018 to be effective 10/1/2018.

*Filed Date:* 9/28/18.

*Accession Number:* 201809285066.

*Comments Due:* 5 p.m. ET 10/19/18.

*284.123(g) Protests Due:* 5 p.m. ET 11/27/18.

*Docket Number:* PR18-86-000.

*Applicants:* Energy Transfer Fuel, LP.

*Description:* Tariff filing per 284.123(b), (e) + (g): Energy Transfer Fuel, LP Statement of Operating Conditions, October 1, 2018 to be effective 10/1/2018.

*Filed Date:* 9/28/18.

*Accession Number:* 201809285072.

*Comments Due:* 5 p.m. ET 10/19/18.

*284.123(g) Protests Due:* 5 p.m. ET 11/27/18.

*Docket Number:* PR18-87-000.

*Applicants:* ONEOK Field Services Company, L.L.C.

*Description:* Tariff filing per 284.123(b)(2) + (g): OFS 311 Cost of Service Rate Filing to be effective 9/28/2018.

*Filed Date:* 9/28/18.

*Accession Number:* 201809285081.

*Comments Due:* 5 p.m. ET 10/19/18.

*284.123(g) Protests Due:* 5 p.m. ET 11/27/18.

*Docket Number:* PR18-88-000.

*Applicants:* Houston Pipe Line Company LP.

*Description:* Tariff filing per 284.123(b), (e) + (g): Houston Pipe Line Company, LP Statement of Operating Conditions, October 1, 2018 to be effective 10/1/2018.

*Filed Date:* 9/28/18.

*Accession Number:* 201809285082.

*Comments Due:* 5 p.m. ET 10/19/18.

*284.123(g) Protests Due:* 5 p.m. ET 11/27/18.

*Docket Number:* PR18-89-000.

*Applicants:* Red Bluff Express Pipeline, LLC.

*Description:* Tariff filing per 284.123(b), (e) + (g): Red Bluff Express Pipeline, LLC Statement of Operating

Conditions, 10/1/2018 to be effective 10/1/2018.

*Filed Date:* 9/28/18.

*Accession Number:* 201809285085.

*Comments Due:* 5 p.m. ET 10/19/18.

*284.123(g) Protests Due:* 5 p.m. ET 11/27/18.

*Docket Number:* PR18-90-000.

*Applicants:* Regency Intrastate Gas LP.

*Description:* Tariff filing per 284.123(b), (e) + (g): Regency Intrastate Gas LP Statement of Operating Conditions, October 1, 2018 to be effective 10/1/2018.

*Filed Date:* 9/28/18.

*Accession Number:* 201809285088.

*Comments Due:* 5 p.m. ET 10/19/18.

*284.123(g) Protests Due:* 5 p.m. ET 11/27/18.

*Docket Numbers:* RP18-1257-001.

*Applicants:* National Fuel Gas Supply Corporation.

*Description:* Compliance filing GT&C Section 42 Tracker Filing—Amendment to be effective 11/1/2018.

*Filed Date:* 10/4/18.

*Accession Number:* 20181004-5184.

*Comments Due:* 5 p.m. ET 10/16/18.

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 10, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018-22712 Filed 10-17-18; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC19–6–000.  
*Applicants:* NRG REMA LLC, Keystone Power Pass-Through Holders LLC, Conemaugh Power Pass-Through Holders LLC.  
*Description:* Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of NRG REMA LLC, et al.  
*Filed Date:* 10/9/18.  
*Accession Number:* 20181009–5298.  
*Comments Due:* 5 p.m. ET 10/30/18.  
*Docket Numbers:* EC19–7–000.  
*Applicants:* MidAmerican Wind Tax Equity Holdings, LLC, Blue Cloud Wind Energy, LLC, Blue Cloud TE Partnership LLC, Sponsor Blue Cloud HoldCo LLC.  
*Description:* Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Blue Cloud Wind Energy, LLC, et al.  
*Filed Date:* 10/9/18.  
*Accession Number:* 20181009–5324.  
*Comments Due:* 5 p.m. ET 10/30/18.  
 Take notice that the Commission received the following exempt wholesale generator filings:  
*Docket Numbers:* EG19–6–000.  
*Applicants:* Conemaugh Power Pass-Through Holders LLC.  
*Description:* Notice of Self-Certification of Conemaugh Power Pass-Through Holders LLC.  
*Filed Date:* 10/10/18.  
*Accession Number:* 20181010–5070.  
*Comments Due:* 5 p.m. ET 10/31/18.  
*Docket Numbers:* EG19–7–000.  
*Applicants:* Keystone Power Pass-Through Holders LLC.  
*Description:* Notice of Self-Certification of Keystone Power Pass-Through Holders LLC.  
*Filed Date:* 10/10/18.  
*Accession Number:* 20181010–5071.  
*Comments Due:* 5 p.m. ET 10/31/18.  
*Docket Numbers:* EG19–8–000.  
*Applicants:* GRP Madison, LLC.  
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of GRP Madison, LLC.  
*Filed Date:* 10/10/18.  
*Accession Number:* 20181010–5084.  
*Comments Due:* 5 p.m. ET 10/31/18.  
*Docket Numbers:* EG19–9–000.  
*Applicants:* GRP Franklin, LLC.  
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of GRP Franklin, LLC.  
*Filed Date:* 10/10/18.  
*Accession Number:* 20181010–5085.  
*Comments Due:* 5 p.m. ET 10/31/18.  
 Take notice that the Commission received the following electric rate filings:  
*Docket Numbers:* ER10–2527–007; ER10–1821 018; ER10–2400 010; ER10–2528 003; ER10–2529 003; ER10–2530

004; ER10–2531 008; ER10–2532 013; ER10–2533 007; ER10–2534 004; ER10–2535 008; ER11–4475 011.  
*Applicants:* Allegheny Ridge Wind Farm, LLC, Crescent Ridge LLC, GSG, LLC, Mendota Hills, LLC, Cedar Creek Wind Energy, LLC, Goshen Phase II LLC, Rockland Wind Farm LLC, Aragonne Wind LLC, Buena Vista Energy, LLC, Kumeyaay Wind LLC, Blue Canyon Windpower LLC, Caprock Wind LLC.  
*Description:* Notice of Non-Material Change in Status of Allegheny Ridge Wind Farm, LLC, et al.  
*Filed Date:* 10/9/18.  
*Accession Number:* 20181009–5326.  
*Comments Due:* 5 p.m. ET 10/30/18.  
*Docket Numbers:* ER17–1442–002.  
*Applicants:* Axiall, LLC.  
*Description:* Supplement to June 28, 2018 Updated Market Power Analysis for Central Region of Axiall, LLC.  
*Filed Date:* 10/9/18.  
*Accession Number:* 20181009–5318.  
*Comments Due:* 5 p.m. ET 10/30/18.  
*Docket Numbers:* ER19–69–000.  
*Applicants:* Rockland Wind Farm LLC.  
*Description:* § 205(d) Rate Filing: Notice of Change in Category Seller Status to be effective 10/10/2018.  
*Filed Date:* 10/9/18.  
*Accession Number:* 20181009–5235.  
*Comments Due:* 5 p.m. ET 10/30/18.  
*Docket Numbers:* ER19–70–000.  
*Applicants:* Keystone Power Pass-Through Holders LLC.  
*Description:* Baseline eTariff Filing: Market-Based Rate Tariff Application to be effective 10/9/2018.  
*Filed Date:* 10/9/18.  
*Accession Number:* 20181009–5236.  
*Comments Due:* 5 p.m. ET 10/30/18.  
*Docket Numbers:* ER19–71–000.  
*Applicants:* Midcontinent Independent System Operator, Inc.  
*Description:* § 205(d) Rate Filing: 2018–10–09\_SA 3170 Crossett Solar—EAI GIA (J680) to be effective 9/24/2018.  
*Filed Date:* 10/9/18.  
*Accession Number:* 20181009–5243.  
*Comments Due:* 5 p.m. ET 10/30/18.  
*Docket Numbers:* ER19–72–000.  
*Applicants:* Bruce Power Inc.  
*Description:* § 205(d) Rate Filing: Notice of Non-Material Change in Status and Change in Category Seller Status to be effective 10/10/2018.  
*Filed Date:* 10/9/18.  
*Accession Number:* 20181009–5255.  
*Comments Due:* 5 p.m. ET 10/30/18.  
*Docket Numbers:* ER19–73–000.  
*Applicants:* Conemaugh Power Pass-Through Holders LLC.  
*Description:* Initial rate filing: Reactive Rate Filing to be effective 12/31/9998.

*Filed Date:* 10/9/18.  
*Accession Number:* 20181009–5260.  
*Comments Due:* 5 p.m. ET 10/30/18.  
*Docket Numbers:* ER19–74–000.  
*Applicants:* Keystone Power Pass-Through Holders LLC.  
*Description:* Initial rate filing: Reactive Rate Filing to be effective 12/31/9998.  
*Filed Date:* 10/9/18.  
*Accession Number:* 20181009–5266.  
*Comments Due:* 5 p.m. ET 10/30/18.  
*Docket Numbers:* ER19–75–000.  
*Applicants:* Portsmouth Genco, LLC.  
*Description:* § 205(d) Rate Filing: Request for Category 1 Status to be effective 10/10/2018.  
*Filed Date:* 10/9/18.  
*Accession Number:* 20181009–5284.  
*Comments Due:* 5 p.m. ET 10/30/18.  
*Docket Numbers:* ER19–76–000.  
*Applicants:* Keystone Power LLC.  
*Description:* § 205(d) Rate Filing: Keystone MBR Tariff Revisions to be effective 10/10/2018.  
*Filed Date:* 10/10/18.  
*Accession Number:* 20181010–5000.  
*Comments Due:* 5 p.m. ET 10/31/18.  
*Docket Numbers:* ER19–77–000.  
*Applicants:* Conemaugh Power LLC.  
*Description:* § 205(d) Rate Filing: Conemaugh MBR Tariff Revisions to be effective 10/10/2018.  
*Filed Date:* 10/10/18.  
*Accession Number:* 20181010–5002.  
*Comments Due:* 5 p.m. ET 10/31/18.  
*Docket Numbers:* ER19–78–000.  
*Applicants:* Panther Creek Power Operating, LLC.  
*Description:* § 205(d) Rate Filing: Panther Creek MBR Tariff Revisions to be effective 10/10/2018.  
*Filed Date:* 10/10/18.  
*Accession Number:* 20181010–5004.  
*Comments Due:* 5 p.m. ET 10/31/18.  
*Docket Numbers:* ER19–79–000.  
*Applicants:* PJM Interconnection, L.L.C.  
*Description:* § 205(d) Rate Filing: Original ISA and CSA, SA Nos. 5212 and 5213; Queue No. AB2–077/AB2–078/AB2–079 to be effective 9/10/2018.  
*Filed Date:* 10/10/18.  
*Accession Number:* 20181010–5044.  
*Comments Due:* 5 p.m. ET 10/31/18.  
*Docket Numbers:* ER19–80–000.  
*Applicants:* PJM Interconnection, L.L.C.  
*Description:* § 205(d) Rate Filing: Revisions to OA, Schedule 6, sec. 1.5 re: Market Efficiency Process Enhancements to be effective 12/10/2018.  
*Filed Date:* 10/10/18.  
*Accession Number:* 20181010–5045.  
*Comments Due:* 5 p.m. ET 10/31/18.  
*Docket Numbers:* ER19–81–000.



*Applicants:* Athens Energy, LLC.  
*Description:* Report Filing: Refund Report (ER17–1954) to be effective N/A.  
*Filed Date:* 10/10/18.  
*Accession Number:* 20181010–5104.  
*Comments Due:* 5 p.m. ET 10/31/18.  
*Docket Numbers:* ER19–81–000.  
*Applicants:* Athens Energy, LLC.  
*Description:* Baseline eTariff Filing: Application for Market-Based Rates to be effective 10/10/2018.  
*Filed Date:* 10/10/18.  
*Accession Number:* 20181010–5100.  
*Comments Due:* 5 p.m. ET 10/31/18.  
*Docket Numbers:* ER19–82–000.  
*Applicants:* AEP Texas Inc.  
*Description:* § 205(d) Rate Filing: AEPTX-La Chalupa Interconnection Agreement to be effective 9/28/2018.  
*Filed Date:* 10/10/18.  
*Accession Number:* 20181010–5103.  
*Comments Due:* 5 p.m. ET 10/31/18.  
*Docket Numbers:* ER19–83–000.  
*Applicants:* AEP Texas Inc.  
*Description:* § 205(d) Rate Filing: AEPTX–OCI Alamo 6 System Upgrade Agreement Cancellation to be effective 9/18/2018.  
*Filed Date:* 10/10/18.  
*Accession Number:* 20181010–5107.  
*Comments Due:* 5 p.m. ET 10/31/18.  
*Docket Numbers:* ER19–84–000.  
*Applicants:* ISO New England Inc., New England Power Pool Participants Committee.  
*Description:* § 205(d) Rate Filing: Enhanced Storage Participation Revisions to be effective 4/1/2019.  
*Filed Date:* 10/10/18.  
*Accession Number:* 20181010–5114.  
*Comments Due:* 5 p.m. ET 10/31/18.

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 10, 2018.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2018–22709 Filed 10–17–18; 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:* ER16–471–002.  
*Applicants:* Midcontinent Independent System Operator, Inc., Merricourt Power Partners LLC.  
*Description:* Pre-Arranged/Pre-Agreed (Settlement and Settlement Agreement) Filing of the Midcontinent Independent System Operator, Inc., et al.  
*Filed Date:* 10/11/18.  
*Accession Number:* 20181011–5180.  
*Comments Due:* 5 p.m. ET 11/1/18.  
*Docket Numbers:* ER18–2194–001.  
*Applicants:* Fox Creek Farm Solar, LLC.  
*Description:* Tariff Amendment: Amendment to 1 to be effective 10/23/2018.  
*Filed Date:* 10/12/18.  
*Accession Number:* 20181012–5141.  
*Comments Due:* 5 p.m. ET 11/2/18.  
*Docket Numbers:* ER19–98–000.  
*Applicants:* Midcontinent Independent System Operator, Inc.  
*Description:* § 205(d) Rate Filing: 2018–10–12 Filing to revise Attachment WW to be effective 12/12/2018.  
*Filed Date:* 10/12/18.  
*Accession Number:* 20181012–5084.  
*Comments Due:* 5 p.m. ET 11/2/18.  
*Docket Numbers:* ER19–99–000.  
*Applicants:* PJM Interconnection, L.L.C.  
*Description:* § 205(d) Rate Filing: Revisions to the PJM OATT to reflect AMPT as a Transmission Own to be effective 12/14/2018.  
*Filed Date:* 10/12/18.  
*Accession Number:* 20181012–5086.  
*Comments Due:* 5 p.m. ET 11/2/18.  
*Docket Numbers:* ER19–100–000.  
*Applicants:* PJM Interconnection, L.L.C.  
*Description:* § 205(d) Rate Filing: Revisions to the CTOA Attachment A to reflect AMPT as a new Transmission Owner to be effective 12/14/2018.  
*Filed Date:* 10/12/18.  
*Accession Number:* 20181012–5087.  
*Comments Due:* 5 p.m. ET 11/2/18.  
*Docket Numbers:* ER19–101–000.  
*Applicants:* R–WS Antelope Valley Gen-Tie, LLC.  
*Description:* § 205(d) Rate Filing: Certificate of Concurrence for Shared Facilities Agreement to be effective 10/14/2018.  
*Filed Date:* 10/12/18.  
*Accession Number:* 20181012–5088.

*Comments Due:* 5 p.m. ET 11/2/18.

*Docket Numbers:* ER19–102–000.

*Applicants:* Luminant Energy Company LLC.

*Description:* Baseline eTariff Filing: Market-Based Rate Application to be effective 10/13/2018.

*Filed Date:* 10/12/18.

*Accession Number:* 20181012–5142.

*Comments Due:* 5 p.m. ET 11/2/18.

*Docket Numbers:* ER19–103–000.

*Applicants:* Wisconsin Electric Power Company.

*Description:* § 205(d) Rate Filing: WEPCo Formula Rate Tariff Filing to be effective 12/11/2018.

*Filed Date:* 10/12/18.

*Accession Number:* 20181012–5151.

*Comments Due:* 5 p.m. ET 11/2/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 12, 2018.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2018–22714 Filed 10–17–18; 8:45 am]

**BILLING CODE 6717–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Tuesday, October 23, 2018 at 10:00 a.m.

**PLACE:** 1050 First Street NE, Washington, DC.

**STATUS:** This meeting will be closed to the public.

#### MATTERS TO BE CONSIDERED:

Compliance matters pursuant to 52 U.S.C. 30109

Matters concerning participation in civil actions or proceedings or arbitration

\* \* \* \* \*

**CONTACT PERSON FOR MORE INFORMATION:**  
 Judith Ingram, Press Officer, Telephone: (202) 694–1220.



Signed:

**Dayna C. Brown,**

*Secretary and Clerk of the Commission.*

[FR Doc. 2018–22887 Filed 10–16–18; 4:15 pm]

**BILLING CODE 6715–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 5, 2018.

*A. Federal Reserve Bank of Minneapolis* (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Belva H. Rasmussen 2018–A Irrevocable Trust under Agreement dated April 26, 2018, and the Belva H. Rasmussen 2018–B Irrevocable Trust under Agreement dated April 26, 2018, both of Minneapolis, Minnesota (trustees Chris R. Fitzmorris, Little Canada, Minnesota; Teresa J. Rasmussen, Orono Minnesota; Eva B. Rasmussen, Edina, Minnesota; and Thomas M. Beck, Eden Prairie, Minnesota);* to acquire voting shares of Northeast Securities Corporation, Minneapolis, Minnesota, and thereby indirectly acquire shares of Northeast Bank, Minneapolis, Minnesota.

In addition, the Notificants will join the Rasmussen family shareholder group acting in concert.

Board of Governors of the Federal Reserve System, October 15, 2018.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2018–22738 Filed 10–17–18; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 13, 2018.

*A. Federal Reserve Bank of Dallas* (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Dominion Bancshares, Inc., Dallas, Texas;* to become a bank holding company by acquiring 100 percent of Grapeland State Bank, Grapeland, Texas.

Board of Governors of the Federal Reserve System, October 12, 2018.

**Ann Misback,**

*Secretary of the Board.*

[FR Doc. 2018–22670 Filed 10–17–18; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and

§ 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 1, 2018.

*A. Federal Reserve Bank of Minneapolis* (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Matthew Moran, Seattle, Washington; Gellert Dornay, Mercer Island, Washington; and Robert Cumming, Snohomish, Washington;* each individually and, with Kevin Johnston, Issaquah, Washington, as a group acting in concert, to acquire voting shares of Ceylon Bancorporation, Inc. and thereby indirectly acquire control of the State Bank of Ceylon, both of Ceylon, Minnesota.

Board of Governors of the Federal Reserve System, October 12, 2018.

**Ann Misback,**

*Secretary of the Board.*

[FR Doc. 2018–22671 Filed 10–17–18; 8:45 am]

**BILLING CODE P**

## FEDERAL RETIREMENT THRIFT INVESTMENT

### Board Meeting

**October 22, 2018, 8:30 a.m., (In-Person)**

#### Open Session

1. Approval of the Minutes of the September 17, 2018 Board Meeting
2. Investment Manager Annual Service Review
3. Monthly Reports
  - (a) Participant Activity
  - (b) Legislative
4. Quarterly Reports
  - (c) Investment Performance
  - (d) Budget Review
5. Mid-Year Financial Audit
6. ORM Annual Report/FEVS Update
7. OEP Annual Report/TSP Health Report
8. Audit/Security Update

#### Closed Session

Material covered by 5 U.S.C. (c)(9)(B).

#### CONTACT PERSON FOR MORE INFORMATION:

Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: October 12, 2018.

**Dharmesh Vashee,**

*Deputy General Counsel, Federal Retirement Thrift Investment Board.*

[FR Doc. 2018-22675 Filed 10-17-18; 8:45 am]

BILLING CODE 6760-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Docket Number CDC-2018-0085, NIOSH-319]

#### Partnership Opportunity To List in a Public Database (PPE-Info) Appropriate Personnel Protective Equipment Products That Protect Workers Against Fentanyl Exposure

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The National Institute for Occupational Safety and Health of the Centers for Disease Control and Prevention announces the opportunity for manufacturers to participate in an evolution of the PPE-Info database to include products identified as protection against fentanyl exposure. To view the notice and related materials, visit <https://www.regulations.gov> and enter CDC-2018-0085 in the search field and click "Search."

**DATES:** Electronic or written comments expressing willingness to participate must be received by November 19, 2018. Other types of comments are not being requested. Product information is not required to be submitted in this timeframe.

**ADDRESSES:** You may submit comments, identified by CDC-2018-0085; NIOSH-319, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov> Follow the instructions for submitting comments.
- **Mail:** National Institute for Occupational Safety and Health, NIOSH Docket Office, 1090 Tusculum Avenue, MS C-34, Cincinnati, Ohio 45226-1998.

**Instructions:** All information received in response to this notice must include the agency name and docket number [CDC-2018-0085; NIOSH-319]. All relevant comments received will be

posted without change to <https://www.regulations.gov>, including any personal information provided. For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>. All information received in response to this notice will also be available for public examination and copying at the NIOSH Docket Office, 1150 Tusculum Avenue, Room 155, Cincinnati, OH 45226-1998.

#### FOR FURTHER INFORMATION CONTACT:

[ppeconcerns@cdc.gov](mailto:ppeconcerns@cdc.gov), NIOSH, National Personal Protective Technology Laboratory, Office of the Director, 626 Cochran Mill Road, Building 141, Pittsburgh, PA, 15236, 1-888-654-2294 (a toll free number).

**SUPPLEMENTARY INFORMATION:** PPE-Info is a collection of national personal protective equipment (PPE) information. The database provides PPE standards setting organizations, manufacturers, suppliers, purchasers, and end users with the ability to conduct general- or advanced-criteria searches of (1) relevant standards, (2) associated product types, (3) target occupational groups, (4) basic conformity assessment specifications, and (5) additional pertinent information. PPE-Info is the only U.S. database that is maintained with comprehensive information about national PPE standards and select product information. Using this collection of information, PPE-Info currently offers the following capabilities:

- Identification of PPE standards, searchable by PPE type, hazard category, Standards Development Organization, Standard Occupational Classification (SOC) code, standard type, and standard status, with basic- and advanced-search functions;
- A PPE-Selection Logic Tool for potential Ebola exposure; and
- Identification of 3rd party testing laboratories whose scope of accreditation includes testing to the identified standard.

**Background:** In 2011 NIOSH began an effort to address the recommendations issued by the Institute of Medicine (IOM) in its report "*Certifying Personal Protective Technologies: Improving Worker Safety*," which recommended that "NIOSH NPPTL should continue and expand its role in PPT [personal protective technology] conformity assessment. Specifically, NPPTL should expand its role and become the primary clearinghouse for reliable information on non-respirator PPT." The PPE-Info Database is a key element designed to

address this IOM recommendation. First developed in 2012, the PPE-Info website is available for public use at <https://www.cdc.gov/PPEinfo>. In addition, there is a tutorial for users on the features and use of the current PPE-Info database at <https://niosh-connect.adobeconnect.com/p7o6sz3xxt5/>.

**Information Needs:** NIOSH is expanding the PPE-Info Database as a tool to connect existing protection standards with relevant PPE information for protection against fentanyl and its analogues. This new aspect of the NIOSH PPE-Info Database will allow end users (e.g., emergency responders) to find products (e.g., gloves and coveralls) that are compliant (as confirmed by manufacturer) with the protection standards outlined by the CDC Fentanyl PPE Guidance at <https://www.cdc.gov/niosh/topics/fentanyl/risk.html>. The objective is to include information about all PPE types associated with the CDC Fentanyl PPE Guidance as the information becomes available. Since there is no single source for this information, NIOSH is requesting that manufacturers provide CDC with their product information directly for input into the database to provide end users with Fentanyl PPE selection options. NIOSH will develop individual Memoranda of Understanding (MOU) with PPE manufacturers to facilitate the sharing of product information. The primary focus of the collaboration with an individual manufacturer will be (1) the receipt of manufacturer product information to be collected and displayed in the NIOSH PPE-Info Database; and (2) the verification, by the manufacturer, of product information displayed in the NIOSH PPE-Info Database. The purpose of these collaborations is to obtain information on all currently available PPE types that comply with the CDC Fentanyl PPE Guidance.

#### References

Cohen HJ, Liverman CT [2010]. *Certifying Personal Protective Technologies: Improving Worker Safety*. <https://www.nap.edu/catalog/12962/certifying-personal-protective-technologies-improving-worker-safety>.

Dated: October 15, 2018.

**Frank J Hearl,**

*Chief of Staff, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.*

[FR Doc. 2018-22721 Filed 10-17-18; 8:45 am]

BILLING CODE 4163-19-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Administration for Children and Families****Proposed Information Collection Activity; Comment Request**

*Proposed Projects:* Office of Child Care CCDF Onsite Monitoring.

*Title:* Child Care and Development Fund (CCDF) State Monitoring Compliance Demonstration Packet.

*OMB No.:* New.

*Description:* The proposed data collection form is designed as part of the evidence collection process of the Onsite Monitoring system and provides states with an opportunity to propose

how they, as block-grant recipients, will choose to demonstrate compliance.

*Respondents:* 51 States and Territories triennially.

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Compliance Demonstration Chart .....	17	1	16	272
Document Submission Chart .....	17	1	80	1,360

*Estimated Total Annual Burden Hours:* 1,632 hours.

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chap 35), the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington DC 20201. Attn: ACF Reports Clearance Officer. Email address: [infocollection@acf.hhs.gov](mailto: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 functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2018–22700 Filed 10–17–18; 8:45 am]

**BILLING CODE 4184–43–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration**

[Docket No. FDA–2018–D–3443]

**Content of Premarket Submissions for Management of Cybersecurity in Medical Devices; Draft Guidance for Industry and Food and Drug Administration Staff; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled “Content of Premarket Submissions for Management of Cybersecurity in Medical Devices.” As more medical devices are becoming interconnected, cybersecurity threats have become more numerous, more frequent, more severe, and more clinically impactful. There is a need to provide manufacturers with specific technical recommendations (e.g., appropriate threat modeling and other premarket testing) to help ensure device cybersecurity. The updates to the existing “Content of Premarket Submissions for Management of Cybersecurity in Medical Devices” guidance is anticipated to better protect against risks, such as ransomware campaigns, that could disrupt clinical operations and delay patient care and risks, such as exploiting a vulnerability that enables attacks on multiple patients. This draft guidance is not final nor is it in effect at this time.

**DATES:** Submit either electronic or written comments on the draft guidance by March 18, 2019 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–3443 for “Content of Premarket Submissions for Management of Cybersecurity in Medical Devices.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

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

An electronic copy of the guidance document is available for download

from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled “Content of Premarket Submissions for Management of Cybersecurity in Medical Devices” to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Schwartz, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5434, Silver Spring, MD 20993–0002, 301–796–6937, or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The need for effective cybersecurity to assure medical device functionality and safety has become more important with the increasing use of wireless, internet- and network-connected devices, and the frequent electronic exchange of medical device-related health information. In addition, cybersecurity threats to the healthcare sector have become more frequent, more severe, and more clinically impactful. Cybersecurity incidents have rendered medical devices and hospital networks inoperable, disrupting the delivery of patient care across healthcare facilities in the United States and globally. Such cyberattacks and exploits can delay diagnoses and/or treatment and may lead to patient harm.

Although FDA issued guidance addressing recommendations for device cybersecurity information in premarket submissions in 2014,<sup>1</sup> the rapidly evolving landscape, and the increased

understanding of the threats and their potential mitigations necessitates an updated approach. This draft guidance is intended to provide recommendations to industry regarding cybersecurity device design, labeling, and the documentation that FDA recommends be included in premarket submissions for devices with cybersecurity risk. These recommendations can facilitate an efficient premarket review process and help ensure that marketed medical devices are sufficiently resilient to cybersecurity threats.

FDA plans to hold a public workshop on January 29th and January 30th, 2019.<sup>2</sup> FDA seeks to bring together diverse stakeholders to discuss, in-depth, the draft guidance, “Content of Premarket Submissions for Management of Cybersecurity in Medical Devices” and the subtopic of the draft guidance regarding a Cybersecurity Bill of Materials (CBOM), which can be a critical element in identifying assets, threats, and vulnerabilities.

##### **II. Significance of Guidance**

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on Content of Premarket Submissions for Management of Cybersecurity in Medical Devices. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

##### **III. Electronic Access**

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at <https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm>. This guidance document is also available at <https://www.regulations.gov> or <https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm>. Persons unable to download an electronic copy of “Content of Premarket Submissions for Management of Cybersecurity in Medical Devices” may send an email request to [CDRH-Guidance@fda.hhs.gov](mailto:CDRH-Guidance@fda.hhs.gov) to receive an electronic copy of the document. Please use the document

<sup>1</sup> “Content of Premarket Submissions for Management of Cybersecurity in Medical Devices—Guidance for Industry and Food and Drug Administration Staff” at <https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM356190>.

<sup>2</sup> <https://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm>.

number 1825 to identify the guidance you are requesting.

#### IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of

information. 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 the following FDA regulations and guidance have been approved by OMB as listed in the following table:

21 CFR part or guidance	Topic	OMB control No.
807, subpart E .....	Premarket notification .....	0910–0120
814, subparts A through E .....	Premarket approval .....	0910–0231
814, subpart H .....	Humanitarian Device Exemption .....	0910–0332
812 .....	Investigational Device Exemption .....	0910–0078
“De Novo Classification Process (Evaluation of Automatic Class III Designation)”.	De Novo classification process .....	0910–0844
801 .....	Medical Device Labeling Regulations .....	0910–0485
820 .....	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation .....	0910–0073

#### V. Other Issues for Consideration

The Agency invites comments on the “Content of Premarket Submissions for Management of Cybersecurity in Medical Devices” draft guidance, in general, and on the following topics, in particular:

- Definition of CBOM:
- Whether a CBOM should include both software and hardware components
- Type of information and level of detail that should be included in a CBOM
- Effective mechanisms for sharing CBOM information
- Format the CBOM should take:
- Available formats that could be leveraged
- Whether multiple formats would be able to co-exist
- Appropriate frequency for updating the CBOM
- Features of a CBOM that would make it automatically consumable

Dated: October 12, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–22697 Filed 10–17–18; 8:45 am]

BILLING CODE 4164–01–P

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Food and Drug Administration

[Docket Nos. FDA–2017–E–6698 and FDA–2017–E–6699]

##### Determination of Regulatory Review Period for Purposes of Patent Extension; OCREVUS

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for OCREVUS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

**DATES:** Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by December 17, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by April 16, 2019. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

**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 December 17, 2018. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 17, 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 Nos. FDA–2017–E–6698 and FDA–2017–E–6699 for “Determination of Regulatory Review Period for Purposes of Patent Extension; OCREVUS.” 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 § 10.20 (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:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic

Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product OCREVUS (ocrelizumab). OCREVUS is indicated for the treatment of patients with relapsing or primary progressive forms of multiple sclerosis. Subsequent to this approval, the USPTO received a patent term restoration application for OCREVUS (U.S. Patent Nos. 7,799,900 and 8,562,992) from Genentech, Inc., and the USPTO requested FDA’s assistance in determining this patent’s eligibility for patent term restoration. In a letter dated February 6, 2018, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of OCREVUS represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product’s regulatory review period.

##### **II. Determination of Regulatory Review Period**

FDA has determined that the applicable regulatory review period for OCREVUS is 4,844 days. Of this time, 4,509 days occurred during the testing phase of the regulatory review period,

while 335 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* December 25, 2003. FDA has verified the applicant’s claim that the date the investigational new drug application became effective was on December 25, 2003.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* April 28, 2016. FDA has verified the applicant’s claim that the biologics license application (BLA) for OCREVUS (BLA 761053) was initially submitted on April 28, 2016.

3. *The date the application was approved:* March 28, 2017. FDA has verified the applicant’s claim that BLA 761053 was approved on March 28, 2017.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,358 days or 795 days of patent term extension.

##### **III. Petitions**

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA-2013-S-0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: October 12, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–22699 Filed 10–17–18; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2016–E–3918]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; AFSTYLA

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for AFSTYLA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

**DATES:** Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by December 17, 2018. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by April 16, 2019. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

**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 December 17, 2018. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 17, 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

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- *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–E–3918 for “Determination of Regulatory Review Period for Purposes of Patent Extension; AFSTYLA.” 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 § 10.20 (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:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase



begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product AFSTYLA (Antihemophilic Factor (Recombinant), Single Chain). AFSTYLA is indicated in children and adults with hemophilia A (congenital Factor VIII deficiency) for: (1) On-demand treatment and control of bleeding episodes, (2) routine prophylaxis to reduce the frequency of bleeding episodes, and (3) perioperative management of bleeding. Subsequent to this approval, the USPTO received a patent term restoration application for AFSTYLA (U.S. Patent No. 7,041,635) from SK Chemicals Co, LTD., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 1, 2017, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of AFSTYLA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

## II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for AFSTYLA is 1,734 days. Of this time, 1,371 days occurred during the testing phase of the regulatory review period, while 363 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* August 28, 2011. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 28, 2011.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* May 29, 2015. FDA has

verified the applicant's claim that the biologics license application (BLA) for AFSTYLA (BLA 125591) was initially submitted on May 29, 2015.

3. *The date the application was approved:* May 25, 2016. FDA has verified the applicant's claim that BLA 125591 was approved on May 25, 2016.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,047 days of patent term extension.

## III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: October 12, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–22696 Filed 10–17–18; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

**Agency Information Collection Activities: Proposed Collection: Public Comment Request: Information Collection Request Title: Bureau of Health Workforce Performance Data Collection, OMB No. 0915–0061—Revision**

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this ICR should be received no later than December 17, 2018.

**ADDRESSES:** Submit your comments to [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference.

*Information Collection Request Title:* Bureau of Health Workforce Performance Data Collection, OMB No. 0915–0061—Revision.

*Abstract:* Over 40 Bureau of Health Workforce (BHW) programs award grants to health professions schools and training programs across the United States to develop, expand, and enhance training, and to strengthen the distribution of the health workforce. These programs are governed by the Public Health Service Act (42 U.S.C. 201 *et seq.*), specifically Titles III, VII, and VIII. Performance information about these health professions programs is



collected in the HRSA Performance Report for Grants and Cooperative Agreements. Specific performance measurement requirements for each program may be found on the HRSA website at <https://bhwa.hrsa.gov/grants/reportonyourgrant>. Data collection activities consist of two reports, an annual progress and annual performance report that are submitted by awardees to comply with statutory and programmatic requirements for performance measurement and evaluation (including specific Title III, VII and VIII requirements), as well as the Government Performance and Results Act of 1993 (GPRA) and the GPRA Modernization Act of 2010 requirements. The performance measures were last revised in 2016 to ensure they addressed programmatic changes, met evolving program management needs, and responded to emerging workforce concerns. As these changes successfully enabled BHW to demonstrate accurate outputs and outcomes associated with the health professions programs, BHW will continue with its current performance

management strategy and make only minor changes that reflect new HHS and HRSA priorities with the addition of a question asking awardees how many trainees received training in telehealth, substance use treatment, and/or medication-assisted treatment.

**Need and Proposed Use of the Information:** The purpose of the proposed data collection is to continue analysis and reporting of awardee training activities and educational programs, identify intended practice locations, and report outcomes of funded initiatives. Data collected from these grant programs will also provide a description of the program activities of approximately 1,500 reporting grantees to inform policymakers on the barriers, opportunities, and outcomes involved in health care workforce development. The proposed measures focus on five key outcomes: (1) Increasing the workforce supply of well-educated practitioners in needed professions; (2) increasing the number of practitioners that practice in underserved and rural areas; (3) enhancing the quality of education; (4) increasing the

recruitment, training, and placement of under-represented groups in the health workforce; and (5) supporting educational infrastructure to increase the capacity to train more health professionals in high demand areas.

**Likely Respondents:** Respondents are awardees of BHW health professions grant programs.

**Burden Statement:** Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

#### TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Direct Financial Support Program .....	500	1	500	3.1	1,550
Infrastructure Program .....	100	1	100	4.5	450
Multipurpose or Hybrid Program .....	900	1	900	4.3	3,870
	1,500	.....	1,500	.....	5,870

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Amy P. McNulty,**

*Acting Director, Division of the Executive Secretariat.*

[FR Doc. 2018-22708 Filed 10-17-18; 8:45 am]

**BILLING CODE 4165-15-P**

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Office of the Secretary

##### Posting of the National Security Presidential Memorandum 14, "Support for National Biodefense"

**ACTION:** Notice.

**SUMMARY:** National Security Presidential Memorandum 14 directs implementation of the National Biodefense Strategy. The Secretary is authorized and directed to publish the Memorandum in the **Federal Register**.

**DATES:** National Security Presidential Memorandum 14 was signed on September 18, 2018.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Kadlec, MD, MTM&H, MS, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue

SW, Washington, DC 20201; Telephone: 202-205-2882.

##### SUPPLEMENTARY INFORMATION:

*National Security Presidential Memorandum:* Support for National Biodefense.

*Memorandum for:* The Vice President; The Secretary of State; The Secretary of the Treasury; The Secretary of Defense; The Attorney General; The Secretary of the Interior; The Secretary of Agriculture; The Secretary of Commerce; The Secretary of Labor; The Secretary of Health and Human Services; The Secretary of Transportation; The Secretary of Energy; The Secretary of Veterans Affairs; The Secretary of Homeland Security; Assistant to the President and Chief of Staff; Administrator of the Environmental Protection Agency; Director of the Office of Management and Budget; The Representative of the United States to the United Nations; Director of National Intelligence;

Assistant to the President for Science and Technology and Director of the Office of Science and Technology Policy; Chairman of the Joint Chiefs of Staff; Administrator of the United States Agency for International Development; Director of the Federal Bureau of Investigation.

It is a vital interest of the United States to prepare for, counter, respond to, and recover from biological incidents at home and abroad. Nearly all executive departments and agencies (agencies) contribute to the biodefense mission of the United States Government. Those contributions occur through a variety of authorities and programs. To ensure an integrated, comprehensive approach, agencies shall coordinate and manage biodefense activities in support of the broader biodefense enterprise, which consists of all stakeholders with a role in the detection of, prevention of, preparedness for, response to, and recovery from biological incidents, including Federal, State, local, tribal, and territorial governments, the private sector, and international partners.

**Section 1. Policy.** (a) It is the policy of the United States to preserve our national and economic security by protecting the Nation from biological threats. Acting within the biodefense enterprise, the United States Government will undertake actions at home and with partners abroad to reduce the risk of natural, accidental, and deliberate biological threats to humans, animals, agriculture, and the environment that have the potential to significantly affect the national and economic security of the United States.

(b) The foundation for the United States Government's role in the biodefense enterprise is the National Biodefense Strategy and its implementation plan (Strategy), which serve as the authoritative sources for the goals, objectives, and definitions for United States Government activities in support of the broader biodefense enterprise. Agency biodefense activities shall be conducted consistent with section 1086 of the National Defense Authorization Act for Fiscal Year 2017 and the Strategy, including activities undertaken to implement prior Executive Orders and Presidential Directives, such as Homeland Security Presidential Directive (HSPD)–5 of February 28, 2003 (Management of Domestic Incidents); HSPD–9 of January 30, 2004 (Defense of United States Agriculture and Food); HSPD–18 of January 31, 2007 (Medical Countermeasures against Weapons of Mass Destruction); HSPD–21 of October 18, 2007 (Public Health and Medical

Preparedness); Executive Order 13676 of September 18, 2014 (Combating Antibiotic–Resistant Bacteria); and Executive Order 13747 of November 4, 2016 (Advancing the Global Health Security Agenda To Achieve a World Safe and Secure From Infectious Disease Threats).

**Sec. 2. Implementation.** The policy set forth in section 1 of this memorandum shall be implemented, to the extent permitted by law and available appropriations, and subject to the internal programmatic and budgetary processes of the agencies, as follows:

(a) Consistent with the Strategy, the heads of agencies shall:

(i) Prioritize the implementation of the Strategy and include Strategy-related activities within their strategic planning and budgetary processes;

(ii) coordinate their biodefense policies with other agencies that have responsibilities or capabilities pertaining to biodefense, as well as with appropriate non-Federal entities;

(iii) share information, as appropriate, and coordinate decision-making related to the biodefense enterprise; and

(iv) monitor, evaluate, and hold their agencies accountable for implementation of the Strategy.

(b) The Assistant to the President for National Security Affairs (APNSA) shall serve as the lead for policy coordination and review, acting through the process described in National Security Presidential Memorandum (NSPM)–4 of April 4, 2017 (Organization of the National Security Council, the Homeland Security Council, and Subcommittees), to provide strategic input and facilitate policy integration for Federal biodefense efforts.

(c) There is hereby established a Biodefense Steering Committee (Committee), which shall be chaired by the Secretary of Health and Human Services (Secretary). The other members of the Committee shall include the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Agriculture, the Secretary of Veterans Affairs, the Secretary of Homeland Security, and the Administrator of the Environmental Protection Agency. The heads of other agencies with responsibilities or capabilities pertaining to biodefense shall participate at the invitation of the Committee, as appropriate. The Committee shall be responsible for monitoring and coordinating the implementation of the Strategy. The Committee shall seek consensus, with disagreements being addressed through the NSPM–4 process. The Committee may establish appropriate consultative or advisory mechanisms to facilitate

interaction with non-Federal stakeholders. The Secretary, as the Chair of the Committee, shall serve as the Federal lead in coordinating implementation of the Strategy.

(d) To assist the Committee in carrying out the responsibilities described in subsection (c) of this section, the Secretary shall, within 90 days of the date of this memorandum, establish a Biodefense Coordination Team (Team) administratively located within the Department of Health and Human Services.

(i) The Secretary shall designate a senior official of, or detailed to, the Department of Health and Human Services to serve as the director of the Team, who shall report to the Secretary.

(ii) The Secretary, the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Agriculture, the Secretary of Veterans Affairs, the Secretary of Homeland Security, the Administrator of the Environmental Protection Agency, and the heads of other agencies with responsibilities or capabilities pertaining to biodefense shall support the work of the Team, including, where appropriate, through the detail of personnel to the Team, consistent with law.

(iii) The Secretary, in consultation with the Committee, shall ensure that appropriate resources are provided by the Department of Health and Human Services to facilitate the Team's activities.

(iv) The Team shall, in consultation with existing governance bodies with responsibilities or capabilities pertaining to biodefense, assist the Committee in monitoring and coordinating implementation of the Strategy. The Team may convene working groups with relevant agencies as appropriate. In addition, the Team shall, on an ongoing basis, maintain awareness of biodefense activities conducted by agencies, relevant interagency entities, and non Federal partners in the broader biodefense enterprise, including relevant private sector stakeholders. The Team shall identify opportunities to increase coordination with non-Federal partners, including international organizations. Subject to the approval of the Committee, the Team shall establish policies, processes, and procedures to govern its activities.

(v) The Secretary shall notify the APNSA when the Team is established.

(e) To ensure effective implementation of the Strategy, within 30 days of the formation of the Team and annually thereafter in alignment with the annual budget process, the

Secretary shall submit written requests for information to the heads of agencies identified by the Committee as having responsibilities pertaining to biodefense (Covered Officials), including the following:

- (i) The Secretary of State;
- (ii) the Secretary of the Treasury;
- (iii) the Secretary of Defense;
- (iv) the Attorney General;
- (v) the Secretary of the Interior;
- (vi) the Secretary of Agriculture;
- (vii) the Secretary of Commerce;
- (viii) the Secretary of Labor;
- (ix) the Secretary of Health and Human Services;
- (x) the Secretary of Transportation;
- (xi) the Secretary of Energy;
- (xii) the Secretary of Veterans Affairs;
- (xiii) the Secretary of Homeland Security;
- (xiv) the Administrator of the Environmental Protection Agency;
- (xv) the Director of National Intelligence;
- (xvi) the Administrator of the United States Agency for International Development; and
- (xvii) the Director of the Federal Bureau of Investigation.

(f) These requests shall ask how agency programs and activities contribute to the objectives of the Strategy. Covered Officials shall respond to these requests within 60 days of receipt of the request through a Biodefense Memorandum, as described in paragraphs (i)–(ii) of this subsection.

(i) The Biodefense Memorandum shall identify those activities, programs, and projects that are planned, programmed, or have been executed that advance or are expected to advance the Strategy; quantify, to the extent feasible, resources allocated to biodefense within the agency; assess the extent to which the goals, objectives, and sub-objectives of the Strategy are being met; and identify impediments to timely and effective implementation and options for their resolution. Each agency shall provide its Biodefense Memorandum to the Committee, the Team, the National Security Council (NSC) staff, and the Office of Management and Budget (OMB). The Team shall distribute the collected Memoranda to Covered Officials.

(ii) Covered Officials are not required to provide information on specific law enforcement activities, counterproliferation activities, military plans or operations, intelligence activities, or criminal investigations.

(g) The Team, as informed by each Biodefense Memorandum and consultations with the agencies, shall prepare a Biodefense Assessment (Assessment) to identify any gaps,

shortfalls, and redundancies; describe any challenges to the implementation and execution of the Strategy; and recommend any necessary updates or changes to the Strategy. The Assessment shall include an analysis of the extent to which current United States Government resources support the goals and objectives of the Strategy, how existing programs and resources could be better executed or allocated to align with the Strategy, and how additional resources could, if available, be applied to support the goals of the Strategy. The Team shall coordinate the Assessment with the NSC staff and the OMB prior to its finalization. The Assessment shall be submitted to the Committee for approval and provided to the APNSA and the Director of the OMB within 180 days of the formation of the Team and annually thereafter.

(h) Each year, within 90 days of the approval of the Assessment, the Team shall summarize the Assessment and prepare, subject to the approval of the Committee and in coordination with the NSC staff, a public report describing the actions taken to reduce the risk of biological threats to the American people.

(i) Each year, Covered Officials, in coordination with the APNSA through the NSPM–4 process, shall prepare joint policy guidance (Guidance) on priority areas of biodefense. The Guidance shall be informed by the Assessment, and Covered Officials shall consider the Guidance when they develop their annual budget requests. Based on the Guidance, the Covered Officials shall include in their respective annual budget requests to the OMB information on the programs within the budget requests that support the implementation of the Strategy and conform to budget formulation requirements established by the OMB, including specified funding levels. Concurrently, Covered Officials shall submit a memorandum to the NSC staff and the OMB conveying their response to the policy Guidance. Covered Officials shall ensure that new and existing activities are prioritized and can be accommodated within budget guidance from the OMB.

(j) Within 120 days of the issuance of this memorandum, the Team, in coordination with the NSC staff through the NSPM–4 process, shall develop a proposal for metrics, milestones, end states, and roles and responsibilities of agencies, with respect to biodefense activities, particularly in meeting the goals, objectives, and sub-objectives of the Strategy. This proposal will be approved by Deputies, consistent with the NSPM–4 process.

(k) Within 2 years of the date of this memorandum, and every 2 years thereafter, Covered Officials shall review and, as appropriate, revise the Strategy. The APNSA, acting through the NSC staff, shall coordinate the development of updates to the Strategy. The updates to the Strategy shall be submitted to the President through the APNSA and, to the extent permitted by and consistent with applicable law and policy, released to the public.

(l) The APNSA, with the approval of every member of the Committee, may designate a different member of the Committee to serve as Chair of the Committee and perform the responsibilities specified in subsection 2(c).

*Sec. 3. Earlier Presidential Actions.* (a) Presidential Policy Directive–2 of November 23, 2009 (Implementation of the *National Strategy for Countering Biological Threats*) and HSPD 10/ National Security Presidential Directive–33 of April 21, 2004 (National Policy for Biodefense) are hereby superseded and replaced.

*Sec. 4. General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) The authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the OMB relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable laws and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary is hereby authorized and directed to publish this memorandum in the **Federal Register**.

Dated: October 12, 2018.

**Alex M. Azar II**,  
Secretary.

[FR Doc. 2018–22742 Filed 10–17–18; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Government-Owned Inventions; Availability for Licensing; Correction

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Department of Health and Human Services, National Institutes of Health published a Notice in the **Federal Register** on October 9, 2018. That Notice inadvertently contained an error within the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Peter Soukas, J.D., 301–594–8730; [peter.soukas@nih.gov](mailto:peter.soukas@nih.gov). Licensing information and copies of the patent applications listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD, 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

**SUPPLEMENTARY INFORMATION:**

*Correction*

In the **Federal Register** of October 9, 2018, in FR Doc. 2018–21764, on page 50667, in the first column, correct “HHS Reference No. E–018–2018/0” to read “HHS Reference No. E–167–2018–0”.

Dated: October 12, 2018.

**Suzanne M. Frisbie,**

*Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.*

[FR Doc. 2018–22722 Filed 10–17–18; 8:45 am]

**BILLING CODE 4140–01–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; Member

Conflict: Animal Models of Epilepsy, Stroke and Spinal Cord Injury.

*Date:* October 31, 2018.

*Time:* 11:00 a.m. to 2:00 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:* Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5211, Bethesda, MD 20892, 301–760–8207, [schauweckerpe@csr.nih.gov](mailto:schauweckerpe@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR—Shared Instrumentation: Flow Cytometry.

*Date:* November 6, 2018.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* John Burch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, [burchjb@csr.nih.gov](mailto:burchjb@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Eye function Assessments, Genetics and Interventions.

*Date:* November 7, 2018.

*Time:* 10:30 a.m. to 12:30 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:* Alessandra C. Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm 5205, MSC 7846, Bethesda, MD 20892, (301) 435–1021, [rovescaa@mail.nih.gov](mailto:rovescaa@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Biomaterials, Delivery and Nanotechnology.

*Date:* November 13, 2018.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*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, [rosenzweig@csr.nih.gov](mailto:rosenzweig@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Health Informatics.

*Date:* November 13–14, 2018.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

*Contact Person:* Xin Yuan, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, 301–827–7245, [yuanx4@csr.nih.gov](mailto:yuanx4@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Decision Making and Emotion Function in Aging and AD.

*Date:* November 13, 2018.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, [tianbi@csr.nih.gov](mailto:tianbi@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Anti-Infective Therapeutics.

*Date:* November 14–15, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Cambria Hotel Rockville, 1 Helen Heneghan Way, Rockville, MD 20850.

*Contact Person:* Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–2306, [kaushikbasun@csr.nih.gov](mailto:kaushikbasun@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Cell and Molecular Biology.

*Date:* November 14–15, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

*Contact Person:* Amy Kathleen Wernimont, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, Bethesda, MD 20892, 301–827–6427, [amy.wernimont@nih.gov](mailto:amy.wernimont@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Pain Mechanisms.

*Date:* November 14–15, 2018.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, [bishopj@csr.nih.gov](mailto:bishopj@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Bacterial Pathogenesis and Host Interactions.

*Date:* November 14, 2018.

*Time:* 9:30 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 (Virtual Meeting).

*Contact Person:* Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301-435-0903, [saadisoh@csr.nih.gov](mailto:saadisoh@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Endocrinology, Metabolism, Nutrition, and Reproductive Science.

*Date:* November 14, 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 (Virtual Meeting).

*Contact Person:* Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301-435-0229, [hunnicutgr@csr.nih.gov](mailto:hunnicutgr@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR: Adverse Drug Reaction Research.

*Date:* November 14, 2018.

*Time:* 1:00 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Alexander D. Politis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435-1150, [politisa@csr.nih.gov](mailto:politisa@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Innate Immunity, Host Defense and Vaccines.

*Date:* November 14, 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 (Virtual Meeting).

*Contact Person:* Deborah Hodge, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4207, MSC 7812, Bethesda, MD 20892, (301) 435-1238, [hodged@mail.nih.gov](mailto:hodged@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Improvement of Animal Models for Stem Cell-Based Regenerative Medicine.

*Date:* November 14, 2018.

*Time:* 2:00 p.m. to 4:30 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:* Maqsood A. Wani, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301-435-2270, [wanimags@csr.nih.gov](mailto:wanimags@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Improvement of Animal Models for Stem Cell-Based Regenerative Medicine.

*Date:* November 14, 2018.

*Time:* 2:00 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:* Rass M. Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435-2359, [shayiqr@csr.nih.gov](mailto:shayiqr@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 11, 2018.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018-22680 Filed 10-17-18; 8:45 am]

**BILLING CODE 4140-01-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:* AIDS and Related Research Integrated Review Group; HIV Comorbidities and Clinical Studies Study Section.

*Date:* November 14-15, 2018.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Dimitrios Nikolaos Vatakis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, Bethesda, MD 20892, 301-827-7480, [dimitrios.vatakis@nih.gov](mailto:dimitrios.vatakis@nih.gov).

*Name of Committee:* AIDS and Related Research Integrated Review Group; HIV/AIDS Intra- and Inter-personal Determinants and Behavioral Interventions Study Section.

*Date:* November 15-16, 2018.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Suites—Old Town Alexandria, 801 N Saint Asaph St., Alexandria, VA 22314.

*Contact Person:* Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301-806-6596, [rubertm@csr.nih.gov](mailto:rubertm@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR17-094: NIGMS Maximizing Investigators' Research Award (R35).

*Date:* November 15-16, 2018.

*Time:* 8:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

*Contact Person:* C-L Albert Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, 301-435-1016, [wangca@csr.nih.gov](mailto:wangca@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: High-End or Shared Light Microscope Systems (S10).

*Date:* November 15-16, 2018.

*Time:* 8:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Charles Selden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5187 MSC 7840, Bethesda, MD 20892, 301-451-3388, [seldens@mail.nih.gov](mailto:seldens@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Medical Imaging.

*Date:* November 15-16, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National 4-H Conference Center, 7100 Connecticut Avenue, Chevy Chase, MD 20815.

*Contact Person:* Leonid V. Tsap, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, (301) 435-2507, [tsapl@csr.nih.gov](mailto:tsapl@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Biomedical Sensing, Measurement and Instrument.

*Date:* November 15-16, 2018.

*Time:* 8:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Inna Gorshkova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301-435-1784, [gorshkoi@csr.nih.gov](mailto:gorshkoi@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Cancer Immunology and Immunotherapy.

*Date:* November 15–16, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Sarita Kandula Sastry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20782, [sarita.sastry@nih.gov](mailto:sarita.sastry@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Immune Responses and Vaccines to Non-HIV Microbial Infections.

*Date:* November 15–16, 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:* Andrea Keane-Myers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, 301-435-1221, [andrea.keane-myers@nih.gov](mailto:andrea.keane-myers@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Exploration of Antimicrobial Therapeutics and Resistance.

*Date:* November 15–16, 2018.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marines' Memorial Club & Hotel, 609 Sutter Street, San Francisco, CA 94102.

*Contact Person:* Susan Daum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr. Room 3202, Bethesda, MD 20892, 301-827-7233, [susan.boyle-vavra@nih.gov](mailto:susan.boyle-vavra@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Drug Development and Therapeutics.

*Date:* November 15–16, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marines' Memorial Club & Hotel, 609 Sutter Street, San Francisco, CA 94102.

*Contact Person:* Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301-451-0131, [ltopol@mail.nih.gov](mailto:ltopol@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business Hematology.

*Date:* November 15–16, 2018.

*Time:* 9:00 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 (Virtual Meeting).

*Contact Person:* Bukhtiar H Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, 301-806-7314, [shahb@csr.nih.gov](mailto:shahb@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business Hematology.

*Date:* November 15–16, 2018.

*Time:* 9:00 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 (Virtual Meeting).

*Contact Person:* Katherine M. Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301-435-0912, [Katherine\\_Malinda@csr.nih.gov](mailto:Katherine_Malinda@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Electronic Nicotine Delivery Systems (ENDS): Population, Clinical and Applied Prevention Research.

*Date:* November 15, 2018.

*Time:* 10:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301-496-0726, [prenticekj@mail.nih.gov](mailto:prenticekj@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Electronic Nicotine Delivery Systems (ENDS): Population, Clinical and Applied Prevention Research.

*Date:* November 15, 2018.

*Time:* 10:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Miriam Mintzer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, Bethesda, MD 20892, 301-523-0646, [mintzermz@csr.nih.gov](mailto:mintzermz@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Biological Chemistry and Macromolecular Biophysics Chemistry.

*Date:* November 15, 2018.

*Time:* 10:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Mike Radtke, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301-435-1728, [radtkem@csr.nih.gov](mailto:radtkem@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Tumor Biology.

*Date:* November 15, 2018.

*Time:* 11:00 a.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:* Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301-451-4467, [morrowcs@csr.nih.gov](mailto:morrowcs@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Focus on Antimicrobial Drug Development and Resistance.

*Date:* November 16, 2018.

*Time:* 8:00 a.m. to 9:00 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marines' Memorial Club & Hotel, 609 Sutter Street, San Francisco, CA 94102.

*Contact Person:* Guangyong Ji, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301-435-1146, [jig@csr.nih.gov](mailto:jig@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR-18-102: Small Grants for New Investigators to Promote Diversity in Health-Related Research (R21 Clinical Trial Optional).

*Date:* November 16, 2018.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Jianxin Hu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2156, Bethesda, MD 20892, 301-827-4417, [jianxinh@csr.nih.gov](mailto:jianxinh@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Innovative Basic Research on Adducts in Cancer Risk Identification and Prevention.

*Date:* November 16, 2018.

*Time:* 11:00 a.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:* Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301-594-7945, [smileyja@csr.nih.gov](mailto:smileyja@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 12, 2018.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–22725 Filed 10–17–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Center for Complementary & Integrative Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Special Emphasis Panel.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Complementary and Integrative Health Special Emphasis Panel; Fellowship, Career Development, and Research Grant Programs.

*Date:* November 30, 2018.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Viatcheslav A. Soldatenkov, MD, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, [soldatenkov@mail.nih.gov](mailto:soldatenkov@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Integrative Health, National Institutes of Health, HHS)

Dated: October 12, 2018.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–22679 Filed 10–17–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel Member Conflict Special Emphasis Panel.

*Date:* November 14, 2018.

*Time:* 10:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6710B, Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Helen Huang, Scientific Review Branch (SRB), DER, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Rm 2125B, Bethesda, MD 20817, 301–435–8380, [helen.huang@nih.gov](mailto:helen.huang@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 15, 2018.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–22723 Filed 10–17–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* National Advisory Board on Medical Rehabilitation Research.

*Date:* December 3–4, 2018.

*Time:* December 3, 2018, 9:00 a.m. to 5:00 p.m.

*Agenda:* NICHD Director's report; NCMRR Updates; NCATS Support for Research Infrastructure; NIH Research Plan on Rehabilitation; NINDS Stroke Translation Research; Limb Loss Research.

*Place:* NICHD Offices, 6710B Rockledge Drive, Rooms 1425/1427, Bethesda, MD 20892.

*Time:* December 4, 2018, 8:30 a.m. to 12:00 p.m.

*Agenda:* NIH BRAIN Initiative; Dissemination and Implementation Research; CDC: Health and Disability; Scientific Presentation on Activity and Participation.

*Place:* NICHD Offices, 6710B Rockledge Drive, Rooms 1425/1427, Bethesda, MD 20892.

*Contact Person:* Ralph M. Nitkin, Ph.D., Deputy Director, National Center for Medical Rehabilitation Research (NCMRR), Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Room 2116, MSC 7002, Bethesda, MD 20892, (301) 402–4206, [RN21e@nih.gov](mailto:RN21e@nih.gov).

Information is also available on the Institute's Center's home page: <http://www.nichd.nih.gov/about/advisory/nabmrr/Pages/index.aspx> where the current roster and minutes from past meetings are posted.

The Board meeting will be videocast out to the public and will be archived for later viewing at: <https://videocast.nih.gov/>.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 15, 2018.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–22724 Filed 10–17–18; 8:45 am]

**BILLING CODE 4140–01–P**



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Center for Complementary & Integrative Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended notice is hereby given of a meeting of the Special Emphasis Panel.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Complementary and Integrative Health Special Emphasis Panel; Center of Excellence for Research on Complementary and Integrative Health (P01) (CERCIH).

*Date:* November 27, 2018.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Ashlee Tipton, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Center for Complementary and Integrative Health, 6707 Democracy Boulevard, Room 401, Bethesda, MD 20892, 301-451-3849, [ashlee.tipton@nih.gov](mailto:ashlee.tipton@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Integrative Health, National Institutes of Health, HHS)

Dated: October 12, 2018.

**Ronald J. Livingston, Jr.,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018-22678 Filed 10-17-18; 8:45 am]

BILLING CODE 4140-01-P

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625-0014, Request for Designation and Exemption of Oceanographic Research Vessels; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before November 19, 2018.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2018-0784] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email:* [dhsdeskofficer@omb.eop.gov](mailto:dhsdeskofficer@omb.eop.gov).

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG-612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR AVE SE, STOP 7710, WASHINGTON, DC 20593-7710.

#### FOR FURTHER INFORMATION CONTACT:

Contact Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing

the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG-2018-0784], and must be received by November 19, 2018.

#### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at <https://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625-0014.

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2018-0784]

#### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625-0014

**AGENCY:** Coast Guard, DHS.

**Previous Request for Comments**

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 39769, August 10, 2018) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

**Information Collection Request**

*Title:* Request for Designation and Exemption of Oceanographic Research Vessels.

*OMB Control Number:* 1625-0014.

*Summary:* This collection requires submission of specific information about a vessel in order for the vessel to be designated as an Oceanographic Research Vessel (ORV).

*Need:* Title 46 U.S.C. 2113 authorizes the Secretary of the Department of Homeland Security to exempt Oceanographic Research Vessels (ORV), by regulation, from provisions of Subtitle II, of Title 46, Shipping, of the United States Code, concerning maritime safety and seaman's welfare laws. This information is necessary to ensure a vessel qualifies for the designation of ORV under 46 CFR part 3 and 46 CFR part 14, subpart D.

*Forms:* N/A.

*Respondents:* Owners or operators of certain vessels.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has increased from 25 hours to 36 hours a year due to an increase in the estimated annual number of respondents.

*Authority:* The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: October 11, 2018.

**James D. Roppel,**

*U.S. Coast Guard, Acting Chief, Office of Information Management.*

[FR Doc. 2018-22690 Filed 10-17-18; 8:45 am]

**BILLING CODE 9110-04-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-6131-N-01]

**The Performance Review Board**

**AGENCY:** Office of the Deputy Secretary, HUD.

**ACTION:** Notice of appointments.

**SUMMARY:** The Department of Housing and Urban Development announces the establishment of two Performance Review Boards to make recommendations to the appointing authority on the performance of its

senior executives. Patricia Hoban-Moore, Felicia Purifoy, Danielle Bastarache, John Benison, Virginia Sardone, Bryan Greene, Ivery Himes, George Tomchick, and Kurt Usowski will serve as members of the Departmental Performance Review Board to review career SES performance. Seth D. Appleton, Maren Kasper, John Bravacos, Ralph Gaines, and Joseph Grassi will serve as members of the Departmental Performance Review Board to review noncareer SES performance. The address is: Department of Housing and Urban Development, Washington, DC 20410-0050.

**FOR FURTHER INFORMATION CONTACT:**

Persons desiring any further information about the Performance Review Board and its members may contact Lynette Warren, Director, Office of Executive Resources, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 708-1381. (This is not a toll-free number)

Dated: October 11, 2018.

**Pamela H. Patenaude,**

*Deputy Secretary.*

[FR Doc. 2018-22733 Filed 10-17-18; 8:45 am]

**BILLING CODE P**

**INTERNATIONAL TRADE COMMISSION**

[USITC SE-18-047]

**Government in the Sunshine Act Meeting Notice**

Agency Holding the Meeting:

United States International Trade Commission.

**TIME AND DATE:** October 23, 2018 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205-2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. No. 731-TA-1203 (Review) (Xanthan Gum from China). The Commission is currently scheduled to complete and file its determination and views of the Commission by November 15, 2018.

5. Vote on Inv. Nos. 731-TA-873-875, 878-880, and 882 (Third Review) (Steel Concrete Reinforcing Bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine). The Commission is currently scheduled to complete and file its determinations and

views of the Commission by November 15, 2018.

6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: October 15, 2018.

**William Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2018-22798 Filed 10-16-18; 11:15 am]

**BILLING CODE 7020-02-P**

**MERIT SYSTEMS PROTECTION BOARD****Membership of the Merit Systems Protection Board's Performance Review Board**

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the members of the Merit Systems Protection Board's Performance Review Board.

**DATES:** October 18, 2018.

**FOR FURTHER INFORMATION CONTACT:**

Pervis Lee, Director of Human Resources, Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419; telephone: (202) 254-4413; or email: [pervis.lee@mspb.gov](mailto:pervis.lee@mspb.gov).

**SUPPLEMENTARY INFORMATION:** The Merit Systems Protection Board is publishing the names of the current members of the Performance Review Board (PRB) as required by 5 U.S.C. 4314(c)(4). Laura M. Albornoz serves as Chair of the PRB. Louis Lopez, Office of Special Counsel, Susan M. Swafford, Merit Systems Protection Board, and William L. Boulden, Merit Systems Protection Board, serve as members of the PRB.

**Jennifer Everling,**

*Acting Clerk of the Board.*

[FR Doc. 2018-22668 Filed 10-17-18; 8:45 am]

**BILLING CODE 7400-01-P**

**MILLENNIUM CHALLENGE CORPORATION**

[MCC FR 18-13]

**Notice of Open Meeting**

**AGENCY:** Millennium Challenge Corporation.

**ACTION:** Notice.

**SUMMARY:** In accordance with the requirements of the Federal Advisory

Committee Act, 5 U.S.C. App., the Millennium Challenge Corporation (MCC) Advisory Council was established as a discretionary advisory committee on July 14, 2016. Its charter was renewed for a second term on July 11, 2018. The MCC Advisory Council serves MCC in a solely advisory capacity and provides insight regarding innovations in infrastructure, technology and sustainability; perceived risks and opportunities in MCC partner countries; new financing mechanisms for developing country contexts; and shared value approaches. The MCC Advisory Council provides a platform for systematic engagement with the private sector and other external stakeholders and contributes to MCC's mission—to reduce poverty through sustainable, economic growth.

**DATES:** Monday, November 5, 2018, from 9:00 a.m.–2:00 p.m. EST which includes a working lunch.

**ADDRESSES:** The meeting will be held at the Millennium Challenge Corporation, 1099 14th Street NW, Suite 700, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Carisa Graf-Suleman, 202.766.0286, [MCCAdvisoryCouncil@mcc.gov](mailto:MCCAdvisoryCouncil@mcc.gov) or visit <https://www.mcc.gov/about/org-unit/advisory-council>.

#### **SUPPLEMENTARY INFORMATION:**

*Agenda.* During the Fall/Winter 2018 meeting of the MCC Advisory Council, members will be provided an overview and update of MCC's work and discuss with MCC leadership the MCC selection process. The MCC Advisory Council will also provide advice on the compact development process and MCC's investment strategy in Sri Lanka. A guest speaker will discuss the changing development finance landscape with the MCC Advisory Council.

*Public Participation.* The meeting will be open to the public. Members of the public may file written statement(s) before or after the meeting. If you plan to attend, please submit your name and affiliation no later than Monday, October 29, 2018 to [MCCAdvisoryCouncil@mcc.gov](mailto:MCCAdvisoryCouncil@mcc.gov) to be placed on an attendee list.

Dated: October 15, 2018.

**Jeanne M. Hauch,**

*VP/General Counsel and Corporate Secretary.*

[FR Doc. 2018–22740 Filed 10–17–18; 8:45 am]

**BILLING CODE 9211–03–P**

## **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**[Notice (18–078)]**

### **Notice of Intent To Grant Partially Exclusive License**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of intent to grant partially exclusive license.

**SUMMARY:** NASA hereby gives notice of its intent to grant a partially exclusive license in the United States to practice the invention described and claimed in U.S. Patent Application Serial No. 62/555,416 entitled “Real-Time Six Degree of Freedom Shape Sensing Algorithm”, to Safety Technology Holding, Inc., having its principal place of business in Plymouth, MI. The fields of use may be limited to anthropomorphic dummies used in the automotive testing industry. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

**DATES:** The prospective partially exclusive term license may be granted unless NASA receives written objections, including evidence and argument no later than November 2, 2018 that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA no later than November 2, 2018 will also be treated as objections to the grant of the contemplated exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

**ADDRESSES:** Objections relating to the prospective license may be submitted to Mr. Mark Homer, Patent Counsel, Jet Propulsion Laboratory, 4800 Oak Grove Drive, M/S 180–800, Pasadena, CA 91109, (818) 354–7770.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janeya Griffin, Technology Transfer Branch, Armstrong Flight Research Center, 4800 Lilly Drive M/S 1100 Edwards, California 93524, (661) 276–5743.

**SUPPLEMENTARY INFORMATION:** This notice of intent to grant an exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in these

inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Information about other NASA inventions available for licensing can be found online at <http://technology.nasa.gov>.

**Mark Dvorscak,**

*Agency Counsel for Intellectual Property.*

[FR Doc. 2018–22669 Filed 10–17–18; 8:45 am]

**BILLING CODE 7510–13–P**

## **NATIONAL CREDIT UNION ADMINISTRATION**

### **Sunshine Act; Notice of Matters To Be Deleted From the Agenda of a Previously Announced Agency Meeting**

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** October 15, 2018 (83 FR 51986).

**TIME AND DATE:** 9:00 a.m., Thursday, October 18, 2018.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Closed.

Pursuant to the provisions of the “Government in Sunshine Act” notice is hereby given that the NCUA Board gave notice on October 11, 2018 of the regular meeting of the NCUA Board scheduled for October 18, 2018. Prior to the meeting, on October 16, 2018, the NCUA Board unanimously determined that agency business required the deletion of the first and second items on the closed agenda with less than seven days’ notice to the public, and that no earlier notice of the deletion was possible.

**MATTERS TO BE DELETED:** 1. Supervisory Enforcement Matter. Closed pursuant to Exemptions (6), (8), (9)(ii), and (10).

2. Supervisory Enforcement Matter. Closed pursuant to Exemptions (6), (8), (9)(ii), and (10).

**FOR FURTHER INFORMATION CONTACT:** Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

**Gerard Poliquin,**

*Secretary of the Board.*

[FR Doc. 2018–22847 Filed 10–16–18; 4:15 pm]

**BILLING CODE 7535–01–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Institute of Museum and Library Services

#### Submission for OMB Review, Comment Request, Proposed Collection: IMLS Accelerating Promising Practices for Small Libraries (APP) Notice of Funding Opportunity

**AGENCY:** Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

**ACTION:** Submission for OMB review, comment request.

**SUMMARY:** The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. This notice proposes the clearance of the instructions for the IMLS Accelerating Promising Practices for Small Libraries (APP) Notice of Funding Opportunity.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Comments must be submitted to the office listed in the **CONTACT** section below on or before November 16, 2018.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

**ADDRESSES:** Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395-7316.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sandra Webb, Director of Grant Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North, SW, Suite 4000, Washington, DC 20024-2135. Dr. Webb can be reached by Telephone: 202-653-4718 Fax: 202-653-4608, or by email at [swebb@imls.gov](mailto:swebb@imls.gov), or by teletype (TTY/TDD) for persons with hearing difficulty at 202-653-4614.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit [www.imls.gov](http://www.imls.gov).

##### II. Current Actions

The goal of the IMLS initiative Accelerating Promising Practices for Small Libraries (APP) is to support projects that strengthen the ability of small and rural libraries and archives to serve their communities. IMLS invites applications that focus on transforming school library practice, community memory, or digital inclusion, and are clearly linked to an individual institution's broader community needs. IMLS Accelerating Promising Practices for Small Libraries (APPL) is being offered as a special initiative with funding from the National Leadership Grants for Libraries Program. This action is to create the forms and instructions for this initiative as a Notice of Funding Opportunity for the next three years.

**Agency:** Institute of Museum and Library Services.

**Title:** 2019-2021 IMLS Accelerating Promising Practices for Small Libraries Notice of Funding Opportunity.

**OMB Number:** 3137-TBD.

**Frequency:** Once per year.

**Affected Public:** Library organization applicants.

**Number of Respondents:** 150.

**Estimated Average Burden per Response:** 35 hours.

**Estimated Total Annual Burden:** 5250 hours.

**Total Annualized capital/startup costs:** n/a.

**Total Annual costs:** \$145,582.50.

**Dated:** October 15, 2018.

**Kim Miller,**

*Grants Management Specialist, Institute of Museum and Library Services.*

[FR Doc. 2018-22737 Filed 10-17-18; 8:45 am]

**BILLING CODE 7036-01-P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

#### 30-Day Notice for the "Our Town Program Implementation Study" Proposed Collection; Comment Request

**AGENCY:** National Endowment for the Arts, National Foundation on the Arts and the Humanities.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection for the Evaluation of the Our Town Program. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

**DATES:** Written comments must be submitted to the office listed in the address section below within 30 days from the date of this publication in the **Federal Register**.

**ADDRESSES:** Send comments to: Sunil Iyengar, National Endowment for the Arts, 400 7th Street SW, Washington, DC 20506-0001, telephone (202) 682-5424 (this is not a toll-free number), fax (202) 682-5677, or send via email to [research@arts.gov](mailto:research@arts.gov).

**FOR FURTHER INFORMATION CONTACT:** The Office of Information and Regulatory Affairs, Attn: Sharon Mar, OMB Desk Officer for the National Endowment for the Arts, Office of Management and

Budget, Room 10235, Washington, DC 20503, 202-395-7316.

**SUPPLEMENTARY INFORMATION:** The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

*Agency:* National Endowment for the Arts.

*Title:* Our Town Program Implementation Study.

*OMB Number:* New.

*Frequency:* One Time.

*Affected Public:* Grantee Organizations (local government agencies and nonprofits).

*Estimated Number of Respondents:* 381.

*Total burden hours:* 190.5 hours.

*Total annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* \$55,000.

This study is a new information collection request, and the data to be collected are not available elsewhere unless obtained through this information collection. A web-based survey of the National Endowment for the Arts' (NEA) *Our Town* program grantees is planned for late January 2019 through mid-April 2019. Knowledge gained through this study will enable the NEA to validate or modify the *Our Town* program theory of change, logic model, and measurement model in order to adjust grant program guidelines and grantee reporting requirements and to prepare for a future outcome evaluation study. The web-based survey of past and present *Our Town* grantees will provide the NEA with a richer understanding of how *Our Town* grantees operate in local communities and the types of change to which the grants contribute. Currently, the NEA

grantee report form does not collect detailed information about project design, and changes to the report form would not yield substantive information until at least 2022 due to the grant reporting cycle. *Our Town* is the NEA's creative placemaking grants program since FY 2011. Through project-based funding ranging from \$25,000 to \$150,000, the agency makes awards nationally to local government agencies and nonprofit organizations in urban, rural, and tribal communities to support projects that integrate arts, culture, and design activities into efforts that strengthen communities by advancing local economic, physical, and/or social outcomes. These projects require a partnership between a local government entity and nonprofit organization, one of which must be a cultural organization; and should engage in partnership with other sectors (such as agriculture and food, economic development, education and youth, environment and energy, health, housing, public safety, transportation, and workforce development). *Our Town* projects proposed by applicants often utilize a mix of activities, including arts engagement, cultural planning, design, and artist and creative industry support. It is the agency's vision that successful *Our Town* projects ultimately lay the groundwork for systemic changes that sustain the integration of arts, culture, and design into strategies for strengthening communities. This study supports NEA's FY 2018-2022 Strategic Plan, which seeks in part to "provide opportunities for the arts to be integrated into the fabric of community life" (Strategic Objective 2.3) and to "expand and promote evidence of the value and impact of the arts for the benefit of the American people" (Strategic Objective 3.2).

Dated: October 15, 2018.

**Gregory Gendron,**

*Director, Administrative Services, National Endowment for the Arts.*

[FR Doc. 2018-22729 Filed 10-17-18; 8:45 am]

**BILLING CODE 7537-01-P**

## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### Privacy Act of 1974; System of Records

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Notice of a modified system of records and rescindment of a system of records notice.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, the

Occupational Safety and Health Review Commission (OSHRC) is revising the notice for system-of-records OSHRC-7 and is rescinding the notice for system-of-records OSHRC-8.

**DATES:** Comments must be received by OSHRC on or before November 19, 2018. The revisions to the system-of-records notice for OSHRC-7, and the rescindment of the notice for OSHRC-8, will become effective on that date, without any further notice in the **Federal Register**, unless comments or government approval procedures necessitate otherwise.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Email:* [rbailey@oshrc.gov](mailto:rbailey@oshrc.gov). Include "PRIVACY ACT SYSTEM OF RECORDS" in the subject line of the message.

- *Fax:* (202) 606-5417.

- *Mail:* One Lafayette Centre, 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457.

- *Hand Delivery/Courier:* Same as mailing address.

*Instructions:* All submissions must include your name, return address, and email address, if applicable. Please clearly label submissions as "PRIVACY ACT SYSTEM OF RECORDS."

**FOR FURTHER INFORMATION CONTACT:** Ron Bailey, Attorney-Advisor, Office of the General Counsel, via telephone at (202) 606-5410, or via email at [rbailey@oshrc.gov](mailto:rbailey@oshrc.gov).

**SUPPLEMENTARY INFORMATION:** The Privacy Act of 1974, 5 U.S.C. 552a(e)(4), requires federal agencies such as OSHRC to publish in the **Federal Register** notice of any new or modified system of records. As detailed below, OSHRC is revising the notice for Personnel Security Files, OSHRC-7, to (1) account for changes in the names of the pertinent office and positions within the agency; (2) eliminate OSHRC's regional offices as system locations and managers; (3) revise the method by which records are retrieved; (4) update the authorities permitting maintenance of this system of records and the reference to the applicable General Records Schedule; (5) simplify the explanations concerning the categories of individuals covered by the system, and the categories of records in the system; and (6) accurately describe storage and safeguarding practices. To this system, OSHRC is also adding records relating to the issuance of office access cards, which are retrievable by name, and include the first and last names of those issued cards, and the dates that the cards were activated, deactivated, and turned in. In addition, OSHRC has previously relied on blanket

routine uses to describe the circumstances under which records may be disclosed. Going forward, as revised notices are published for new and modified systems of records, a full description of the routine uses—rather than a reference to blanket routine uses—will be included in each notice. This is simply a change in format that has not resulted in any substantive changes to the routine uses for this system of records.

OSHC is also rescinding the notice for OSHRC-8—Identification Card and Office Key Distribution Records. Most of the records covered by OSHRC-8 are no longer maintained by OSHRC due to the issuance and use of personal identity verification (PIV) cards, in accordance with Homeland Security Presidential Directive (HSPD) 12. Records concerning these PIV cards are maintained by the General Services Administration (GSA) and are covered by the governmentwide system-of-records notice GSA/GOVT-7 (HSPD-12 USAccess). OSHRC does, however, maintain records, as described above, on office access cards. OSHRC has concluded, however, that such records are related to personnel security and therefore should be included in OSHRC-7, Personnel Security Records.

The notices for the rescission of OSHRC-8, and for modified system-of-records OSHRC-7, are as follows.

#### **SYSTEM NAME AND NUMBER**

Identification Card and Office Key Distribution Records, OSHRC-8.

#### **HISTORY:**

April 14, 2006, 71 FR 19556; August 4, 2008, 73 FR 45256; October 5, 2015, 80 FR 60182; and September 28, 2017, 82 FR 45324.

#### **SYSTEM NAME AND NUMBER:**

Personnel Security Records, OSHRC-7.

#### **SECURITY CLASSIFICATION:**

Unclassified.

#### **SYSTEM LOCATION:**

The Office of the Executive Director maintains the records in this system. The office is located at 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457.

#### **SYSTEM MANAGER(S):**

Human Resources Specialist, 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457; (202) 606-5100.

#### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Executive Orders 10450, 10577, 13467, and 13488; Homeland Security

Presidential Directive (HSPD) 12; and Federal Information Processing Standard (FIPS) 201.

#### **PURPOSE(S) OF THE SYSTEM:**

The information collected by OSHRC allows the Office of Personnel Management (OPM) to conduct background investigations on those individuals being credentialed, assists in verifying the identity of those for whom credentials have been requested, and provides the necessary information for issuance of identification and access cards.

#### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

This system of records covers current OSHRC employees, contractors, and Commission members, and, as to records concerning office access cards, also former employees, contractors, and Commission members.

#### **CATEGORIES OF RECORDS IN THE SYSTEM:**

This system of records may include an individual's name and former names; signature; date and place of birth; social security number; citizenship information; residential history; education; employment history; criminal history and police records; names of associates and references, and their contact information; military history and selective service record; illegal drug activities; telephone numbers; hair and eye color, weight, and height; gender; financial records; investigative records; foreign countries visited; marital status and name, date and place of birth, address, and social security number of spouse; names of certain relatives who work for the government; names, addresses, dates and countries of birth, and citizenship of certain relatives. As to office access cards, the records include only the individual's name, and the date that the access card was activated, deactivated, and turned in.

Most of these records are decentralized copies from OPM and remain subject to the practices and policies set forth in system-of-records notice OPM/CENTRAL-9 (Personnel Investigations Records).

#### **RECORD SOURCE CATEGORIES:**

Information contained in the system is obtained from individuals subject to the credentialing process, OSHRC employees involved in the credentialing process, and investigative record materials furnished by OPM.

#### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

(1) To the Department of Justice (DOJ), or to a court or adjudicative body before which OSHRC is authorized to appear, when any of the following entities or individuals—(a) OSHRC, or any of its components; (b) any employee of OSHRC in his or her official capacity; (c) any employee of OSHRC in his or her individual capacity where DOJ (or OSHRC where it is authorized to do so) has agreed to represent the employee; or (d) the United States, where OSHRC determines that litigation is likely to affect OSHRC or any of its components—is a party to litigation or has an interest in such litigation, and OSHRC determines that the use of such records by DOJ, or by a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation.

(2) To an appropriate agency, whether federal, state, local, or foreign, charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes civil, criminal or regulatory violations, and such disclosure is proper and consistent with the official duties of the person making the disclosure.

(3) To a federal, state, or local agency maintaining civil, criminal or other relevant enforcement information, such as current licenses, if necessary to obtain information relevant to an OSHRC decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a license, grant or other benefit.

(4) To a federal, state, or local agency, in response to that agency's request for a record, and only to the extent that the information is relevant and necessary to the requesting agency's decision in the matter, if the record is sought in connection with the hiring, appointment, or retention of an

employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a license, grant or other benefit by the requesting agency.

(5) To an authorized appeal grievance examiner, formal complaints manager, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee, only to the extent that the information is relevant and necessary to the case or matter.

(6) To OPM in accordance with the agency's responsibilities for evaluation and oversight of federal personnel management.

(7) To officers and employees of a federal agency for the purpose of conducting an audit, but only to the extent that the record is relevant and necessary to this purpose.

(8) To OMB in connection with the review of private relief legislation at any stage of the legislative coordination and clearance process, as set forth in Circular No. A-19.

(9) To a Member of Congress or to a person on his or her staff acting on the Member's behalf when a written request is made on behalf and at the behest of the individual who is the subject of the record.

(10) To the National Archives and Records Administration (NARA) for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906.

(11) To appropriate agencies, entities, and persons when: (a) OSHRC suspects or has confirmed that there has been a breach of the system of records; (b) OSHRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, OSHRC, the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OSHRC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(12) To NARA, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with FOIA, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

(13) To another federal agency or federal entity, when OSHRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

#### **POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records are stored on paper in locked file cabinets.

#### **POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records are retrieved by an individual's name.

#### **POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Office access card records are retained and disposed of in accordance with NARA's General Records Schedule 5.6, Item 21. However, paper copies of personnel security records from OPM are shredded once an employee, contractor, or Commission member no longer works at OSHRC.

#### **ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Records are maintained in a locked file cabinet. Access to the cabinet is limited to personnel having a need for access to perform their official functions.

#### **RECORD ACCESS PROCEDURES:**

Individuals who wish to gain access to their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457. For an explanation on how such requests should be drafted, refer to 29 CFR 2400.6 (procedures for requesting records).

#### **CONTESTING RECORD PROCEDURES:**

Individuals who wish to contest their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457. For an explanation on the specific procedures for contesting the contents of a record, refer to 29 CFR 2400.8 (Procedures for requesting amendment), and 29 CFR 2400.9 (Procedures for appealing).

#### **NOTIFICATION PROCEDURES:**

Individuals interested in inquiring about their records should notify: Privacy Officer, OSHRC, 1120 20th

Street NW, Ninth Floor, Washington, DC 20036-3457. For an explanation on how such requests should be drafted, refer to 29 CFR 2400.5 (notification), and 29 CFR 2400.6 (procedures for requesting records).

#### **EXEMPTIONS PROMULGATED FOR THE SYSTEM:** None.

#### **HISTORY:**

April 14, 2006, 71 FR 19556; August 4, 2008, 73 FR 45256; October 5, 2015, 80 FR 60182; and September 28, 2017, 82 FR 45324.

Dated: October 11, 2018.

**Nadine N. Mancini,**

*General Counsel, Senior Agency Official for Privacy.*

[FR Doc. 2018-22677 Filed 10-17-18; 8:45 am]

**BILLING CODE 7600-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-84420; File No. SR-NYSE-2018-46]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend the Listed Company Manual for Acquisition Companies To Reduce the Continued Listing Standards for Public Holders From 300 to 100 and To Enable the Exchange To Exercise Discretion To Allow Acquisition Companies a Reasonable Time Period Following a Business Combination To Demonstrate Compliance With the Applicable Quantitative Listing Standards**

October 12, 2018.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 1, 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 the Listed Company Manual (the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.



“Manual”) to revise its continued listing standards for Acquisition Companies..[sic] The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

Section 102.06 of the Manual sets forth initial listing requirements applicable to a company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time (an “Acquisition Company” or “AC”).<sup>4</sup> Section 102.06 requires, in part, that an Acquisition Company: (i) Deposit into and retain in an escrow account at least 90% of the gross proceeds of its initial public offering through the date of its Business Combination; (ii) complete the Business Combination within 36 months of the effectiveness of the IPO registration statement; and (iii) provide the public shareholders who object to the Business Combination with the right to convert their common stock into a pro rata share of the funds held in escrow.<sup>5</sup> Following the Business Combination, the combined company must meet the Exchange’s requirements for initial listing.

Section 802.01B of the Manual sets forth the continued listing standards for ACs. The Exchange proposes to change

its initial and continued listing standards for Acquisition Companies as follows:

- Reduce the 300 total [sic] holders continued listing requirement to 100 total [sic] holders.
- Amend the rule text in Section 802.01B to enable the Exchange to exercise discretion to allow companies a reasonable period of time following the Business Combination to demonstrate compliance with all applicable quantitative listing standards.

#### Proposal To Reduce Continued Listing Requirement With Respect to Number of Holders

Acquisition Companies often have difficulty demonstrating compliance with the 300 total [sic] shareholder requirement for continued listing. The shareholder requirement is designed to help ensure that a security has a sufficient number of investors to provide a liquid trading market.<sup>6</sup> Based on conversations with marketplace participants, including the sponsors of Acquisition Companies and lawyers and bankers that advise these companies, the Exchange believes that the difficulties Acquisition Companies have in demonstrating compliance with the shareholder requirement are due to intrinsic features of Acquisition Companies, which limit the number of retail investors interested in the vehicle and encourage owners to hold their shares until a transaction is announced, which can be as long as three years after the initial public offering. These same intrinsic features of Acquisition Companies also limit the benefit to investors of a shareholder requirement.

In addition, because the price of an Acquisition Company is based primarily on the value of the funds it holds in trust, and the Acquisition Company’s shareholders have the right to redeem their shares for a pro rata share of that trust in conjunction with the Business Combination, the impact of the number of shareholders on an Acquisition Company security’s price is less relevant than is the case for operating company common stocks. For this reason, Acquisition Companies, historically, trade close to the value in the trust, even when they have had few shareholders. These trading patterns suggest that Acquisition Companies’ low number of shareholders has not resulted in distorted prices.

The Exchange believes that an Exchange Traded Fund (“ETF”) is

somewhat similar to an Acquisition Company in this regard in that an arbitrage mechanism keeps the ETF’s price close to the value of its underlying securities, even when trading in the ETF’s shares is relatively illiquid. The initial listing requirements for ETFs do not include a shareholder requirement and only 50 shareholders are required for continued listing after the ETF has been listed for one year.

Accordingly, given the short life of an Acquisition Company, the trading characteristics of Acquisition Companies, and the requirement to meet the initial listing standards at the time of the Business Combination, the Exchange proposes to reduce from 300 holders to 100 holders the minimum total number of [sic] holders required on a continued listing basis for Acquisition Companies.<sup>7</sup>

#### Period for Company To Demonstrate That It Satisfies Initial Listing Requirements

Section 802.01B of the Manual currently states that:

After consummation of its Business Combination, a company that had originally listed as an AC will be subject to Section 801 and Section 802.01 in its entirety and will be required immediately upon consummation of the Business Combination to meet the following requirements:

- (i) A price per share of at least \$4.00;
- (ii) a global market capitalization of at least \$150,000,000;
- (iii) an aggregate market value of publicly-held shares of at least \$40,000,000 \*; and
- (iv) the requirements with respect to shareholders and publicly-held shares set forth in Section 102.01A for companies listing in connection with an initial public offering.<sup>8</sup>

\* Shares held by directors, officers, or their immediate families and other concentrated holding of 10 percent or more are excluded in calculating the number of publicly-held shares.

Section 802.01B also provides that an Acquisition Company failing to meet these requirements will be promptly subject to suspension and delisting proceedings.

The Exchange notes that it can be difficult for a company, once listed, to obtain evidence demonstrating the number of its shareholders because

<sup>7</sup> The Exchange notes that any Acquisition Company listed on the NYSE will be allocated to a Designated Market Maker. As a result, the Exchange does not expect that the proposed change will result in illiquidity or other problems trading the securities of Acquisition Companies.

<sup>8</sup> The applicable requirement is 400 holders of round lots (i.e., 100 shares).

<sup>4</sup> Section 102.06 provides that an Acquisition Company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (the “Business Combination”) within 36 months of the effectiveness of its IPO registration statement.

<sup>5</sup> Section 102.06 also requires that each proposed business combination be approved by a majority of the company’s independent directors.

<sup>6</sup> See, e.g., Rocky Mountain Power Company, Securities Exchange Act Release No. 40648 (November 9, 1998) (text at footnote 11).

many accounts are held in street name and shareholders may object to being identified to the company. As a result, companies must seek information from broker-dealers and from third-parties that distribute information such as proxy materials for the broker-dealers. This process is especially burdensome for Acquisition Companies at the time of their Business Combinations, because Acquisition Company shareholders typically have the right to request redemption of their securities until immediately before consummation and it is therefore impracticable for companies to identify the number of round-lot holders immediately to demonstrate their qualification for initial listing.

The Exchange proposes to amend Section 802.01B to provide that “[f]ollowing consummation of its Business Combination, a company that had originally listed as an [Acquisition Company] will be subject to” the quantitative listing standards set forth above. This change is consistent with rule text in Nasdaq’s IM-5101-2 and is intended in particular to address the delays described above associated with obtaining information about the number of shareholders holding shares in “street name” accounts. By amending Section 802.01B, an Acquisition Company would not need to meet the shareholder distribution requirements immediately upon consummation of its Business Combination, but may do so at some point following closing of that transaction. The purpose of the proposed amendment is to allow the Exchange to exercise discretion to allow companies a reasonable period of time following the Business Combination to demonstrate compliance with the applicable quantitative listing standards, including the shareholders requirement. If the company is unable to demonstrate that it meets the applicable quantitative requirements after such reasonable time period, the Exchange would commence delisting proceedings and immediately suspend trading in the company’s securities.

These proposed changes will be effective upon approval of this rule by the Commission.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,<sup>10</sup> in particular in that it is designed to promote just and equitable principles of

trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. While the change would allow Acquisition Companies to maintain their continued listing status with fewer shareholders, this proposed change is consistent with the investor protection provisions of the Act because other protections help assure that market prices will not be distorted by any potential resulting lack of liquidity, which is the underlying purpose of the shareholder requirement. In particular, the ability of a shareholder to redeem shares for a pro rata share of the trust helps assure that the Acquisition Company will trade close to the value of the assets held in trust.

Thus, this change will remove impediments to and perfect the mechanism of a free and open market by removing listing requirements that prohibit certain companies from remaining listed without any concomitant investor protection benefits.

The proposal to allow Acquisition Companies to demonstrate that they meet the applicable quantitative requirements following a Business Combination is intended in particular to address the difficulty companies have in identifying the number of holders they have immediately upon consummation of their Business Combination. Acquisition Company shareholders typically have the right to request redemption of their securities until immediately before consummation and it is therefore impracticable for companies to identify the number of round-lot holders immediately to demonstrate their qualification for initial listing. This proposed change is consistent with the protection of investors and the public interest, as it does not alter the substantive quantitative requirements a company must meet to remain listed.

## 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 purpose of the proposed rule is to adopt continued listing standards for

Acquisition Companies that better reflect the characteristics and trading market for Acquisition Companies. While the rule may permit more Acquisition Companies to list, or remain listed, on the Exchange, other exchanges could adopt similar rules to compete for such listings. As such, the Exchange does not believe it imposes any burden on competition.

## C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NYSE–2018–46 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–2018–46. 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

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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-NYSE-2018-46 and should be submitted on or before November 8, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2018-22682 Filed 10-17-18; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84418; File No. SR-FINRA-2018-026]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend the Arbitrator Payment Rule To Pay Each Arbitrator a \$200 Honorarium To Decide Without a Hearing Session a Contested Subpoena Request or a Contested Order for Production or Appearance

October 12, 2018.

#### I. Introduction

On July 13, 2018, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange

Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend FINRA Rule 12214(c) of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and FINRA Rule 13214(c) through (e) of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") and together, "Codes"), to provide that FINRA will pay each arbitrator a \$200 honorarium to decide without a hearing session a contested subpoena request or a contested order for production or appearance.

The proposed rule change was published for comment in the **Federal Register** on July 30, 2018.<sup>3</sup> The public comment period closed on August 20, 2018. The Commission received four comment letters in response to the Notice, all supporting the proposed rule change.<sup>4</sup> On October 5, 2018, FINRA responded to the comment letters received in response to the Notice.<sup>5</sup> On August 23, 2018, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to October 26, 2018.<sup>6</sup> This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change<sup>7</sup>

##### Background

Parties to an arbitration typically exchange documents and information

with each other to prepare for the arbitration through the discovery process.<sup>8</sup> If one party objects to a discovery request, the party seeking the documents or information, or appearance may file a motion requesting that the arbitrator issue a subpoena<sup>9</sup> or an order compelling discovery.<sup>10</sup> The opposing party may oppose the filing party's motion, contesting the request for a subpoena<sup>11</sup> or order compelling discovery.

##### Subpoena for Appearance

Currently, under FINRA Rule 12214(d),<sup>12</sup> each arbitrator who decides one or more contested subpoenas without a hearing session receives a one-time honorarium of \$250 during the life of the arbitration case.<sup>13</sup> The rule caps the total amount that the parties could pay the arbitrators to decide contested subpoena requests without a hearing in any one case at \$750.<sup>14</sup> The panel allocates the cost of the honorarium to the parties in the award.<sup>15</sup> Arbitrators do not receive an honorarium for deciding unopposed requests to issue a subpoena.<sup>16</sup>

##### Order for Production or Appearance

The Codes do not expressly provide an honorarium for arbitrators who decide requests for orders for production or appearance without a hearing session. FINRA does, however, provide arbitrators a \$200 honorarium to decide discovery-related motions without a hearing.<sup>17</sup> Accordingly, FINRA categorizes requests to issue orders for production as discovery-related motions and pays \$200 honorarium for each arbitrator deciding

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Exchange Act Release No. 83699 (Jul. 24, 2018), 83 FR 36647 (Jul. 30, 2018) (File No. SR-FINRA-2018-026) ("Notice").

<sup>4</sup> See Letter from Steven B. Caruso, Maddox Hargett Caruso, P.C., dated July 25, 2018 ("Caruso Letter"); letter from Ryan K. Bakhtiari, Aidikoff, Uhl and Bakhtiari, dated July 31, 2018 ("Bakhtiari Letter"); letter from Glenn S. Gitomer, McCausland, Keen and Buckman, dated August 1, 2018 ("Gitomer Letter"); and letter from Andrew Stoltmann, President, Public Investors Arbitration Bar Association ("PIABA"), dated August 15, 2018 ("PIABA Letter"). Comment letters are available on the Commission's website at <https://www.sec.gov>.

<sup>5</sup> See Letter from Mignon McLemore, Assistant Chief Counsel, FINRA, to Mr. Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, dated October 5, 2018 ("FINRA Letter"). The FINRA Letter is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA, at the Commission's website at [http://www.finra.org/sites/default/files/rule\\_filing\\_file/SR-FINRA-2018-026-response-to-comments.pdf](http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2018-026-response-to-comments.pdf), and at the Commission's Public Reference Room.

<sup>6</sup> See Letter from Mignon McLemore, Assistant Chief Counsel, FINRA, to Lourdes Gonzalez, Assistant Chief Counsel—Sales Practices, Division of Trading and Markets, Securities and Exchange Commission, dated August 23, 2018.

<sup>7</sup> The subsequent description of the proposed rule change is substantially excerpted from FINRA's description in the Notice. See Notice, 83 FR at 36648–36649.

<sup>8</sup> See FINRA Rules 12505 and 13505.

<sup>9</sup> See FINRA Rules 12512 and 13512.

<sup>10</sup> See FINRA Rules 12513 and 13513.

<sup>11</sup> See FINRA Rules 12512(c) and 13512(c).

<sup>12</sup> See also FINRA Rule 13214(d).

<sup>13</sup> See FINRA Rules 12214(d)(1) and 13214(d)(1).

If a hearing session is required to decide the motion, each arbitrator who participates in the hearing session will receive a \$300 honorarium instead. See FINRA Rules 12214(a) and 13214(a).

<sup>14</sup> See FINRA Rules 12214(d)(1) and 13214(d)(1). The chairperson of a three-person panel will decide the contested subpoena request without a hearing session, for which the chairperson would be paid \$250. The honorarium for contested subpoena requests could increase in \$250 increments, if, for example, the chairperson recuses or withdraws from the panel and the replacement chairperson must decide another contested subpoena request without a hearing session. In this instance, the replacement chairperson would receive a \$250 honorarium for this work. In no event would the parties be charged more than \$750 per case. See Notice at 36648, note 14.

<sup>15</sup> See FINRA Rules 12214(d)(3) and 13214(d)(3).

<sup>16</sup> See Notice at 36648.

<sup>17</sup> FINRA Rules 12214(c) and 13214(c) provide that FINRA will pay each arbitrator an honorarium of \$200 to decide a discovery-related motion without a hearing session.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

the order, regardless of whether it is contested. FINRA does not pay the honorarium, however, for an order for appearance, regardless of whether it is contested or unopposed.<sup>18</sup>

#### *Proposed Rule Change*

FINRA is proposing to amend FINRA Rules 12214(c) and 13214(c) to provide that FINRA would pay each arbitrator an honorarium of \$200 to decide, without a hearing session: (i) A discovery-related motion;<sup>19</sup> (ii) a motion that contains one or more contested subpoena requests<sup>20</sup> or contested orders for production or appearance; or (iii) a motion that contains one or more contested subpoena requests and contested orders for production or appearance.<sup>21</sup>

#### *Contested Subpoena*

Specifically, the proposed rule change would reduce the honorarium that an arbitrator receives to decide a contested subpoena request from \$250 to \$200; however, it would also remove the per-case cap on these payments. Thus, under the proposed rule change, an arbitrator would receive a \$200 honorarium for each contested subpoena request that he or she decides.<sup>22</sup>

#### *Contested Orders for Production or Appearance*

In addition, the proposed rule change would now expressly provide a \$200 honorarium for arbitrators deciding a contested order for production or appearance without a hearing session. Specifically, FINRA would not need to categorize requests to issue orders for production as discovery-related motions. Similarly, arbitrators would receive an honorarium for deciding without a hearing session, a contested arbitrator order for appearance as well as for production. Under the proposal, however, arbitrators would no longer receive an honorarium for deciding unopposed requests to issue an order for production.<sup>23</sup>

The proposed rule change would describe what constitutes a contested order for production or appearance by modeling the description on that of a contested subpoena request. Specifically, proposed FINRA Rule 12214(c)(2)(iii) would provide that a contested order for production or appearance shall include a motion requesting the issuance of an order for production or appearance, a written objection from the party opposing the issuance of the order, and any other documents supporting a party's position.<sup>24</sup>

Moreover, like a contested subpoena request, a party would be permitted to request the issuance of one or more orders in one motion,<sup>25</sup> and if one or all of the arbitrator orders become contested, each arbitrator who decides the motion would receive one honorarium payment of \$200.<sup>26</sup>

#### *Additional Proposed Changes*

The proposed rule change would also amend Rules 12214(a) and 13214(a) to make a few non-substantive changes.<sup>27</sup>

### **III. Comment Summary**

#### *Supportive Comments*

As noted above, the Commission received four comment letters on the proposed rule change, supporting the proposal.<sup>28</sup> All four commenters support the proposal and believe that it represents a fair and reasonable approach to helping ensure that arbitrators are compensated according to the time and effort they devote to deciding a motion.<sup>29</sup> Specifically, one commenter states that "removing the per-case cap on [honorarium for contested subpoena requests] would provide consistency and fairness to the arbitrator payment rules by ensuring that the payment arbitrators receive for deciding these requests is commensurate with the time and effort spent on each motion."<sup>30</sup> Two other commenters believe that the proposal would help FINRA retain and recruit qualified arbitrators to its arbitration forum.<sup>31</sup> In particular, one commenter

states that "paying arbitrators fair honoraria commensurate with the time and effort required for deciding motions tends to encourage qualified arbitrators to serve on cases and as Chair."<sup>32</sup>

#### *Additional Guidance*

One commenter also suggests that FINRA take additional action regarding the assessment of fees related to discovery-related motions for subpoenas and orders. Specifically, the commenter suggests that FINRA should "informally advise arbitrators to consider assessing all fees to the non-prevailing party on contested discovery motions, where in the arbitrators' view the non-prevailing party's position lacked merit."<sup>33</sup> Otherwise, the commenter suggests arbitrators may "naturally" split fees between the parties which could encourage "spurious" motion practice.<sup>34</sup>

In response, FINRA states that its arbitration forum already provides a mechanism for parties to argue their positions regarding the assessments of fees associated with an arbitration proceeding.<sup>35</sup> Specifically, FINRA states that in the absence of an agreement between the parties governing the allocation of these fees, FINRA Rules 12902(c) and 13902(c) give arbitrators discretion to determine how these fees should be allocated in an award.<sup>36</sup> FINRA also states, however, that "[p]arties may argue their positions regarding the appropriate assessment of fees and expenses in their motion papers or responses thereto the panel."<sup>37</sup> Accordingly, FINRA rejects the notion that formal guidance on a panel's authority is necessary.<sup>38</sup>

### **IV. Discussion and Commission Findings**

After careful review of the proposed rule change and the comment letters, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.<sup>39</sup> Specifically, the

<sup>18</sup> See Notice at 36648–36649.

<sup>19</sup> Under the proposed rule change, FINRA would add a contested subpoena request and a contested order for production or appearance to the discovery-related motions rule; however, FINRA would not change the rule language explaining what constitutes a discovery-related motion. See Notice at 36649, note 27.

<sup>20</sup> The proposal would retain what constitutes a contested subpoena by moving the description from FINRA Rule 12214(d)(2) to FINRA Rule 12214(c)(2)(ii). See Notice at 36649, note 28.

<sup>21</sup> See Notice at 36649.

<sup>22</sup> See *id.* As is current practice, arbitrators would not receive an honorarium for an unopposed subpoena request. See Notice at 36649, note 29.

<sup>23</sup> See Notice at 36649.

<sup>24</sup> *Id.*

<sup>25</sup> The proposed rule change would also permit parties to request the issuance of one or more subpoenas in the same motion or a combination of subpoena and order requests. See Notice at 36649, note 30.

<sup>26</sup> See Notice at 36649.

<sup>27</sup> See *id.*

<sup>28</sup> See *supra* note 4.

<sup>29</sup> See Caruso Letter, Bakhtiari Letter, Gitomer Letter, and PIABA Letter; see also FINRA Letter.

<sup>30</sup> Caruso Letter; see also Gitomer Letter (stating that the proposal would provide "reasonable compensation for the time and effort spent in deciding these important requests.").

<sup>31</sup> See Bakhtiari Letter and PIABA Letter.

<sup>32</sup> PIABA Letter; see also Bakhtiari Letter (stating that "fairly compensate[ing] arbitration Chairpersons for deciding contested subpoenas and orders of production and appearance" would help FINRA recruit and retain qualified arbitrators to preside over its forum.).

<sup>33</sup> PIABA Letter.

<sup>34</sup> See *id.*

<sup>35</sup> See *supra* note 5.

<sup>36</sup> See FINRA Letter.

<sup>37</sup> FINRA Letter.

<sup>38</sup> See FINRA Letter.

<sup>39</sup> In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,<sup>40</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Exchange Act Section 15A(b)(5) of the Exchange Act,<sup>41</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

The Commission agrees with FINRA and the commenters that the proposed rule change would protect investors and the public interest by improving the FINRA arbitration forum for the parties that use it and the arbitrators who preside over claims.<sup>42</sup> Currently, the FINRA rules governing fees and corresponding honoraria for the resolution of discovery-related subpoenas and orders in arbitration vary. As stated above, an arbitrator who decides one or more contested subpoenas without a hearing receives \$250. An arbitrator receives no honorarium, however, for: (i) Deciding an unopposed request to issue a subpoena; or (ii) deciding requests for orders for appearance without a hearing. Furthermore, FINRA states that arbitrators only receive honorarium for deciding requests for orders for production without a hearing (for which an arbitrator would receive no honorarium) because FINRA typically characterizes them as discovery-related motions without a hearing so that it can pay \$200 honorarium to each arbitrator for deciding the motion.<sup>43</sup>

The proposal would make the rules more transparent and consistent for both parties and arbitrators by providing for payments to each arbitrator of an honorarium of \$200 to decide, without a hearing session: (i) A discovery-related motion; (ii) a motion that contains one or more contested subpoena requests or contested orders for production or appearance; or (iii) a motion that contains one or more contested subpoena requests and contested orders for production or appearance.<sup>44</sup> According to FINRA, the existing structure for payments to arbitrators for deciding requests to issue subpoenas or orders without a hearing session has

been difficult for parties and arbitrators to understand due to the differences between when, and under what circumstances, arbitrators will receive payments.<sup>45</sup> For example, parties can incur different fees, and arbitrators can receive different honoraria, for contested and unopposed requests to issue subpoenas and orders.<sup>46</sup>

The Commission believes the proposal would also help FINRA retain and recruit qualified arbitrators to its forum by helping ensure arbitrators are paid honoraria commensurate with the time and effort they devote to deciding each request. As stated in the Notice, arbitrators must review several documents related to contested discovery-related requests: The motions requesting the issuance of the order or subpoena; the draft order or subpoena; and, any written objections to the motion. Arbitrators must then consider the arguments before making decisions on the merits of the request.<sup>47</sup> Despite the similar type and amount of work necessary to decide certain discovery-related requests for orders and subpoenas without a hearing, the rules expressly provide honoraria to arbitrators for deciding a contested subpoena but not for deciding a contested order.

The Commission believes that by structuring the arbitrator honorarium rules so that arbitrators receive the same amount of honorarium for each contested subpoena request or contested request for an order for production or appearance they decide without a hearing, the proposed rules would align the payment of honoraria to arbitrators based on the amount of time and effort required to revolve certain discovery-related motions rather than based on the characterization of those requests.<sup>48</sup> The Commission also believes that simplifying the rules governing the payment of honorarium would help improve arbitrators' understanding of the honorarium structure.

The Commission acknowledges that the proposed rule change could increase fees for certain parties. For example, under the proposed rule change parties would be subject to fees for contested requests to issue orders of appearance without a hearing session; and, the proposal would remove the per-case cap on fees for contested subpoena requests so that parties would be assessed additional fees if they submit multiple contested requests for subpoenas.

The Commission also acknowledges that the proposed rule change could lower fees for certain parties. For example, the proposal would: (i) Eliminate payment of honoraria to arbitrators deciding an unopposed order for production; and (ii) lower the amount of honoraria paid to arbitrators for deciding a contested subpoena request from \$250 to \$200. In addition, the proposal would permit a party or parties to use one motion to request the issuance of one or more contested subpoenas or orders so that parties could mitigate their fees.<sup>49</sup> The Commission also acknowledges, however, that the proposal would eliminate the per-case cap honoraria so arbitrators could receive additional payments for multiple contested requests for subpoenas.<sup>50</sup>

On balance, the Commission believes that the proposed rule change is designed to protect investors and the public interest. Notwithstanding the potential increase in fees to some parties in arbitration, the Commission believes that the proposal would improve the FINRA arbitration forum for its users.<sup>51</sup>

In addition, notwithstanding the potential decrease in honoraria in some cases, the Commission believes that the proposal would help FINRA retain and recruit qualified arbitrators to its forum.<sup>52</sup> In particular the Commission believes that reducing the honoraria for contested subpoena requests while removing the per-case cap on these payments would help ensure that the honoraria arbitrators receive for deciding contested requests for orders and subpoenas without a hearing would be more commensurate with their time and effort to consider the requests.<sup>53</sup> Furthermore, the Commission believes that retaining and recruiting qualified arbitrators is an essential element to operating an effective arbitration forum.<sup>54</sup>

The Commission acknowledges one commenter's request that FINRA provide additional guidance to arbitrators regarding their authority to assess all fees to the non-prevailing party on contested discovery motions, where in the arbitrators' view the non-prevailing party's position lacked

<sup>40</sup> 15 U.S.C. 78o-3(b)(6).

<sup>41</sup> 15 U.S.C. 78o-3(b)(5).

<sup>42</sup> See *supra* note 28; see also FINRA Letter.

<sup>43</sup> See *supra* notes 17 and 18.

<sup>44</sup> See Notice at 36649.

<sup>45</sup> See Notice at 36650; see also Notice at 36650, note 34.

<sup>46</sup> See Notice at 36650.

<sup>47</sup> See Notice at 36648.

<sup>48</sup> See Notice at 36649.

<sup>49</sup> See Notice at 36649 and 36651.

<sup>50</sup> See *id.*

<sup>51</sup> The Commission also notes that the proposal would help parties mitigate any potential fee increase by allowing parties to request one or more contested subpoenas or orders in one motion.

<sup>52</sup> The Commission also notes that the proposal would mitigate these decreases by removing the per-case cap on these honorarium payments.

<sup>53</sup> See *supra* note 29.

<sup>54</sup> See Notice at 36650; see also *supra* note 32.

merit.<sup>55</sup> However, the Commission notes FINRA's statement that a mechanism for checking arbitrators' assessments of fees associated with an arbitration proceeding already exists.<sup>56</sup> Accordingly, the Commission acknowledges FINRA's decisions not to provide additional formal guidance to its arbitrators.<sup>57</sup>

## V. Conclusion

*It is therefore ordered* pursuant to Section 19(b)(2) of the Exchange Act<sup>58</sup> that the proposal (SR-FINRA-2018-026), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>59</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018-22681 Filed 10-17-18; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33270; File No. 812-14862]

### Audax Credit BDC Inc., et al.; Notice of Application

October 12, 2018.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of an application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act permitting certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit a business development company ("BDC") and certain closed-end investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

**APPLICANTS:** Audax Credit BDC Inc. (the "Company"), Audax Credit Strategies (SCS), L.P. ("SCS"), Audax Credit Opportunities (SBA), LLC ("SBA"), Audax Senior Debt (MP), LLC ("MP"), Audax Senior Debt (WCTPT), LLC ("WCTPT"), Audax Senior Debt (AZ), LLC ("AZ"), Audax Senior Loan Fund I, L.P. ("SLF I"), Audax Senior Loan Fund I (Offshore), L.P. ("SLF I(O)"), Audax Senior Loan Fund, L.P. ("SLF"), Audax

Senior Loan Fund III, L.P. ("SLF III"), Audax Senior Loan Fund III (Offshore), L.P. ("SLF III(O)"), Audax Senior Loan Fund (ST), LP ("SLF(ST)"), Audax Direct Lending Solutions Fund-A, L.P. ("Direct Lending-A"), Audax Direct Lending Solutions Fund-B, L.P. ("Direct Lending-B"), Audax Direct Lending Solutions Fund-C, L.P. ("Direct Lending-C"), Audax Direct Lending Solutions Fund-D, L.P. ("Direct Lending-D" and, collectively with SCS, SBA, MP, WCTPT, AZ, SLF I, SLF I(O), SLF, SLF III, SLF III(O), SLF(ST), Direct Lending-A, Direct Lending-B, and Direct Lending-C, the "Private Funds"), and Audax Management Company (NY), LLC (the "Company Adviser," and collectively with the Company and the Private Funds, the "Applicants").

**FILING DATES:** The application was filed on December 29, 2017 and amended on June 14, 2018.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 6, 2018 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F St. NE, Washington, DC 20549-1090. Applicants: 101 Huntington Avenue, Boston, Massachusetts 02199.

**FOR FURTHER INFORMATION CONTACT:** Jill Ehrlich, Senior Counsel, at (202) 551-6819, or Andrea Ottomaneli Magovern, Branch Chief, at (202) 551-6821 (Chief Counsel's Office, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

## Applicants' Representations

1. The Company was organized as a corporation under the General Corporation Law of the State of Delaware on January 29, 2015 and elected to be treated as a BDC<sup>1</sup> through a notification of election to be subject to sections 55 through 65 of the Act on Form N-54A. The Company's "Objectives and Strategies"<sup>2</sup> are to generate current income and, to a lesser extent, long-term capital appreciation by investing primarily in senior secured debt of privately owned U.S. middle-market companies. The Company has a five-member board of directors (the "Board"), of which three members are not "interested persons" of the Company within the meaning of section 2(a)(19) of the Act (the "Non-Interested Directors"). No Non-Interested Director will have any direct or indirect financial interest in any Co-Investment Transaction (defined below) or any interest in any portfolio company, other than indirectly through share ownership (if any) in the Company or a Future Regulated Fund (defined below).

2. SCS was formed as a Delaware limited partnership on March 10, 2014 and would be an investment company but for the exclusion from the definition of investment company provided by section 3(c)(7) of the Act. SCS's investment objective is to invest primarily in a portfolio of secured and unsecured loans and other debt instruments, seeking low volatility, principal protection and current income. SCS has an investment strategy that is similar to the Company's investment strategy.

3. SBA was formed as a Delaware limited liability company on March 10, 2010 and would be an investment company but for the exclusion from the definition of investment company provided by section 3(c)(7) of the Act. SBA's investment objective is to invest primarily in a portfolio of secured and unsecured loans and other debt instruments, seeking low volatility, principal protection and current

<sup>1</sup> Section 2(a)(48) of the Act defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

<sup>2</sup> "Objectives and Strategies" means, with respect to a Regulated Fund (defined below), the investment objectives and strategies of such Regulated Fund, as described in such Regulated Fund's registration statement, other filings the Regulated Fund has made with the Commission under the Act, Securities Act of 1933 (the "1933 Act"), or under the Securities Exchange Act of 1934, or in the Regulated Fund's reports to stockholders.

<sup>55</sup> See *supra* notes 33 and 34.

<sup>56</sup> See *supra* note 37.

<sup>57</sup> See *supra* note 38.

<sup>58</sup> 15 U.S.C. 78s(b)(2).

<sup>59</sup> 17 CFR 200.30-3(a)(12).

income. SBA has an investment strategy that is similar to the Company's investment strategy.

4. MP was formed as a Delaware limited liability company on June 28, 2017 and would be an investment company but for the exclusion from the definition of investment company provided by section 3(c)(7) of the Act. MP's investment objective is to invest primarily in a portfolio of secured and unsecured loans and other debt instruments, seeking low volatility, principal protection and current income. MP has an investment strategy that is similar to the Company's investment strategy.

5. WCTPT was formed as a Delaware limited liability company on October 25, 2011 and would be an investment company but for the exclusion from the definition of investment company provided by section 3(c)(7) of the Act. WCTPT's investment objective is to invest in a portfolio of first lien senior secured loans, seeking low volatility, principal protection and current income for WCTPT. WCTPT has an investment strategy that is similar to the Company's investment strategy.

6. AZ was formed as a Delaware limited liability company on November 20, 2017 and would be an investment company but for the exclusion from the definition of investment company provided by section 3(c)(7) of the Act. AZ's investment objective is to invest primarily in a portfolio of secured and unsecured loans and other debt instruments, seeking low volatility, principal protection and current income. AZ has an investment strategy that is similar to the Company's investment strategy.

7. SLF I was formed as a Delaware limited partnership on July 23, 2007 and would be an investment company but for the exclusion from the definition of investment company provided by section 3(c)(7) of the Act. SLF I's investment objective is to invest primarily in a portfolio of secured and unsecured loans and other debt instruments, seeking low volatility, principal protection and current income. SLF I has an investment strategy that is similar to the Company's investment strategy.

8. SLF I(O) was formed as a Cayman Islands exempted limited partnership on October 2, 2007 and would be an investment company but for the exclusion from the definition of investment company provided by section 3(c)(7) of the Act. SLF I(O)'s investment objective is to invest primarily in a portfolio of secured and unsecured loans and other debt instruments, seeking low volatility,

principal protection and current income. SLF(I)O has an investment strategy that is similar to the Company's investment strategy.

9. SLF was formed as a Delaware limited partnership on August 10, 2012 and would be an investment company but for the exclusion from the definition of investment company provided by section 3(c)(7) of the Act. The investment objective of SLF is to invest primarily in a portfolio of first lien senior secured loans to North American middle market companies, although a portion of the its portfolio may be invested in mezzanine, second lien, distressed and other securities or instruments, including securities or instruments of non-North American companies. SLF has an investment strategy that is similar to the Company's investment strategy.

10. SLF III was formed as a Delaware limited partnership on January 19, 2016 and would be an investment company but for the exclusion from the definition of investment company provided by section 3(c)(7) of the Act. The investment objective of SLF III is to invest primarily in a portfolio of first lien senior secured loans to North American middle market companies, although a portion of the its portfolio may be invested in mezzanine, second lien, distressed and other securities or instruments, including securities or instruments of non-North American companies. SLF III has an investment strategy that is similar to the Company's investment strategy.

11. SLF III(O) was formed as a Cayman Islands exempted limited partnership on May 25, 2016 and would be an investment company but for the exclusion from the definition of investment company provided by section 3(c)(7) of the Act. The investment objective of SLF III(O) is to invest primarily in a portfolio of first lien senior secured loans to North American middle market companies, although a portion of the its portfolio may be invested in mezzanine, second lien, distressed and other securities or instruments, including securities or instruments of non-North American companies. SLF III(O) has an investment strategy that is similar to the Company's investment strategy.

12. SLF (ST) was formed as a Delaware limited partnership on May 16, 2018 and would be an investment company but for the exclusion from the definition of investment company provided by section 3(c)(7) of the Act. The investment objective of SLF (ST) is to invest primarily in a portfolio of secured and unsecured loans and other debt instruments, seeking low volatility,

principal protection and current income. SLF (ST) has an investment strategy that is similar to the Company's investment strategy.

13. Direct Lending-A, Direct Lending-B and Direct Lending-C were each formed as a Delaware limited partnership on October 12, 2017, October 12, 2017 and April 5, 2017, respectively, and each would be an investment company but for the exclusion from the definition of investment company provided by section 3(c)(7) of the Act. Direct Lending-D was formed as a Cayman Islands exempted limited partnership on April 10, 2018 and would be an investment company but for the exclusion from the definition of investment company provided by section 3(c)(7) of the Act. The investment objective of each of Direct Lending-A, Direct Lending-B, Direct Lending-C, and Direct Lending-D is to engage in direct lending to private middle market companies based in the United States and Canada through a variety of structures, and primarily via unitranche and stretch senior secured loans, with selected positions in senior secured first or second lien loans, equity and similar investments. The investment strategy of each of Direct Lending-A, Direct Lending-B, Direct Lending-C, and Direct Lending-D overlaps with the Company's investment strategy.

14. The Company Adviser, a Delaware limited liability company and an investment adviser registered with the Commission under the Investment Advisers Act of 1940 ("Advisers Act"), serves as investment adviser to both the Company and each of the Private Funds. Under the investment advisory agreements of the Company and the Private Funds, the Company Adviser manages the portfolio of each entity in accordance with the investment objective and policies of each, makes investment decisions for each entity, places purchase and sale orders for portfolio transactions for each entity, and otherwise manages the day-to-day operations of each entity, subject, in the case of the Company, to the oversight of its Board.

15. Applicants seek an order ("Order") to permit one or more Regulated Funds<sup>3</sup> and/or one or more

<sup>3</sup> "Regulated Fund" means the Company and any Future Regulated Fund. "Future Regulated Fund" means any closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser is an Adviser, and (c) that intends to participate in the Co-Investment Program. The term "Adviser" means (a) the



Affiliated Funds<sup>4</sup> to participate in the same investment opportunities through a proposed co-investment program (the “Co-Investment Program”) where such participation would otherwise be prohibited under section 57(a)(4) and rule 17d–1 by (a) co-investing with each other in securities issued by issuers in private placement transactions in which an Adviser negotiates terms in addition to price;<sup>5</sup> and (b) making additional investments in securities of such issuers, including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers (“Follow-On Investments”). “Co-Investment Transaction” means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Subsidiary) participates together with one or more other Regulated Funds and/or one or more Affiliated Funds in reliance on the requested Order.<sup>6</sup> “Potential Co-Investment Transaction” means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Subsidiary) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.<sup>7</sup>

16. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment

Subsidiaries. Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Affiliated Fund or Regulated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Subsidiary be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Fund and that the Wholly-Owned Investment Subsidiary’s participation in any such transaction be treated, for purposes of the requested Order, as though the parent Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Subsidiary would have no purpose other than serving as a holding vehicle for the parent Regulated Fund’s investments and, therefore, no conflicts of interest could arise between a Regulated Fund and its Wholly-Owned Investment Subsidiary. The applicable Regulated Fund’s Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Subsidiary’s participation in a Co-Investment Transaction, and the Regulated Fund’s Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Subsidiary in the Regulated Fund’s place. If the Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subsidiaries, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Subsidiary.

17. When considering Potential Co-Investment Transactions for any Regulated Fund, the applicable Adviser will consider only the Objectives and Strategies, investment policies, investment positions, capital available for investment (“Available Capital”), and other pertinent factors applicable to that Regulated Fund. The Board of each Regulated Fund, including the Non-Interested Directors, has (or will have prior to relying on the requested Order) determined that it is in the best interests of the Regulated Fund to participate in the Co-Investment Transaction.

18. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making the determinations required in conditions 1 and 2(a), the Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the directors of the Board eligible to vote under section 57(o) of the Act (“Eligible Directors”), and the “required

majority,” as defined in section 57(o) of the Act (“Required Majority”)<sup>8</sup> will approve each Co-Investment Transaction prior to any investment by the participating Regulated Fund.

19. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Fund and Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund’s participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund’s Eligible Directors. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

20. Applicants also represent that if the Advisers, the principals of the Advisers (“Principals”), or any person controlling, controlled by, or under common control with an Adviser or the Principals, and the Affiliated Funds (collectively, the “Holders”) own in the aggregate more than 25% of the outstanding voting shares of a Regulated Fund (the “Shares”), then the Holders will vote such Shares as required under condition 14. Applicants believe this condition will ensure that the Non-Interested Directors will act independently in evaluating the Co-Investment Program, because the ability of the Advisers or the Principals to influence the Non-Interested Directors by a suggestion, explicit or implied, that the Non-Interested Directors can be removed will be limited significantly. Applicants represent that the Non-Interested Directors will evaluate and approve any such independent third party, taking into account its qualifications, reputation for independence, cost to the stockholders, and other factors that they deem relevant.

<sup>8</sup> In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).

Company Adviser and (b) any future investment adviser that controls, is controlled by or is under common control with the Company Adviser or its successor and is registered as an investment adviser under the Advisers Act. The term “successor,” as applied to each Adviser, means an entity that results from a reorganization into another jurisdiction or change in the type of business organization.

<sup>4</sup> “Affiliated Fund” means the Private Funds and any Future Affiliated Fund. “Future Affiliated Fund” means any entity (a) whose investment adviser is an Adviser, (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, and (c) that intends to participate in the Co-Investment Program.

<sup>5</sup> The term “private placement transactions” means transactions in which the offer and sale of securities by the issuer are exempt from registration under the 1933 Act.

<sup>6</sup> The term “Wholly-Owned Investment Subsidiary” means an entity (i) that is wholly-owned by a Regulated Fund (with the Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments and incur debt (which is or would be consolidated with other indebtedness of such Regulated Fund for financial reporting or compliance purposes under the Act) on behalf of the Regulated Fund; (iii) with respect to which the Regulated Fund’s Board has the sole authority to make all determinations with respect to the entity’s participation under the conditions of the application; and (iv) that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act.

<sup>7</sup> All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

## Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC or a company controlled by a BDC in contravention of rules as prescribed by the Commission. Under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by, or under common control with a BDC is subject to section 57(a)(4). Applicants submit that each of the Regulated Funds and Affiliated Funds could be deemed to be a person related to each Regulated Fund in a manner described by section 57(b) by virtue of being under common control. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d-1 also applies to joint transactions with Regulated Funds that are BDCs. Section 17(d) of the Act and rule 17d-1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Section 17(d) of the Act and rule 17d-1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d-1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that in the absence of the requested relief, the Regulated Funds would be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less

advantageous than that of other participants.

## Applicants' Conditions

Applicants agree that the Order will be subject to the following conditions:

1. Each time an Adviser considers a Potential Co-Investment Transaction for an Affiliated Fund or another Regulated Fund that falls within a Regulated Fund's then-current Objectives and Strategies, the Regulated Fund's Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the amount proposed to be invested by each. The applicable Adviser will provide the Eligible Directors of each participating Regulated Fund with information concerning each participating party's Available Capital to assist the Eligible Directors with their review of the Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a), the applicable Adviser will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and Affiliated Fund) to the Eligible Directors of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with one or more other Regulated Funds and/or one or more Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its stockholders and do not involve

overreaching in respect of the Regulated Fund or its stockholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) The interests of the Regulated Fund's stockholders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Funds or Affiliated Funds would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of any other Regulated Funds or Affiliated Funds; provided that if any other Regulated Funds or Affiliated Funds, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any;

(B) the applicable Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Affiliated Fund or any Regulated Fund or any affiliated person of any Affiliated Fund or any Regulated Fund receives in connection with the right of the Affiliated Fund or Regulated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Funds (who each may, in turn, share its portion with its affiliated persons) and the participating Regulated Fund in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the Advisers, any Affiliated Funds or other Regulated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by section 17(e) or 57(k) of the Act, as applicable, (C) indirectly, as a result of

an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,<sup>9</sup> a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, an Affiliated Fund or any affiliated person of another Regulated Fund or Affiliated Fund is an existing investor.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Affiliated Fund. The grant to an Affiliated Fund or another Regulated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Affiliated Fund or any Regulated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment

Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Affiliated Funds and Regulated Funds.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Affiliated Fund and each Regulated Fund will bear its own expenses in connection with any such disposition.

8.

(a) If any Affiliated Fund or Regulated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the co-investment transaction of the proposed Follow-On Investment at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the

Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the opportunity is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, then the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Non-Interested Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by any other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Non-Interested Directors may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Directors will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the

<sup>9</sup> This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which the Regulated Fund already holds investments.

Required Majority under section 57(f) of the Act.

11. No Non-Interested Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an “affiliated person” (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the 1933 Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee<sup>10</sup> (including break-up or commitment fees but excluding broker’s fees contemplated section 17(e) or 57(k) of the Act, as applicable) received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the Co-Investment Transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Advisers, the other Regulated Funds, or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of an Adviser, investment advisory fees paid in accordance with the investment advisory agreements between such

Adviser and the Regulated Fund or Affiliated Fund).

14. If the Holders own in the aggregate more than 25% of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable state law affecting the Board’s composition, size or manner of election.

15. Each Regulated Fund’s chief compliance officer, as defined in rule 38a-1(a)(4) under the Act, will prepare an annual report for the Board of such Regulated Fund that evaluates (and documents the basis of that evaluation) the Regulated Fund’s compliance with the terms and conditions of the application and procedures established to achieve such compliance.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018-22676 Filed 10-17-18; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84417; File No. SR-MIAX-2018-14]

### Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Order Granting Approval of a Proposed Rule Change To List and Trade Options on the SPIKES™ Index

October 12, 2018.

#### I. Introduction

On June 28, 2018, Miami International Securities Exchange, LLC (“MIAX Options” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade options on the SPIKES™ Index (“SPIKES” or the “Index”), which measures expected 30-day volatility of the SPDR S&P 500 ETF Trust (“SPY”). The proposed rule change was published for comment in the **Federal Register** on July 16, 2018.<sup>3</sup> On August 28, 2018, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a

longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

The Exchange proposes to list and trade cash-settled, European-style options on the Index, which measures expected thirty-day volatility of SPY.<sup>6</sup>

As more fully set forth in the Notice, the Index is calculated using a methodology developed by T3i Pty Ltd, which uses published real-time prices and bid/ask quotes of SPY options.<sup>7</sup> The Index will be calculated and maintained by the Exchange. The Index uses a proprietary “price dragging” technique to determine the ongoing price for each individual option used in the calculation of the Index (“Reference Price”), which the Exchange believes should materially reduce erratic movements of the Index value as quotations on out-of-the-money options are rapidly altered during times of low liquidity.<sup>8</sup> The Exchange also notes the Index’s exclusion rule (“truncation method”), which determines how far away from the money to exclude strikes from the volatility calculation. When two consecutive option prices of \$0.05 or less are encountered when moving away from the at-the-money strike, the truncation method excludes all the strikes beyond that level, from each of the put and call side.<sup>9</sup> The Exchange believes that this exclusion methodology should result in a calculation outcome that better reflects the expected measure of volatility.<sup>10</sup>

The Index will be updated on a real-time basis on each trading day beginning at 9:30 a.m. and ending at

<sup>5</sup> See Securities Exchange Act Release No. 83975, 83 FR 44929 (September 4, 2018). The Commission designated October 14, 2018 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

<sup>6</sup> According to the Exchange, SPY is historically the largest and most actively-traded exchange-traded fund in the United States as measured by its assets under management and the value of shares traded. See Notice, *supra* note 3, at 32936.

<sup>7</sup> See *id.* at 32933–36 (describing in more detail the calculation methodology for the Index).

<sup>8</sup> See *id.* at 32934–35 (describing in more detail the “price dragging” methodology).

<sup>9</sup> See *id.* at 32935 (describing in more detail the truncation method).

<sup>10</sup> See *id.*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 83619 (July 11, 2018), 83 FR 32932 (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> The Applicants are not requesting, and the staff is not providing, any relief for transaction fees received in connection with any Co-Investment Transaction.

4:15 p.m. (New York time).<sup>11</sup> Values of the Index will be disseminated to the Options Price Reporting Authority (“OPRA”) at least every fifteen seconds during the Exchange’s regular trading hours, pursuant to Exchange Rules 1802 and 1803.<sup>12</sup> In the event the Index ceases to be maintained or calculated, or its values are not disseminated at least every fifteen seconds by a widely available source, the Exchange will not list any additional series for trading and may, for the purpose of maintaining a fair and orderly market and protecting investors, limit transactions in certain options on the Index to closing transactions only.

The Exchange proposes that the standard trading hours for index options (9:30 a.m. to 4:15 p.m., New York time) will apply to options on the Index. Options on the Index will expire on the Wednesday that is thirty days prior to the third Friday of the calendar month immediately following the expiration month.<sup>13</sup> The exercise-settlement amount will be equal to the difference between the final settlement value of the Index and the exercise price of the option, multiplied by \$100. Exercise will result in the delivery of cash on the business day following expiration.

To determine the final settlement value of the Index, the Exchange will perform an Index settlement price calculation, which includes all SPY options that expire thirty days after the SPIKES settlement that are included in the settlement (“constituent options”). To perform the Index settlement price calculation, each constituent option will be assigned a Settlement Reference Price (“SRP”). Each SRP will be determined through the proposed “SPIKES Special Settlement Auction,” which will be conducted once per month, in the constituent options traded on the Exchange, on final settlement day. The SPIKES Special Settlement Auction will utilize the Exchange’s existing standard opening process, as described in Exchange Rule 503(f), with a proposed modification to account for situations where there remains an order imbalance<sup>14</sup> that must be filled at the

opening price after the requisite number of iterations of the imbalance process takes place under the Exchange’s existing opening process.<sup>15</sup>

All orders for participation in the SPIKES Special Settlement Auction that are related to positions in, or a trading strategy involving, Index options (“SPIKES Strategy Orders”) and any change to or cancellation of any such order: (i) Must be received prior to the applicable SPIKES Strategy Order cut-off time for the constituent option series, as determined by the Exchange, which may be no earlier than the opening of the live order window (currently, 7:30 a.m.) or the live quote window (for the SPIKES Special Settlement Auction, anticipated to be 8:30 a.m.), and no later than the opening of trading in the series; and (ii) may not be cancelled or modified after the applicable SPIKES Strategy Order cut-off time, unless the SPIKES Strategy Order is not executed in the SPIKES Special Settlement Auction and the cancellation or modification is submitted after the SPIKES Special Settlement Auction is concluded. The Exchange states that it will generally consider orders to be SPIKES Strategy Orders if the orders possess the following characteristics: (i) They are for options with the expiration that will be used to calculate the exercise or final settlement value of the applicable volatility index option contract; (ii) they are for options spanning the full range of strike prices for the appropriate expiration for options that will be used to calculate the exercise or final settlement value of the applicable volatility index option contract, but not necessarily every available strike price; and (iii) they are for put options with strike prices less than the at-the-money strike price, for call options with strike prices greater than the at-the-money strike price, or for put and call options with at-the-money strike prices. The Exchange notes that it may also deem order types other than those provided above as SPIKES Strategy Orders if the Exchange determines that to be the case based on the applicable facts and circumstances.<sup>16</sup>

The Exchange believes that the Index, including the settlement value, will not be readily susceptible to

manipulation.<sup>17</sup> According to the Exchange, the “price dragging” technique, which is used to determine the ongoing Reference Price for each individual option used in the calculation of the Index, helps prevent market manipulation by utilizing the most recent trade price as the Reference Price, which the Exchange believes to be a more accurate methodology than alternatives.<sup>18</sup> Further, the Exchange believes that using SPY options as the components for a volatility index has the potential to result in an extremely liquid volatility product with exceptionally tight spreads, which consequently would not be readily susceptible to fraudulent and manipulative acts.<sup>19</sup> For example, the Exchange notes that SPY options regularly trade four to five million contracts a day and have twenty to thirty million contracts in open interest, and are traded on all fifteen option exchanges.<sup>20</sup> Since SPY options are traded on all fifteen option exchanges, the Exchange believes that market participants may take advantage of arbitrage opportunities across multiple venues.<sup>21</sup>

The Exchange proposes to adopt minimum trading increments for options on the Index to be \$0.05 for series trading below \$3, and \$0.10 for series trading at or above \$3. The Exchange also proposes to set the minimum strike price interval for options on the Index at \$0.50 where the strike price is less than \$15, \$1 or greater where the strike price is between \$15 and \$200, and \$5 or greater where the strike price is greater than \$200. Currently, when new series of options on the Index with a new expiration date are opened for trading, or when additional series of options on the Index in an existing expiration date are opened for trading as the current value of the Index moves substantially from the exercise prices of series already opened, the exercise prices of such new or additional series must be reasonably related to the current value of the Index at the time such series are first opened for trading.<sup>22</sup> The Exchange, however, proposes to eliminate this range limitation that would otherwise limit the number of \$1 strikes that may be listed in options on the Index. The

<sup>11</sup> If the current published value of a component is not available, the last published value will be used in the calculation.

<sup>12</sup> The Exchange notes that it is currently disseminating the cash values of the Index to OPRA under the ticker symbol “SPIKE” in at least fifteen second intervals. See Notice, *supra* note 3, at 32936.

<sup>13</sup> If that Wednesday or the Friday that is thirty days following that Wednesday is an Exchange holiday, the final settlement value will be calculated on the business day immediately preceding that Wednesday.

<sup>14</sup> An “imbalance” occurs when there is insufficient liquidity to satisfy all trading interest due an execution at a certain price. See Exchange Rule 503(f)(2)(v).

<sup>15</sup> The proposed modification to the Exchange’s existing opening process to facilitate the execution of this remaining must-fill interest is referred to as the special settlement imbalance process (“SSIP”). See proposed Rule 1809, Interpretation and Policy .06. For more detail about the operation of the SPIKES Special Settlement Auction, including an example, see Notice, *supra* note 3, at 32939–41.

<sup>16</sup> See Notice, *supra* note 3, at 32939.

<sup>17</sup> See *id.* at 32942–43.

<sup>18</sup> See *id.* at 32942.

<sup>19</sup> See *id.* at 32943.

<sup>20</sup> See *id.*

<sup>21</sup> See *id.*

<sup>22</sup> See Exchange Rule 1809(c)(3). The term “reasonably related to the current index value of the underlying index” means that the exercise price is within thirty percent of the current index value, as defined in Exchange Rule 1809(c)(4).

Exchange's proposal to eliminate this range limitation is identical to strike price intervals adopted by the Cboe Exchange, Inc. ("Cboe") for the Cboe Volatility Index ("VIX").<sup>23</sup>

The Exchange initially proposes to list options on the Index in up to twelve standard monthly expirations. In addition, long-term option series having up to sixty months to expiration,<sup>24</sup> Short Term Option Series,<sup>25</sup> and Quarterly Options Series<sup>26</sup> may also be traded. Options on the Index will be quoted and traded in U.S. dollars.<sup>27</sup>

The Exchange believes that the Index is a broad-based index, as that term is defined in Exchange Rule 1801(k).<sup>28</sup> The Exchange proposes that the Index should be treated as a broad-based index for purposes of position limits, exercise limits, and margin requirements. Accordingly, the Exchange proposes no position or exercise limits for options on the Index<sup>29</sup> and the Exchange proposes to apply margin requirements that are identical to those applied for other broad-based index options.

In addition, the Exchange proposes that the trading of options on the Index will be subject to the same rules governing the trading of Exchange index options, including sales practice rules, margin requirements, and trading rules. Trading of options on the Index will also be subject to the trading halt procedures applicable to other index options traded on the Exchange.<sup>30</sup> Further, Chapter XIII of the Exchange's rules, which is designed to protect

public customer trading, will apply to trading in options on the Index.

The Exchange represents that it has an adequate surveillance program in place for options on the Index and intends to apply those same program procedures that it applies to the Exchange's other options products. In addition, the Exchange notes that several new surveillances related to the Index will be added to its surveillance program.<sup>31</sup> Specifically, the Exchange notes that it has a Regulatory Services Agreement ("RSA") in place with the Financial Industry Regulatory Authority ("FINRA") to conduct cross-market surveillances on its behalf and has expanded the RSA to include a new options pattern designed to determine whether any market participants influenced the settlement price of an a.m. cash-settled index product to benefit their expiring index option position. Further, the Exchange represents that both MIAX Options Regulation and FINRA Options Regulation will manually review options activity during each monthly settlement process. After manually reviewing settlement process activity over the course of months, the Exchange and FINRA will determine whether additional reports or enhancements to the cash-settled report(s) are required.<sup>32</sup> Additionally, the Exchange notes that it is a member of the Intermarket Surveillance Group, through which it can coordinate surveillance and investigative information sharing in the stock and options markets with all U.S. registered stock and options markets. The Exchange also represents that it has the necessary system capacity to support additional quotations and messages that will result from the listing and trading of options on the Index.

### III. Discussion and Commission Findings

After careful consideration of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>33</sup> and, in particular, the requirements of Section 6 of the Act.<sup>34</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>35</sup> which requires, among other things, that the

rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Commission believes that the proposed Index options provide investors with an additional trading and hedging mechanism.

The Commission believes that the Exchange's proposal is consistent with the Act.<sup>36</sup> As noted above, the Index is calculated using published real-time price and bid/ask quotes of SPY options and measures changes in the expected thirty-day volatility of SPY. The Commission notes that SPY options are the most actively-traded options in terms of average daily volume. After careful consideration, the Commission has determined that the Exchange's proposal to list and trade options on the Index, including the proposed settlement process, is comparable to the listing and trading of options on similar volatility indexes.<sup>37</sup>

The Commission also believes that permitting \$0.50 strike price intervals if the strike price is less than \$15 and \$1.00 strike price intervals if the strike price is between \$15 and \$200 will provide investors with added flexibility in the trading of these options and will further the public interest by allowing investors to establish positions that are better tailored to meet their investment objectives. As noted above, the Exchange proposes to provide an exception for the proposed Index options from the existing requirement that exercise prices of new or additional series must be reasonably related to the current value of the Index at the time such series are first opened for trading.<sup>38</sup> The Commission believes that this change is consistent with the Act because it should provide investors added flexibility to meet their investment objectives.<sup>39</sup> The

<sup>23</sup> See Securities Exchange Act Release No. 63155 (October 21, 2010), 75 FR 66402 (October 28, 2010) (SR-CBOE-2010-096).

<sup>24</sup> See Exchange Rule 1809(b)(1).

<sup>25</sup> See Exchange Rule 1809, Interpretations and Policies .01.

<sup>26</sup> See Exchange Rule 1809, Interpretations and Policies .02.

<sup>27</sup> See Exchange Rule 1809(a)(1).

<sup>28</sup> Exchange Rule 1801(k) defines the terms "market index" and "broad-based index" to mean an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.

<sup>29</sup> As noted above, the Index will settle using published prices and quotes from its corresponding SPY options. The Exchange asserts that because the size of SPY options market (as well as the underlying SPY market) is so large, the Exchange believes that there is minimal risk of manipulation by virtue of position size in SPIKES options. The Exchange notes that options on Cboe's VIX are also not subject to any position or exercise limits. See Notice, *supra* note 3, at 32941. See also Securities Exchange Act Release No. 54019 (June 20, 2006), 71 FR 36569 (June 27, 2006) (SR-CBOE-2006-55). Additionally, the Exchange notes there are currently a number of actively-traded broad-based index options, e.g., DJX, NDX, SPX, that are also not subject to any position or exercise limits. See Notice, *supra* note 3, at 32941 n.56.

<sup>30</sup> See Exchange Rule 1808(c).

<sup>31</sup> See Notice, *supra* note 3, at 32942.

<sup>32</sup> See *id.*

<sup>33</sup> 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).

<sup>34</sup> 15 U.S.C. 78f.

<sup>35</sup> 15 U.S.C. 78f(b)(5).

<sup>36</sup> In approving this proposed rule change to list and trade options on the Index, the Commission is not determining whether the Index is a "narrow-based" security index as that term is defined in the Act. See 15 U.S.C. 78c(a)(55)(B).

<sup>37</sup> See Securities Exchange Act Release No. 49563 (April 14, 2004), 69 FR 21589 (April 21, 2004) (SR-CBOE-2003-40) (order approving the listing and trading of options on the VIX). See also Securities Exchange Act Release No. 71365 (January 22, 2014), 79 FR 4512 (January 28, 2014) (SR-ISE-2013-42) (order approving the listing and trading of options on the Nations VolDex Index).

<sup>38</sup> See *supra* notes 22-23 and accompanying text.

<sup>39</sup> The Commission notes that Cboe previously eliminated the band that limited the number of \$1 strikes that could be listed on VIX options. See

Commission also notes that the Exchange has represented that it has the necessary systems capacity to handle the additional traffic associated with the listing and trading of this new product and it expects that the Exchange considered this expansion of the permissible range of strike prices in making such a representation.<sup>40</sup>

The Commission also believes that it is consistent with the Act to apply margin requirements to the proposed Index options that are otherwise applicable to options on broad-based indexes. The Commission further believes that the Exchange's proposed minimum trading increment, series openings, and other aspects of the proposed rule change are appropriate and consistent with the Act.

As a national securities exchange, the Exchange is required, under Section 6(b)(1) of the Act,<sup>41</sup> to enforce compliance by its members and persons associated with its members with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. The Exchange has asserted its belief that there is a low potential for manipulation of the Index settlement value.<sup>42</sup> The Exchange has represented that it has an adequate surveillance program in place for options traded on the Index, and will monitor for any potential manipulation of the Index settlement value according to its current surveillance procedures and additional surveillance measures.<sup>43</sup> The Commission also notes the Exchange's representation that it has the necessary systems capacity to support the new options series that will result from this proposal.<sup>44</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>45</sup> that the proposed rule change (SR-MIAX-2018-14) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>46</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018-22683 Filed 10-17-18; 8:45 am]

**BILLING CODE 8011-01-P**

Securities Exchange Act Release No. 63155 (October 21, 2010), 75 FR 66402 (October 28, 2010) (SR-CBOE-2010-096).

<sup>40</sup> See Notice, *supra* note 3, at 32942.

<sup>41</sup> 15 U.S.C. 78f(b)(1).

<sup>42</sup> See Notice, *supra* note 3, at 32942-43.

<sup>43</sup> See *supra* notes 31-32 and accompanying text.

<sup>44</sup> See *id.*

<sup>45</sup> 15 U.S.C. 78s(b)(2).

<sup>46</sup> 17 CFR 200.30-3(a)(12).

#### SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15696 and #15697; North Carolina Disaster Number NC-00099]**

##### Presidential Declaration Amendment of a Major Disaster for the State of North Carolina

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 4.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of North Carolina (FEMA-4393-DR), dated 09/14/2018.

*Incident:* Hurricane Florence.

*Incident Period:* 09/07/2018 through 09/29/2018.

**DATES:** Issued on 10/10/2018.

*Physical Loan Application Deadline Date:* 11/13/2018.

*Economic Injury (EIDL) Loan Application Deadline Date:* 06/14/2019.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of North Carolina, dated 09/14/2018, is hereby amended to establish the incident period for this disaster as beginning 09/07/2018 and continuing through 09/29/2018.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**James Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2018-22691 Filed 10-17-18; 8:45 am]

**BILLING CODE 8025-01-P**

#### SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15624 and #15625; California Disaster Number CA-00292]**

##### Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of California

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major

disaster for Public Assistance Only for the State of California (FEMA-4382-DR), dated 08/04/2018.

*Incident:* Wildfires and High Winds.

*Incident Period:* 07/23/2018 through 09/19/2018.

**DATES:** Issued on 10/04/2018.

*Physical Loan Application Deadline Date:* 10/03/2018.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/06/2019.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of California, dated 08/04/2018, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* Lake

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**James Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2018-22693 Filed 10-17-18; 8:45 am]

**BILLING CODE 8025-01-P**

#### SURFACE TRANSPORTATION BOARD

**[Docket No. AB 303 (Sub-No. 50X)]**

##### Wisconsin Central Ltd.— Discontinuance of Service Exemption—in Ashland and Price Counties, Wis.

Wisconsin Central Ltd. (WCL) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over a portion of WCL's Ashland Subdivision extending approximately 58.4 miles from milepost 434.4 in the city of Ashland, Ashland County, Wis., to milepost 376.0 near Park Falls, Price County, Wis. (the Line). The Line traverses United States Postal Service Zip Codes 54806, 54855, 54846, 54546, 54527, 54514, and 54552.

WCL has certified that: (1) No local traffic has moved over the Line for at least two years; (2) there is no overhead traffic to be rerouted over other lines; (3)



no formal complaint filed by a user of a 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 is either pending with the Surface Transportation Board (Board) or with 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) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service 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) <sup>1</sup> to subsidize continued rail service has been received, this exemption will be effective on November 17, 2018, unless stayed pending reconsideration. Formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2) <sup>2</sup> must be filed by October 26, 2018. Petitions to stay that do not involve environmental issues must be filed by October 29, 2018.<sup>3</sup> Petitions for reconsideration must be filed by November 7, 2018, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001.

A copy of any petition filed with Board should be sent to WCL's representative, Bradon J. Smith, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available on our website at [www.stb.gov](http://www.stb.gov).

<sup>1</sup> 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).

<sup>2</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,800. See 49 CFR 1002.2(f)(25).

<sup>3</sup> Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require environmental review.

Decided: October 15, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**Brendetta Jones,**  
Clearance Clerk.

[FR Doc. 2018-22739 Filed 10-17-18; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0236]

#### Hours of Service of Drivers: Rota-Mill, Inc.; Application for Exemption

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from Rota-Mill, Inc. (Rota-Mill) requesting exemptions from two requirements of the hours-of-service (HOS) regulations for drivers of commercial motor vehicles (CMVs): (1) The 30-minute rest break provision and (2) the requirement that short-haul drivers utilizing the record of duty status (RODS) exception return to their work-reporting location within 12 hours of coming on duty. The first exemption would enable drivers engaged in the transportation of milled asphalt and related materials and equipment to use 30 minutes or more of on-duty "waiting time" at a jobsite to satisfy the requirement for the 30-minute rest break, provided they do not perform any other work during the break. The second exemption would allow these drivers to use the short-haul exception, but return to their work-reporting location within 14 hours instead of the current 12 hours. FMCSA requests public comment on Rota-Mill's application for exemptions.

**DATES:** Comments must be received on or before November 19, 2018.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA-2018-0236 by any of the following methods:

- **Federal eRulemaking Portal:** [www.regulations.gov](http://www.regulations.gov). See the *Public Participation and Request for Comments* section below for further information.

- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE,

between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

- **Fax:** 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the *Privacy Act* heading below.

**Docket:** For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online FDMS is available 24 hours each day, 365 days each year.

**Privacy Act:** In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, please contact Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366-2722; Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

##### Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2018-0236), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number, "FMCSA-2018-0236" in the

“Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

## II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

## III. Request for Exemption

Rota-Mill seeks exemptions for all of its drivers transporting milled asphalt and related materials and equipment from the HOS 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii) and the restriction of the RODS exception for short-haul operations to drivers who return to their normal work-reporting location within 12 hours [49 CFR 395.1(e)(1)(ii)(A)].

Rota-Mill employs approximately 21 commercial driver's license holders who

are the operators of the heavy equipment. They drive to the job location, then operate the equipment they deliver. Their driving time for any given day would be less than 5 hours. A considerable amount of Rota-Mill's jobs are between one and one-and-a-half hours away. If the job is for 8 hours, these drivers can easily return to Rota-Mill's facility within the 12-hour limit of the short-haul exception in 395.1(e). The issue arises when Rota-Mill's crews arrive on a job, and the job increases in size as a result of some unforeseen circumstance. In this case, the Rota-Mill drivers are sometimes required to work longer than 12 hours.

The first exemption from the HOS rest break provision, if granted, would enable drivers engaged in the transportation of milled asphalt and related materials to use 30 minutes or more of on-duty “waiting time” to satisfy the requirement for the 30-minute rest break, provided they do not perform any other work during the break. This would apply when the drivers are not eligible for the short-haul exception. According to Rota-Mill, the requirement for the 30-minute break after the first 8 hours on duty is difficult for their drivers, because the time actually driving a CMV is typically only a few hours per day, with the rest of the day assigned to some other task. Rota-Mill dump truck operators are required to wait at quarries and various other locations, and cannot get out of line to take their required 30-minute break. Extending the short-haul exception without the 30-minute mandatory break would help make Rota-Mill's system run more efficiently and ultimately be safer.

The second exemption, if granted, would allow these same drivers to use the short-haul RODS exception but with a 14-hour duty period instead of 12 hours. Rota-Mill advises that providing the requested relief would allow all of their drivers to get home in a compliant amount of time without the burden of having to maintain a full record of duty status or taking the currently required 30-minute break if they exceed the 12-hour work day. Additionally, granting these requested exemptions would ease confusion and provide clarity for Rota-Mill drivers who may mistakenly believe they are covered under the short-haul exception.

Rota-Mill states in its application that drivers would receive sufficient rest due to the nature of their operations that limits driving to an average of six to seven hours per day or less during the road milling season. Rota-Mill believes that granting these exemptions would achieve the same level of safety provided by the two HOS rules. In an

effort to ensure the same level of safety is maintained by complying with the regulations, Rota-Mill will add fatigue management training for its drivers. The requested exemptions are for 5 years. A copy of Rota-Mill's application for exemptions is available for review in the docket for this notice.

Issued on: October 12, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–22703 Filed 10–17–18; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0299]

#### Hours of Service of Drivers: Application for Exemption; Fiat Chrysler Automobiles (FCA)

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that Fiat Chrysler Automobiles (FCA) has requested an exemption from the requirement that a motor carrier install and require each of its drivers to use an electronic logging device (ELD) to record the driver's hours-of-service (HOS). FCA has requested a two-year exemption for all its operators of commercial motor vehicles (CMVs) including engineers, technicians, and other drivers who operate CMVs on public roads. FCA's product development activities encompass working with suppliers on validating engineering redesigns for future vehicles, and they estimate that 85% to 90% of such testing occurs on-site at its facilities. The remaining testing occurs off-site on public roads which is the reason FCA is requesting the exemption from the ELD regulations. FCA believes that granting this exemption will have no adverse safety impacts while its CMV operators are performing product development on off-site public road trips. FMCSA requests public comment on FCA's application for exemption.

**DATES:** Comments must be received on or before November 19, 2018.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2018–0299 by any of the following methods:

- *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). See the *Public*

*Participation and Request for Comments* section below for further information.

- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** 1-202-493-2251.

- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the *Privacy Act* heading below.

**Docket:** For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

**Privacy Act:** In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-2722. Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

#### **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation and Request for Comments**

FMCSA encourages you to participate by submitting comments and related materials.

#### *Submitting Comments*

If you submit a comment, please include the docket number for this notice (FMCSA-2018-0299), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but

please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number, “FMCSA-2018-0299” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party, and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

### **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **III. Request for Exemption**

FCA's CMVs include RAM trucks and other product families, which when configured with a trailer have a gross combination weight rating greater than 10,000 pounds. When operated in interstate commerce, this subjects the company and its drivers to the 49 CFR part 300-399 series of Federal regulations including the hours-of-service (HOS) rules. Procedures and processes are in place to ensure that only FCA and supplier employees with an active driver qualification file operate these vehicles. In any given year, up to 100 FCA employees may be involved in driving its CMVs on product development off-site road trips. All of its engineers and technicians are infrequent drivers who on average drive less than 2,500 miles/year on public roads. Additionally, all Engineering Groups conduct off-site road trips to evaluate systems and components to support future product development activities. Including non-CMV support vehicles, FCA normally sends between 8 to 12 vehicles with 4 to 5 trailers. This type of trip would include up to 20 drivers (engineers and technicians) who possess either a commercial driver's license or a chauffeur's license. Most road trips involve a smaller number of vehicles and drivers, and according to FCA, a significant amount of testing occurs while the vehicles are stationary.

FCA's product development activities encompass working with suppliers on validating engineering redesigns for future vehicles. FCA tests “next generation” vehicles against competing products from other original equipment manufacturers in dynamics settings. FCA estimates that 85% to 90% of such testing occurs on-site at its facilities or proving grounds, and the remaining testing occurs off-site on public roads. Specifically, FCA conducts tests to benchmark vehicles against competing brands, and some of these programs involve calibration and thermal validation of complete vehicle systems at various locations in the United States and Canada. On occasion, the instrumented vehicles and trailers are shipped to the off-site testing location, and on other occasions, FCA's engineers, technicians and suppliers drive these vehicles to the off-site test locations. None of its CMVs are involved in package delivery or passenger transportation.

FCA has already tested several portable electronic logging device (ELD) units and found that the device interferes with the ability of their data loggers to capture high-speed data from vehicle control modules and networks

for critical vehicle validation. Furthermore, the device causes the logger to suspend all message transmissions in error. As a result of its detailed investigations on this matter, FCA has concluded that utilizing paper records of duty status (RODS) and/or another HOS compliance application besides an ELD is the most effective and accurate method of measuring and reporting HOS that is compatible with its data loggers. FCA further includes a number of exhibits which demonstrate the problems described in the application when utilizing ELDs. The Company also includes HOS and other general compliance forms currently used to remain in compliance with the appropriate Federal Motor Carrier Safety Regulations.

#### IV. Method To Ensure an Equivalent or Greater Level of Safety

According to FCA, the granting of this exemption will have no negative impact on public safety or compliance with the HOS regulations. FCA takes the safety of its employees and the general public seriously. All product development off-site road trips are planned months in advance, and the participants, details of the testing protocol, routing and choice of lodgings are selected to maintain HOS compliance. Its employees have been using paper RODS to record HOS for the past five years. FCA utilizes print and on-line training tools to instruct its employees in CMV Driver Basics; Compliance, Safety, Accountability Know the Basics; Driver Vehicle and Road Side Inspections; and HOS Driver Training. FCA further recognizes that employees rotate annually between vehicle platforms and therefore conducts several safe driving workshops annually at its facilities to introduce and reinforce the following: Preparing to drive a CMV and driver fatigue; the basics of vehicle handling and safe braking with and without a trailer; truck-trailer backing skills including backing up an inclined road and parking; downhill braking techniques with ballasted trailers; and demonstration of proper truck/trailer connections (conventional, fifth wheel and gooseneck). All FCA attendees will have an opportunity to practice driving, parking and safe backing skills. FCA requests a two-year exemption from the ELD requirements in 49 CFR part 395 subpart B.

A copy of FCA's application for exemption is available for review in the docket for this notice.

Issued on: October 12, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018-22701 Filed 10-17-18; 8:45 am]

BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0235]

#### Hours of Service of Drivers: Wolfe House Movers, LLC and Wolfe House Movers of Indiana, LLC; Application for Exemption

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received a joint application from Wolfe House Movers, LLC and Wolfe House Movers of Indiana, LLC (Wolfe) requesting an exemption from the hours-of-service (HOS) regulations for drivers operating commercial motor vehicles (CMV) that transport steel beams and dollies to and from various job sites for lifting and moving buildings. Wolfe requests an exemption to use the 70-hour/8-day rule for its CMV operations although the company does not operate CMVs 7 days a week. FMCSA requests public comment on this application for exemption.

**DATES:** Comments must be received on or before November 19, 2018.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA-2018-0235 by any of the following methods:

- *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the *Privacy Act* heading below.

**Docket:** For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

**Privacy Act:** In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, please contact Ms. Pearl Robinson, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366-4225; Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

#### I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

##### Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2018-0235), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number, "FMCSA-2018-0235" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for

copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

## II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

## III. Request for Exemption

Wolfe House Movers, LLC (USDOT 1279267), and Wolfe House Movers of Indiana, LLC (USDOT 1679025) (Wolfe) seek an exemption from the HOS requirements of 49 CFR 395.3(b)(1) which prohibits a motor carrier from permitting or requiring a driver to drive a property-carrying CMV after the driver has been on duty 60 hours within a period of 7 consecutive days if the employing motor carrier does not operate CMVs every day of the week. Wolfe does not operate CMVs every day of the week and is prohibited from using the 70-hour/8-day rule in 49 CFR 395.3(b)(2) for its business operations.

According to Wolfe, its primary line of business is lifting and moving buildings. Drivers employed by Wolfe transport steel beams and dollies to and from various jobsites where work is performed. Wolfe advises that its owners believe that Sunday is a day of

rest and worship and refuse any business opportunities that would require Sunday work.

Because Wolfe does not conduct business on Sunday, its commercial business operations are subject to the 60-hours-in-7-day rule set forth in 49 CFR 395.3(b)(1). Due to the geographical spread of its operations, Wolfe asserts that the 60 hour limitation is a substantial burden. Wolfe explained in its application that the company attempts to schedule work so that all crews can be at their home terminal before the 60th on-duty hour of the week. However, weather, traffic, or jobsite conditions sometimes delay completion of projects causing crews to be stranded one or two hours' drive from the home terminal. When delays occur relief drivers are sent in non-commercial vehicles to pick up stranded drivers so that the drivers who have run out of hours can drive back to the home terminal using the non-commercial vehicles while the relief drivers return the CMVs to the terminal.

Wolfe reports that it is a small company and it is difficult to have relief drivers available on short notice and it is unproductive and costly for the company. Wolfe asserts that the stress and pressure associated with approaching the 60-hour cut-off is likely to have a detrimental effect on the safety performance of even well-trained and well-qualified drivers.

According to Wolfe, allowing it to use the 70-hour/8-day HOS ruleset for all drivers not operating CMVs on Sundays would provide the following significant safety benefits:

- The need for relief drivers would be significantly reduced or completely eliminated. This would result in fewer on-road miles driven (by eliminating the need for a relief driver to drive up to 100 miles out to pick up the CMV and for the regular driver to drive the non-CMV back the same 100 miles). This would also mean that the CMV would continue to be driven by the driver most familiar with it, rather than a part-time driver.
- Drivers would be less stressed, knowing that they have sufficient time to complete their weekly schedule even if they are delayed by heavy traffic, weather conditions, etc.

A copy of Wolfe's application for exemption is available for review in the docket for this notice.

Issued on: October 12, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018-22707 Filed 10-17-18; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0302]

### Hours of Service of Drivers: Transco, Inc.; Application for Exemption

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from Transco, Inc. (Transco) for an exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. Transco requests that its drivers be permitted to comply with the 30-minute rest break requirement while performing on-duty, not-driving tasks. The requested exemption would apply to all Transco drivers in its grocery and food service divisions who make wholesale deliveries to grocery and convenience stores. Transco believes that the exemption, if granted, will achieve a level of safety equivalent to the level that would be achieved absent the exemption. FMCSA requests public comment on Transco's application for exemption.

**DATES:** Comments must be received on or before November 19, 2018.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2018-0302 by any of the following methods:

- **Federal eRulemaking Portal:** [www.regulations.gov](http://www.regulations.gov). See the *Public Participation and Request for Comments* section below for further information.

- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

- **Fax:** 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the *Privacy Act* heading below.

**Docket:** For access to the docket to read background documents or

comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

**Privacy Act:** In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366-2722; Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

##### *Submitting Comments*

If you submit a comment, please include the docket number for this notice (FMCSA-2018-0302), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number, "FMCSA-2018-0302" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would

like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

##### II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

##### III. Request for Exemption

Transco seeks an exemption from the 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii). Specifically, Transco requests an exemption that would allow its drivers to take a 30-minute on-duty, non-driving break in place of the 30-minute off-duty rest break currently required. McLane, Transco's parent company, is one of the nation's largest entities engaged in supply chain services, providing grocery and foodservice supply chain solutions for convenience stores, mass merchants, drug stores and restaurants throughout the United States. Approximately 3,580 Transco drivers would be eligible for the requested exemption. These drivers utilize approximately 1,700 CMVs in Transco's fleet, which consist almost exclusively of tractors equipped with sleeper berths, usually hauling 48 or 53-foot trailers. In most cases Transco's drivers operate in two-driver teams. Routes for these drivers include numerous, frequent stops to make deliveries of groceries to retailers. On these trips, Driver B goes directly into

the sleeper berth at the beginning of the trip while Driver A conducts all pre-departure inspection requirements and then drives to the first delivery. This allows Driver B to delay starting his duty period until a time that is less than 14 hours from the work tour completion, thereby ensuring compliance with the 14-hour rule. Depending on travel times, Driver B usually starts working sometime between the first and third delivery stop. When Driver B comes out of the sleeper berth, he or she rides in the passenger seat while Driver A drives between stops. The two drivers have overlapping working tours and unload together at most stops in the middle of the trip. Until the end of Driver A's 14-hour duty period, the drivers may alternate driving and resting in the passenger seat between deliveries. Once Driver A reaches his or her 14-hour limit, Driver A will often go into the sleeper berth, but is allowed to remain on duty and perform non-driving activities. Therefore, at some point, usually when approximately one-half of the driving for a work tour has been completed, Driver B will take over driving duties and Driver A will sit in the passenger seat between stops. Since Driver B did not begin his or her duty period until exiting the sleeper berth, Driver B will have sufficient time available to drive during the rest of the work tour. Similarly, because Driver A ceases driving when approximately one-half of the work tour has been completed, he or she does not drive beyond the 14 hour on-duty window in which driving is permitted. Total trip time averages 17.2 hours. However, total driving time for both drivers combined averages just 9.1 hours. Each driver spends, on average, only 4.55 hours or 32.9% of their working tour engaged in driving, again much less than the 11 hours maximum time allowed.

Transco contends that its operations are characterized by several factors that make the driving involved low risk and less susceptible to the type of fatigue associated with long-haul driving for the following reasons:

- Transco's drivers operate largely on local roads at low speeds, which reduces fatigue risk. According to Transco, most drowsiness-related crashes occur at night in low-traffic conditions on rural interstates or other rural highways. By and large these conditions are the opposite of the conditions experienced by Transco's drivers, who spend most of their driving time on local roads at low speeds;
- Its operations are characterized by multiple short driving periods interrupted by breaks, which precludes

development of time-on-task fatigue and improves driver performance. Its drivers alternate between driving, unloading, and resting without spending significant continuous periods of time driving;

- Its drivers have regular schedules and routes and return home after every trip. Approximately 85% of Transco's drivers work fixed schedules and routes with minimal trip-to-trip variations. Transco's trips begin and end at the same place.

- Transco practices proactive safety management. In its application, Transco highlights several additional proactive safety management practices currently in place in connection with its grocery operations. These include DriveCam video monitoring; increased safety inspections and meetings; mandatory driver safety training; and manufacturer-installed collision avoidance systems on the vehicles.

According to Transco, as a result of these operational differences, the 30-minute rest break requirement does not increase safety when applied to their drivers; instead, it claims the requirement may very well decrease road safety for its drivers. For the typical long-haul CMV driver, the 30-minute rest break serves as an opportunity to break the monotony of driving and relieve some of the stress of continuous driving, but Transco's drivers currently have breaks, which includes physical exercise, several times each day. Providing this exemption would in fact increase safety overall by reducing Transco's mileage exposure, and thus crash risk, by over 4 million additional miles per year.

Transco believes that the requested exemption would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the current regulation. Transco gives the following reasons why the Agency should approve the exemption request: (1) Allowing its drivers to substitute a 30-minute on-duty, non-driving break for a 30-minute off-duty break will not reduce safety; (2) No more than 50% of their logged time per working tour is "on-duty driving" time and the non-driving on-duty time is primarily devoted to pick-ups, deliveries and like operations; (3) They return to their point of origin at the end of their trip; (4) No driving is performed 14 hours after coming on duty; (5) Drivers do not drive if more than 8 hours have passed since the driver engaged in 30 consecutive minutes of on-duty non-driving activity; and, (6) The drivers operate CMVs equipped with electronic logging devices compliant with the Agency's regulations or compliant automatic on-board

recorders for the period allowed for the use of such devices by FMCSA regulations.

A copy of Transco's application for exemptions is available for review in the docket for this notice.

Issued on: October 12, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018-22706 Filed 10-17-18; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0271]

#### Hours of Service of Drivers: RJR Transportation, Inc.; Application for Exemption

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from RJR Transportation, Inc. (RJR) requesting an exemption to increase the 100 air-mile radius in "short-haul operations" to 150 air-miles for its drivers. This would enable the drivers not exceeding the 150 air-mile radius to utilize time records instead of a complete record of duty status (RODS) for that day. RJR believes that the exemption, if granted, will achieve a level of safety equivalent to the level that would be achieved absent the exemption. FMCSA requests public comment on RJR's application for exemption.

**DATES:** Comments must be received on or before November 19, 2018.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA-2018-0271 by any of the following methods:

- *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for

this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the *Privacy Act* heading below.

**Docket:** For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

**Privacy Act:** In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366-2722; Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

##### Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2018-0271), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number, "FMCSA-2018-0271" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you



are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

## II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision

from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

## III. Request for Exemption

RJR Transportation, Inc. (RJR), USDOT 629200, is requesting an exemption to increase the 100 air-mile radius in 49 CFR 395.1(e)(1) to 150 air-miles for its drivers. This would enable the drivers not exceeding the 150 air-mile radius to utilize time records instead of a complete record of duty status (RODS) for that day.

RJR is a local trucking operation based in Northern California operating on dedicated routes, with more than 98 percent of its trips within the 100 air-mile radius, short-haul exception. RJR primarily operates commercial motor vehicles (CMVs) with a gross vehicle weight rating (GVWR) over 55,000 pounds.

Most of RJR's drivers qualify for and operate under the 100 air-mile radius exemption in 49 CFR 395.1(e)(1); on a weekly or monthly basis, fewer than 5 percent of its drivers may exceed the 100 air-mile radius but not a 150 air-mile radius. Specifically, RJR services three areas outside the 100 air-mile radius which are all between 100 to 140 air-miles from the normal work reporting location. RJR states that it will be forced to make a substantial investment in updating its vehicle fleet to include electronic logging devices (ELDs) for just this short extension of the 100 air-mile radius.

Currently, RJR has five drivers who maintain paper RODS, but all of its 60 CMVs need to be equipped with ELDs in order to give the company the flexibility to put any driver in any vehicle, as it does now. Local pickup and delivery services operate under significantly different circumstances than interstate or long-haul over-the-road truck drivers. This not only presents a substantial and ongoing financial commitment in updating its fleet, but it also creates an additional regulatory requirement that will have to be managed on a daily basis.

RJR states in its application that in order to insure an equivalent level of safety, it will continue to require its drivers to attend and participate in monthly safety meetings, including the promotion of safety through the company's Safety Incentive Program rewarding drivers for driving records free from accidents and moving violations. RJR will further continue to utilize continuous automatic event recorders, which capture among other things, speed, global positioning system location, hard braking events, and sudden turns. RJR believes that granting the exemption will achieve a level of safety equivalent to the level that would be achieved absent the proposed exemption. A copy of RJR's application for exemptions is available for review in the docket for this notice.

Issued on: October 12, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018-22702 Filed 10-17-18; 8:45 am]

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## Part II

### Department of Transportation

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Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172 and 175

Hazardous Materials: Notification of the Pilot-in-Command and Response to Air Related Petitions for Rulemaking; Final Rule

**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****49 CFR Parts 172 and 175****[Docket No. PHMSA–2015–0100 (HM–259)]****RIN 2137–AF10****Hazardous Materials: Notification of the Pilot-in-Command and Response to Air Related Petitions for Rulemaking**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** PHMSA, in consultation with the Federal Aviation Administration, issues this final rule to align the U.S. Hazardous Materials Regulations with current international standards for the air transportation of hazardous materials. These amendments revise certain special provisions, packaging requirements, information to the pilot-in-command requirements, and exceptions for passengers and crewmembers. In addition to facilitating harmonization with international standards, several of the amendments in this rule are responsive to petitions for rulemaking submitted by the regulated community.

**DATES:**

*Effective date:* This rule is effective October 18, 2018.

*Delayed compliance date:* Unless otherwise specified, compliance with the amendments adopted in this final rule is required beginning October 18, 2019.

**FOR FURTHER INFORMATION CONTACT:**

Aaron Wiener, Office of Hazardous Materials Standards, International Standards, (202) 366–4579, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, 2nd Floor, Washington, DC 20590–0001.

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**I. Background**

On December 5, 2016, PHMSA (also “we”), in consultation with the Federal Aviation Administration (FAA), published a notice of proposed rulemaking (NPRM) [Docket No. PHMSA–2015–0100 (HM–259); 81 FR 87510] to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to align more closely with certain provisions of the International Civil Aviation Organization’s Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). These amendments update miscellaneous regulatory requirements for hazardous materials offered for transportation, or transported, in commerce by aircraft. In addition, the NPRM proposed amendments in response to four petitions for rulemaking submitted by the regulated community. The petitions are included in the docket for this proceeding and are discussed at length in Section II (Comment Discussion) of this rulemaking. In the NPRM, the phrase “notification to the pilot-in-command” and the acronym “NOTOC” were used. In this final rule, consistent with the ICAO Technical Instructions, the phrase “information to the pilot-in-command” is used.

**II. Comment Discussion**

In response to the NPRM [81 FR 87510], PHMSA received comments from the following organizations:

- Air Line Pilots Association (ALPA)
- Airlines for America (A4A)
- Council on Safe Transportation of Hazardous Articles (COSTHA)
- Dangerous Goods Advisory Council (DGAC)
- United Parcel Service (UPS)

See below for discussion of the comments received and PHMSA’s determined action in this final rule. This section addresses comments made to proposals to revise the HMR based on petitions for rulemaking. Additional comments are addressed in Section III (Section-by-Section Review) of this rulemaking.

*A. Transportation by Air Intermediate Packaging Requirements for Certain Low and Medium Danger Hazardous Materials (P–1637)*

The DGAC petitioned PHMSA to remove the additional intermediate packaging requirements found in special provisions A3 and A6, *see* 49 CFR 172.102(b)(2), by deleting these special provisions and all references to them in the Hazardous Materials Table (HMT) in § 172.101. *See* P–1637.<sup>1</sup> Special provisions A3 and A6 apply to certain commodities as assigned in column (7) of the HMT when transported by aircraft:

- Special provision A3 states that if glass inner packagings are used for transportation of referenced commodities, they must be packed with absorbent material in tightly closed metal receptacles before being packed in outer packagings.
- Special provision A6 states that if plastic inner packagings are used for transportation of referenced commodities, they must be packed in tightly closed metal receptacles before being packed in outer packagings.

The petitioner notes that the packaging requirements imposed by special provisions A3 and A6 are domestic provisions not found in the ICAO Technical Instructions and that maintaining these differences creates both a trade barrier to U.S. exports and a burden to the domestic market. The petitioner contends that the requirement for “metal receptacles” is overly restrictive and provides a competitive advantage to shippers in countries that allow these products to be shipped without additional intermediate packagings.

The petitioner further notes that the following requirements in § 173.27(d) and (e) of the HMR make special provisions A3 and A6 unnecessary: (1) When transported by air, inner packagings of Packing Group (PG) I materials currently assigned A3, A6, or both are already required to be packed in either a rigid and leakproof receptacle or an intermediate packaging containing sufficient absorbent material to absorb the entire contents of the inner

<sup>1</sup> See <https://www.regulations.gov/docket?D=PHMSA-2014-0094>.

packaging before packing the inner packaging in its outer package; and (2) PG II and III commodities are already subject to secondary closure requirements. Therefore, the petitioner asks that the intermediate packaging requirements in special provisions A3 and A6 be removed.

Section 173.27(d) of the HMR establishes the type of closure required for transportation of liquid hazardous materials by air. It states that the inner packaging for PG I liquid hazardous materials must have a secondary means of closure applied. The inner packaging for PG II or III liquid hazardous materials must have a secondary closure applied unless the secondary closure is impracticable. If the secondary closure is impracticable, the closure requirements for PG II and III liquids may be satisfied by securely closing the inner packaging and placing it in a leakproof liner or bag before placing the inner packaging in the outer packaging.

Section 173.27(e) sets the absorbency requirements for PG I liquid hazardous materials of Classes 3, 4, or 8, or Divisions 5.1 or 6.1, when the materials are packaged in glass, earthenware, plastic, or metal inner packagings and offered for transport by air. It requires that inner packagings be packed in a rigid and leakproof receptacle or intermediate packaging that is sufficiently absorbent to absorb the entire contents of the inner packaging before the inner package is packed in the outer package.

In the NPRM, PHMSA proposed to: (1) Amend special provision A3 in § 172.102 to authorize rigid and leakproof receptacles for intermediate packaging; (2) remove references to special provision A3 from assigned PG I entries in the HMT; and (3) remove references to special provision A6 from assigned liquids in the HMT.

PHMSA received positive feedback from commenters. Specifically, ALPA and UPS expressed support for this amendment. The DGAC also expressed support for the proposed amendment; however, consistent with their petition, DGAC continues to believe that the secondary closure requirements in § 173.27(d) satisfy the provisions in A3, making A3 unnecessary for PG II and III materials.

As stated in the NPRM, PHMSA agrees that current requirements in § 173.27(d) and (e) make special provisions A3 and A6 unnecessarily redundant for liquid PG I materials. We also agree that the requirements in § 173.27(d) for inner packagings to have a secondary means of closure or a leakproof liner or bag adequately address the hazards that special

provision A6 was designed to mitigate for PG II and III materials. As commenters did not provide any supplemental information or justification for the removal of special provision A3 from the assigned PG II and III entries other than originally included in the petition, PHMSA maintains its position stated in the NPRM that the material of construction of the inner packaging referenced in special provision A3 (glass) necessitates an intermediate packaging to perform a containment function in the event an inner packaging breaks. Therefore, PHMSA is maintaining the intermediate packaging requirements for PG II and III materials in special provision A3; however, we are amending special provision A3 to authorize rigid and leakproof receptacles for use as intermediate packagings that are currently limited to metal construction. This will provide a wider range of intermediate packaging options to shippers of hazardous materials subject to special provision A3.

Additionally, in the NPRM, PHMSA solicited comment on maintaining special provision A6 for currently assigned solid materials or whether revisions to the packaging provisions for these materials should be considered in a future rulemaking. Special provision A6 is currently assigned to four solid materials (UN Nos. 1326, 1390, 1889, and 3417) in the HMT. Unlike the liquids currently assigned special provision A6, these solid materials are not subject to the intermediate or secondary packaging provisions in § 173.27. PHMSA received two comments in support of removing special provision A6 from the currently assigned solid materials. The DGAC commented that the special provision is unnecessary because these solid materials are not subject to the intermediate or secondary packaging requirements. UPS supports removing the special provision provided the packaging provisions in § 173.27 are modified to require secondary or intermediate containment for these commodities. Based on the comments received, PHMSA will consider removing special provision A6 from the four solid materials in a future rulemaking.

#### *B. Quantity Limits for Portable Electronic Medical Devices Carried by Passengers, Crewmembers, and Air Operators (P-1649)*

Phillips Healthcare petitioned PHMSA to revise § 175.10(a)(18)(i) to increase the quantity limits applicable to the transportation of portable medical electronic devices (e.g., automated

external defibrillators (AED); nebulizers; continuous positive airway pressure (CPAP) devices containing lithium metal batteries; and spare batteries) carried on aircraft by passengers and crewmembers. *See* P-1649.<sup>2</sup> The current HMR requirements limit all lithium metal batteries carried on an aircraft by passengers or crewmembers for personal use to a lithium content of not more than 2 grams per battery. The ICAO Technical Instructions allow portable medical electronic devices containing lithium metal batteries and spare batteries for these devices to contain up to 8 grams of lithium content per battery to be carried by passengers with the approval of the operator. The petitioner stated:

A global increase in air travel, as well as a growing aged population in many countries, makes it reasonable to assume that there will be a significant increase in older passengers and passengers with illness. An automated external defibrillator can make the difference between life and death during cardiac arrest.

The petitioner further asserted that the current HMR requirements prohibit many people who need to travel with their portable medical electronic devices from doing so because the lithium content exceeds the amount allowed.

In addition, the petitioner noted that increasing the quantity limits for portable medical electronic devices containing lithium metal batteries and spare batteries would be consistent with section 828 of the “FAA Modernization and Reform Act of 2012” (Pub. L. 112–98, 126 Stat. 133; Feb. 14, 2012),<sup>3</sup> which prohibits the Secretary of Transportation from issuing or enforcing any regulation or other requirement regarding the air transportation of lithium cells or batteries if the requirement is more stringent than the requirements of the ICAO Technical Instructions.

In the NPRM, PHMSA proposed to amend § 175.10(a)(18)(i) to authorize passengers and crewmembers to carry on board an aircraft lithium metal battery-powered portable medical electronic devices and two spare batteries for those devices exceeding 2 grams of lithium content per battery, but not exceeding 8 grams of lithium content per battery, with the approval of the operator.

PHMSA received three comments from A4A, COSTHA, and DGAC in support of the proposed amendment.

<sup>2</sup> See <https://www.regulations.gov/docket?D=PHMSA-2015-0107>.

<sup>3</sup> See <http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt381/pdf/CRPT-112hrpt381.pdf>.

A4A commented that the current inability of passengers and crewmembers to carry lithium metal battery-powered portable medical electronic devices exceeding 2 grams imposes unnecessary travel restrictions for passengers with medical needs requiring the equipment. DGAC commented that harmonization with the ICAO Technical Instructions on this issue will benefit the travelers by allowing them to carry life-saving medical devices.

In contrast, ALPA provided comments that oppose the proposed amendment, stating that they do not support changing regulations based on the end use of batteries. Specifically, ALPA notes “batteries installed in a medical device can be the same as used in a non-medical device . . . and are not inherently safer than non-medical devices.” PHMSA agrees with ALPA that hazardous materials are not generally regulated by end-use application when offered as cargo, but rather on the hazard posed during transport. In addition, PHMSA does not dispute ALPA’s assertion that lithium batteries used in medical devices present the same hazard as lithium batteries used in non-medical devices. However, the exceptions for passengers and crewmembers prescribed in § 175.10 do not apply to cargo consignments. Instead, they are based on the need of individual passengers and crewmembers to carry personal items containing relatively small quantities of hazardous materials for common “end-use” items subject to certain conditions. In the 2011–2012 edition of the ICAO Technical Instructions, the 2-gram limit was expanded for medical devices only. Specifically, the limit was expanded to allow for medical devices known to exceed these limits, notably Automated External Defibrillators (AEDs), which typically had a lithium content between 4 and 8 grams.<sup>4</sup> Therefore, PHMSA is adopting the amendment to § 175.10(a)(18) as proposed in the NPRM consistent with the provisions of the ICAO Technical Instructions.

In addition to the comments above, A4A and COSTHA recommended that PHMSA extend this allowance for lithium metal battery-powered portable medical electronic devices exceeding current regulatory limits to all portable electronic devices powered by lithium metal batteries. They stated that maintaining differences between medical and non-medical devices

increases training costs, adds confusion, and the risk of potential inadvertent non-compliance by aircraft operators who elect to approve portable medical devices exceeding 2 grams of lithium content per battery, but not exceeding 8 grams of lithium content per battery. As this proposal was not presented in the December 5, 2016 NPRM, it is considered beyond the scope of the rulemaking and is not addressed in this final rule.

### *C. Information to the Pilot-in-Command, Harmonization With the ICAO Technical Instructions (P-1487)*

UPS petitioned PHMSA to revise the information to the pilot-in-command requirements to match the ICAO Technical Instructions. The pilot-in-command must receive the information in order to appropriately consider the presence, amount, and location of hazardous materials onboard the aircraft in an emergency. See P-1487.<sup>5</sup> This information, which also includes the hazard classification, proper shipping name, and packing group of the hazardous materials onboard the aircraft can help inform the decision-making of the pilot-in-command. If an in-flight emergency did occur, the pilot-in-command or the operator’s ground personnel would need to convey information to air traffic control and/or emergency responders in order to support a safe and effective response.

In its petition, UPS asked PHMSA to amend the domestic information to the pilot-in-command requirements in § 175.33 to reduce what it considers extraneous information and more closely align the HMR with existing international practices. The petitioner stated that harmonization with more elements of the ICAO Technical Instructions’ information to the pilot-in-command requirements will reduce the regulatory burden for operators, as well as the costs associated with training employees and contract personnel to two sets of standards.

In the NPRM, PHMSA proposed adding each of the following requirements to the HMR:

1. The operator must provide to the flight dispatcher<sup>6</sup> the same information as provided on the information to the pilot-in-command;

2. The information must be provided to the pilot-in-command and flight

dispatchers prior to an aircraft moving under its own power;

3. The air operator must retain the pilot-in-command’s confirmation via signature or other appropriate indication that the required information was received; and

4. The person responsible for loading the aircraft must provide a signed confirmation or other form of indication that no damaged or leaking packages or packages showing evidence of damage or leakage were loaded on the aircraft.

PHMSA received comments from A4A, ALPA, DGAC, COSTHA, and UPS providing general support for aligning the information to the pilot-in-command requirements with the ICAO Technical Instructions. UPS commented, “This action will improve consistency between the HMR and ICAO, thereby promoting clarity of requirements, and overall compliance and safety in flight for operations around the world.” DGAC commented, “. . . Harmonizing the provisions of the HMR with those in the ICAO will provide for enhanced safety, minimize potential for errors, enhance training in only one set of harmonized requirements, and otherwise minimize costs of maintaining two systems of operations.”

These and other general changes discussed below will result in PHMSA harmonizing with the ICAO Technical Instructions in regards to the information required to be provided in the information to the pilot-in-command.

• *Requirement that the operator provide the same information to the flight dispatcher that is required to be provided to the pilot-in-command.* In an emergency, a flight dispatcher may be more readily able to communicate with air traffic control and emergency responders about the nature and location of hazardous materials onboard an aircraft than the pilot-in-command. Harmonizing with the ICAO Technical Instructions and requiring flight dispatchers to have the same information as the pilot-in-command regarding the nature, amounts, and locations of hazardous materials improves information sharing in an emergency situation. Incorporating this provision into the HMR is also relevant to the National Transportation Safety Board’s (NTSB) Safety Recommendation A-11-042, which recommends that the FAA “develop a method to quickly communicate information regarding the number of persons on board and the presence of hazardous materials to emergency responders when airport

<sup>5</sup> See <https://www.regulations.gov/docket?D=PHMSA-2006-26159>.

<sup>6</sup> For the purposes of this rulemaking the “flight dispatcher” refers to the personnel with responsibilities for operational control of the aircraft (e.g., the flight operations officer, flight dispatcher, or designated ground personnel responsible for flight operations).

<sup>4</sup> See paragraph 5.4.10 of ICAO Dangerous Goods Panel Working Paper DGP/22-WP/100 (October 2009).

emergency response or search and rescue is activated.”<sup>7</sup>

Consistent with the ICAO Technical Instructions, operators are responsible to specify the personnel to be provided the information to the pilot-in-command in their operations manual and/or other appropriate manuals. The term “provided” covers the information to the pilot-in-command when made available in a handwritten, printed, or electronic format.

Providing an additional and potentially quicker means for airport rescue and firefighting (ARFF) personnel to receive the information to the pilot-in-command underscores that the ARFF community is as much an intended consumer of the information as is the pilot-in-command. ARFF training in hazardous materials incidents is required under 14 CFR part 139, which specifies the FAA’s requirements for certificated airports.

PHMSA received comments from A4A, COSTHA, and UPS concerning use of the term “written” in the proposed paragraphs § 175.33(a) and (b)(2). A4A and COSTHA commented that the “accurate and legible written information” language in proposed § 175.33(a) and the “copy of the written notification” language in proposed § 175.33(b)(2) do not support electronic notification method as air operators continue to move away from paper documents towards electronic systems for messaging and direct information upload to, and retrieval from, the cockpit. In their comments, A4A stated, “Electronic storage and messaging allows the most up-to-date and accurate documentation to be retrieved by flight crews, dispatchers and ground personnel at any time, providing a safety enhancement in addition to considerable cost and environmental benefits.” UPS commented that including the “legible written” language in the proposed § 175.33(a) allows for the interpretation that a printed information to the pilot-in-command is required for issuance to the pilot-in-command, as well as having the unintended effect of requiring printed information to be furnished to a flight dispatcher or equivalent operator employee. UPS explained that large carrier operations such as theirs would face difficulties as “information is readily available in other formats and the task of managing printed copies would be inefficient and contrary to technological advances.” The three commenters provided similar

alternative language removing the word “written” from paragraphs (a) and (b)(2).

The intent of the NPRM was to more closely align the information to the pilot-in-command provisions in the HMR with those in the ICAO Technical Instructions. Consistent with the language in the NPRM, the current requirements in both regulations require that the operator of the aircraft provide the pilot-in-command with “accurate and legible written information.” Chapter 7;4.1.1 b) of the ICAO Technical Instructions requires that the aircraft operator provide personnel with responsibilities for operation control of the aircraft (e.g., flight dispatcher) with the same information required to be provided to the pilot-in-command. The ICAO requirement is followed by an example indicating that an operator may satisfy this requirement by providing the flight dispatcher with a copy of the written information provided to the pilot-in-command. However, the requirement in the ICAO Technical Instructions, while using the phrase “copy of the written information” as an example, does not specify the format or method in which the information is provided to the flight dispatcher, but rather only that the information is the same as provided to the pilot-in-command.

PHMSA agrees that the term “written” may not be clear to everyone that the use of an electronic format for the information to the pilot-in-command is allowed. Based on the information provided by the three commenters, this final rule revises paragraphs (a) and (b)(2) to clarify that for the purposes of § 175.33, “written” means in a handwritten, printed, or an electronic format. Therefore, the information provided to both the pilot-in-command and the flight dispatcher may be provided legibly in writing (e.g. handwritten, printed, or electronic format) provided all requirements of the section are met. We recognize the trend of providing the pilot-in-command and flight dispatchers with operational data through electronic means and that the use of electronic means to supplement the pilot-in-command with information about cargo, including hazardous materials, is consistent with current practices. The FAA recognizes that there are multiple electronic means that operators may use to provide information to their pilot-in-command and flight dispatchers.

• *Requirement that the information to the pilot-in-command be provided to the pilot and flight dispatchers prior to an aircraft moving under its own power.* The current HMR require the pilot-in-command to receive written information

meeting the requirements in § 175.33 as early as practicable before departure of the aircraft. Consistent with the ICAO Technical Instructions, PHMSA believes that this information should be provided to both the pilot-in-command and flight dispatchers prior to the aircraft moving under its own power. The pilot-in-command should not be burdened with additional information or processes during taxiing and final preparations for takeoff. This change would also allow the pilot-in-command additional time to address any safety concerns identified after a review of the information before taxiing. For example, the pilot-in-command will be more likely to have the opportunity to physically inspect (e.g., packages, paperwork, etc.), ask questions, or otherwise act on the information if they receive the information prior to the aircraft moving.

• *Requirement that the air operator obtains and retains a confirmation (e.g., a signed confirmation from the pilot-in-command or notation via an operator’s computer system) that the information was received by the pilot-in-command.* The current HMR require the information to be provided to the pilot-in-command by the operator and for the operator to maintain a record of the information to the pilot-in-command for 90 days, but there is no requirement for the pilot-in-command to indicate receipt of the information. To be consistent with the ICAO Technical Instructions, PHMSA is requiring the operator to obtain and retain documentation of the pilot-in-command’s receipt of the information.

• *Requirement for the information provided to the pilot-in-command to have a signed confirmation or some other indication from the person responsible for loading the aircraft that no evidence of damaged or leaking packages were loaded on the aircraft.* The current HMR require a confirmation that no damaged or leaking packages were loaded on board an aircraft, but there is no requirement for a signature or other means of verification from the person responsible for loading the aircraft. The requirement for the information provided to the pilot-in-command to have a signed confirmation or other indication from the person responsible for loading ensures that there is no evidence of damage to or leakage from the packages or evidence of leakage from the unit load device loaded on an aircraft which provides for a more accountable safety system.

• *General harmonization with the ICAO Technical Instructions in regards to information required to be provided in the information to the pilot-in-*

<sup>7</sup> See <http://www.ntsb.gov/safety/safety-recs/recletters/A-11-039-047.pdf>.

*command associated with (and linked to) requirements for shipping papers.* The current HMR require the additional description requirements of §§ 172.202 and 172.203 to be provided in the information to the pilot-in-command. These additional information requirements necessitate the inclusion of items such as descriptions of the physical or chemical form of radioactive materials, an indication that the materials being transported are packaged under limited quantity exceptions, an indication that marine pollutants are present, etc. By aligning with the ICAO Technical Instructions, PHMSA believes that the removal of additional description requirements from the information to the pilot-in-command will result in decreased complexity and training costs for operators without negatively impacting safety. In the NPRM, we invited comment from the ARFF community pertaining to the effect this proposed rule would have had on past incident or accident responses; however, as no comments were received, we are removing the additional description requirements from the information to the pilot-in-command requirements as proposed.

The current HMR contain a requirement that the information to the pilot-in-command prepared in accordance with the ICAO Technical Instructions must also include any additional elements required to be shown on shipping papers by subpart C of part 171 of this subchapter. The additional elements currently required are: An indication of the “EX Number” for Division 1.4G safety devices; an indication of “RQ” and technical names if applicable for hazardous substances; an indication that the hazardous material is a “Waste” for hazardous wastes; and the inclusion of the words “Poison-Inhalation Hazard” or “Toxic-Inhalation Hazard” and the words “Zone A,” “Zone B,” “Zone C,” or “Zone D” for gases, or “Zone A” or “Zone B” for liquids, as appropriate for Division 2.3 materials meeting the definition of a material poisonous by inhalation. PHMSA is removing the requirement for the information to the pilot-in-command made in accordance with the ICAO Technical Instructions to include these additional elements. This information will still be required on shipping papers.

General harmonization between the HMR information to the pilot-in-command requirements and those found in the ICAO Technical Instructions ensures consistency for operators subject to both regulatory systems, thus reducing the cost of complying with two

different sets of standards. However, the HMR will continue to require that the date of the flight be included on the information to the pilot-in-command, while the current ICAO Technical Instructions do not. Maintaining the flight date adds another safety control to ensure the pilot-in-command has the correct form. As many operators already include the date as a part of their information provided to the pilot-in-command, this amendment will not create an undue administrative burden. PHMSA received one comment from UPS providing support for maintaining the flight date on the information to the pilot-in-command. The ICAO Dangerous Goods Panel (DGP) took action in October 2016 to amend the ICAO Technical Instructions to include the flight date as one of the required fields on the information to the pilot-in-command. This change will align with the HMR and is expected to be reflected in the 2019–2020 ICAO Technical Instructions.

In the NPRM, PHMSA proposed maintaining the existing requirement that a hazardous material carried under the terms of a special permit must be indicated on the information to the pilot-in-command. PHMSA received a comment from UPS stating that the existing term “special permit” is too focused on U.S. regulations. They note that parallel ICAO provision, in Part 7; Section 4.1.1.1 j) refers to a requirement to include, “where applicable, an indication that the dangerous goods are being carried under a State exemption.” UPS suggested that the proposed language should be broadened to include a reference to an “equivalent document issued by the appropriate authority of another country,” thereby reducing potential variation from the ICAO requirement. PHMSA agrees. Therefore, consistent with the ICAO Technical Instructions, this final rule adds “or under a State exemption as prescribed in the ICAO Technical Instructions” in addition to “special permit.” ICAO defines “exemption” as being equivalent to a special permit under the HMR. An “exemption” does not include approvals, which are not required to be indicated on the information to the pilot-in-command.

In their comments, A4A and COSTHA stated that carriers do not prepare the information to the pilot-in-command when the hazardous material does not require a shipping paper, noting that the HMR do not require a shipping paper for lithium cells or batteries prepared in accordance with § 173.185(c) or the corresponding Section II of ICAO Packing Instructions (PI) 965–970. The commenters noted that part 7;4.1.11,

Table 7–9 provides a list of dangerous goods not required to appear in the information to the pilot-in-command. The list includes entries for lithium batteries consigned under the entries UN3090, UN3091, UN3480, and UN3481 when meeting the requirements of Section II of PI 965–970. The commenters noted that the HMR do not have a corresponding exception for these same materials prepared even though a shipping paper is not required. Both commenters suggested incorporating the ICAO provisions by either adding Table 7–9 into § 175.33 or by adding a specific exception stating that lithium batteries prepared in accordance with § 173.185(c) are not required to appear on the information to the pilot-in-command. COSTHA suggested adding exceptions in § 175.33 for all materials listed in Table 7–9 of the ICAO Technical Instructions such as excepted quantities and “UN3373 and Biological substance, Category B” among others.

PHMSA agrees that in instances when a shipping paper is not required, the information for that material is generally not required to appear on the information to the pilot-in-command either. Because a shipping paper contains the information from which the elements of the information to the pilot-in-command are derived, it is impracticable to prepare the information for materials not requiring a shipping paper. We also agree that the HMR do not have a clear exception from the information to the pilot-in-command requirement for lithium batteries prepared in accordance with § 173.185(c), which corresponds with Section II of ICAO PI 965–970. Other materials listed in Table 7–9, such as those offered in excepted quantities (§ 173.4a), and “UN3373 and Biological substance, Category B” (§ 173.199) are sufficiently addressed in their relevant section of the HMR, with an indication that the materials are not otherwise subject to the requirements of the subchapter, to include the requirements of § 175.33, if the applicable conditions are met. Therefore, this final rule clarifies in § 175.33(a)(13) that lithium batteries prepared in accordance with § 173.185(c) are not required to appear on the information to the pilot-in-command, which corresponds with Section II of the applicable ICAO packing instruction.

#### *D. Amendments to Package Inspection (P–1671) and Securing Requirements*

Labelmaster Services petitioned PHMSA to amend § 175.30(c)(1) by removing language prohibiting any package, outside container, or overpack



containing hazardous materials from being transported on an aircraft if it has holes. See P-1671.<sup>8</sup> The petitioner noted that operators and freight forwarders have declined to transport packages with minor abrasions, tears, dents, cuts, small holes, or other minor damage from normal conditions of transportation and handling. Even where these examples of minor damage or holes did not compromise the packaging's integrity, operators and freight forwarders declined to transport them on the basis of § 175.30(c)(1).

PHMSA believes the current restriction prohibiting acceptance of any of these containment methods with holes to be overly prescriptive, especially as the paramount safety requirement is that there must not be any indication that the integrity of the containment method has been compromised. In the NPRM, consistent with the ICAO Technical Instructions, PHMSA proposed to amend § 175.30(c)(1) to remove language prohibiting packages or overpacks containing hazardous materials from being transported on an aircraft simply due to the presence of holes when the holes do not compromise the integrity of the containment device.

PHMSA received comments from A4A, COSTHA, DGAC, and UPS in response to the proposed revision. The DGAC commented in support of the proposed revision as it enhances harmonization and does not compromise safety. UPS commented in support of the proposed revision, noting that the risk of transporting such packages aboard aircraft would not be elevated, and was also supportive of the NPRM preamble language, stating operators are ultimately responsible for the decision to accept such a package for transportation. In their comments, A4A and COSTHA provided support for the NPRM preamble language, stating that operators may continue to have more restrictive standards as a part of their business practice; however, they expressed concern on how package integrity determinations are to be made and whether enforcement officials will accept the aircraft operator's conclusion. COSTHA also commented that aircraft operators receive "knowing" or "constructive knowledge" violations for non-compliance with the HMR, further noting that accidental damage is not a "knowing" violation but that an operator accepting a package with a small hole or abrasion could be considered a "knowing" violation as operators are prohibited from

transporting damaged packages aboard aircraft.

PHMSA expects that the majority of determinations applicable to small holes on the integrity of a package or overpack will be quite evident. If an air operator has any doubt on whether the integrity of the package or overpack has been compromised, and potentially is not suitable for transportation aboard aircraft, it should not be accepted for transport in its present condition. Further, a package or overpack containing only superficial damage not affecting the integrity, and not prohibited by § 175.30(c)(1), would not be considered a damaged package or overpack.

As stated in the NPRM, PHMSA believes the current restriction prohibiting acceptance of any package or overpack with holes to be overly prescriptive, especially as the paramount safety requirement is that there must not be any indication that the integrity of the containment method has been compromised. Therefore, this final rule adopts the revision to § 175.30 as proposed in the December 5, 2016 NPRM with minor editorial clarifications. In reviewing the section during development of the final rule, PHMSA determined that the term "outside container" is not applicable. As per the definition of "strong outer packaging" in § 171.8, it is synonymous with "strong outer container". Therefore "outside container" has the same meaning as outer packaging. Outer packaging is a component of a package, which is already listed. As a result, in this final rule PHMSA is removing "outside container" from paragraphs (b) and (c). In addition, in the NPRM, PHMSA proposed to include "freight container" and "unit load device" in the list of containment devices contained in paragraph (c). The intent was to align with the provisions in ICAO Technical Instructions, but further review found that there is no such provision in the ICAO Technical Instructions. In Part 7;1.3.1 i) of the ICAO Technical Instructions there is a requirement to verify freight containers and unit load devices are not leaking and there is no indication that the integrity has been compromised; however, this is under the activity of conducting an acceptance checklist which the HMR do not require. As a result, in this final rule, we are not listing "freight containers" or "unit load devices" in paragraph (c).

Section 175.88 prescribes requirements for inspection, orientation, and securing packages of hazardous materials aboard aircraft. In the NPRM, PHMSA proposed revisions to § 175.88(c) to require hazardous

materials loaded in an aircraft to be protected from damage, including by the movement of baggage, mail, stores, or other cargo, and further harmonize specific portions of the general loading/securement requirements pertaining to appropriate securing and loading practices of the HMR with those found in the ICAO Technical Instructions. Specifically, PHMSA proposed to revise § 175.88(c) by separating the provisions of the existing paragraph (c) into new subparagraphs (1) and (4), and adding subparagraphs (2) and (3) to align with part 7;2.4.3 of the ICAO Technical Instructions that reads as follows:

When dangerous goods subject to the provisions herein are loaded in an aircraft, the operator must protect the packages of dangerous goods from being damaged, including by the movement of baggage, mail, stores or other cargo. Particular attention must be paid to the handling of packages during their preparation for transport, the type of aircraft on which they are to be carried and the method required to load that aircraft, so that accidental damage is not caused through dragging or mishandling of the packages.

PHMSA received three comments from A4A, COSTHA, and UPS in response to the proposed revisions. The commenters stated that the manner in which the proposed paragraphs are structured may have the unintended effect of applying to activities outside of the aircraft loading process, resulting in subjective conditions that could lead to inappropriate enforcement. COSTHA commented that the proposed requirements "could be interpreted to prohibit industry standard processing and movement of packages and baggage at sorting facilities or conveyor belt operations used to move packages." A4A and UPS commented on the use of "dragging" in proposed paragraph (c)(3). A4A asserted that normal cargo handling practices could be "construed by an inspector" as "dragging" or inadequate protection resulting in a violation and that "such practices include loading of unit load devices and the holds of narrow-body, non-containerized aircraft by leveraging smooth floor surfaces to slide packages into place." UPS commented that the established industry practice of sliding of packages on surfaces (e.g., tables, conveyor belts, floors and other surfaces) may be subject to proposed language in § 175.88(c)(3), noting that the term "dragging" would introduce a basis for enforcement personnel to misinterpret industry package handling methods. UPS further commented that there are aircraft holds, such as those with low ceilings, in which the positioning of or removal of packages

<sup>8</sup> See <https://www.regulations.gov/docket?D=PHMSA-2015-0281>.

necessitates the sliding or dragging of such packages.

In addition, the commenters suggested that the proposed text is unnecessary because other requirements in the HMR, such as those in §§ 175.30 and 175.90(c), already prevent the loading of damaged packages containing hazardous materials aboard aircraft.

The intent of the revisions to § 175.88(c) is to ensure that hazardous materials are not loaded in an inappropriate manner and that accidental damage is not caused during the loading process. The safety gap addressed in this final rule covers the movement of hazardous materials during the aircraft loading process until the cargo is secured aboard the aircraft. PHMSA acknowledges that certain aircraft types or configurations necessitate sliding or dragging to position the cargo aboard the aircraft. An example of this type of aircraft would be passenger aircraft, which contain smaller “lower hold” cargo

configurations. These “lower hold” configurations are typically 3–4 feet in height, in which operator personnel must get on their knees due to the small hold area and items must be maneuvered by pushing, pulling, and sliding cargo.

PHMSA has reviewed the existing requirements in § 175.88(c), and while these requirements ensure that packages are inspected for damage upon initial acceptance by the operator and forbid placing aboard an aircraft baggage or cargo that is contaminated with hazardous material or appears to be leaking, they do not address accidental damage that may be caused through mishandling of the packages during the loading process. PHMSA agrees that the paragraph structure could be misinterpreted to apply to situations outside of the loading process. Therefore, this final rule revises paragraph (c)(3) consistent with the language suggested by COSTHA in their comments.

### III. Section-by-Section Review

The following is a section-by-section review of the amendments in this final rule:

#### Part 172

##### Section 172.101

Section 172.101 contains the Hazardous Materials Table (HMT) and provides instructions for its use. Section 172.101(h) describes column (7) of the HMT, which specifies codes for special provisions applicable to hazardous materials. In this final rule, PHMSA is revising the column (7) special provisions.

Specifically, PHMSA is removing: (1) Special provision A3 from all assigned PG I HMT entries in column (7); and (2) special provision A6 from all assigned liquid HMT entries in column (7). Table 1 illustrates the HMT entries for which changes are proposed:

TABLE 1

Proper shipping name	UN ID No.	SP deletion
Acetaldehyde .....	UN1089	A3
Acetic acid, glacial or Acetic acid solution, with more than 80 percent acid, by mass .....	UN2789	A6
Acetic acid solution, not less than 50 percent but not more than 80 percent acid, by mass .....	UN2790	A6
Acetic anhydride .....	UN1715	A6
Acetyl chloride .....	UN1717	A6
Alkali metal alloys, liquid, n.o.s. ....	UN1421	A3
Alkali metal amalgam, liquid .....	UN1389	A3
Alkali metal dispersions, flammable or Alkaline earth metal dispersions, flammable .....	UN3482	A3
Alkali metal dispersions, or Alkaline earth metal dispersions .....	UN1391	A3
Alkylphenols, liquid, n.o.s. (including C2–C12 homologues) (PG I) .....	UN3145	A6
Allyl iodide .....	UN1723	A6
Amines, liquid, corrosive, flammable, n.o.s. or Polyamines, liquid, corrosive, flammable, n.o.s. (PG I) .....	UN2734	A3, A6
Amines, liquid, corrosive, n.o.s., or Polyamines, liquid, corrosive, n.o.s. (PG I) .....	UN2735	A3, A6
Amyl mercaptan .....	UN1111	A6
Antimony pentafluoride .....	UN1732	A6
Benzyl chloroformate .....	UN1739	A3, A6
Boron trifluoride diethyl etherate .....	UN2604	A3
Butyl mercaptan .....	UN2347	A6
Chlorite solution .....	UN1908	A6
2-Chloropropene .....	UN2456	A3
Chromium oxychloride .....	UN1758	A3, A6
Chromosulfuric acid .....	UN2240	A3, A6
Corrosive liquid, acidic, inorganic, n.o.s. (PG I) .....	UN3264	A6
Corrosive liquid, acidic, organic, n.o.s. (PG I) .....	UN3265	A6
Corrosive liquid, basic, inorganic, n.o.s. (PG I) .....	UN3266	A6
Corrosive liquid, basic, organic, n.o.s. (PG I) .....	UN3267	A6
Corrosive liquid, self-heating, n.o.s. (PG I) .....	UN3301	A6
Corrosive liquids, flammable, n.o.s. (PG I) .....	UN2920	A6
Corrosive liquids, n.o.s. (PG I) .....	UN1760	A6
Corrosive liquids, oxidizing, n.o.s. ....	UN3093	A6
Corrosive liquids, toxic, n.o.s. (PG I) .....	UN2922	A6
Corrosive liquids, water-reactive, n.o.s. ....	UN3094	A6
Dichloroacetic acid .....	UN1764	A6
Dichloroacetyl chloride .....	UN1765	A6
Difluorophosphoric acid, anhydrous .....	UN1768	A6
Disinfectant, liquid, corrosive, n.o.s. ....	UN1903	A6
Dyes, liquid, corrosive, n.o.s. or Dye intermediates, liquid, corrosive, n.o.s. (PG I) .....	UN2801	A6
Ethyl mercaptan .....	UN2363	A6
Ethylchlorosilane .....	UN1183	A3
Fluoroboric acid .....	UN1775	A6
Fluorophosphoric acid anhydrous .....	UN1776	A6
Fluorosilicic acid .....	UN1778	A6

TABLE 1—Continued

Proper shipping name	UN ID No.	SP deletion
Fluorosulfonic acid .....	UN1777	A3, A6
Hexafluorophosphoric acid .....	UN1782	A6
Hydrazine, anhydrous .....	UN2029	A3, A6
Hydriodic acid (PG II) .....	UN1787	A6
Hydrobromic acid, <i>with not more than 49 percent hydrobromic acid</i> (PG II) .....	UN1788	A6
Hydrochloric acid (PG II) .....	UN1789	A6
Hydrofluoric acid and Sulfuric acid mixtures .....	UN1786	A6
Hydrofluoric acid, <i>with more than 60 percent strength</i> .....	UN1790	A6
Hydrofluoric acid, <i>with not more than 60 percent strength</i> .....	UN1790	A6
Hydrogen peroxide and peroxyacetic acid mixtures, <i>stabilized with acids, water, and not more than 5 percent peroxyacetic acid</i> .....	UN3149	A6
Hydrogen peroxide, aqueous solutions <i>with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary)</i> .....	UN2014	A6
Lithium aluminum hydride, ethereal .....	UN1411	A3
Mercaptans, liquid, flammable, toxic, n.o.s. or Mercaptan mixtures, liquid, flammable, toxic, n.o.s. (PG III) .....	UN1228	A6
Mercaptans, liquid, toxic, flammable, n.o.s. or Mercaptan mixtures, liquid, toxic, flammable, n.o.s., <i>flash point not less than 23 degrees C</i> .....	UN3071	A6
Methyldichlorosilane .....	UN1242	A3
Morpholine .....	UN2054	A6
Nitric acid <i>other than red fuming, with at least 65 percent, but not more than 70 percent nitric acid</i> .....	UN2031	A6
Nitric acid <i>other than red fuming, with more than 20 percent and less than 65 percent nitric acid</i> .....	UN2031	A6
Nitric acid <i>other than red fuming, with not more than 20 percent nitric acid</i> .....	UN2031	A6
Nitric acid <i>other than red fuming, with more than 70 percent nitric acid</i> .....	UN2031	A3
Nitrohydrochloric acid .....	UN1798	A3
Nitrosylsulfuric acid, liquid .....	UN2308	A6
Organotin compounds, liquid, n.o.s. (PG I) .....	UN2788	A3
Oxidizing liquid, corrosive, n.o.s. (PG I) .....	UN3098	A6
Oxidizing liquid, n.o.s. (PG I) .....	UN3139	A6
Oxidizing liquid, toxic, n.o.s. (PG I) .....	UN3099	A6
Perchloric acid <i>with more than 50 percent but not more than 72 percent acid, by mass</i> .....	UN1873	A3
Phosphorus tribromide .....	UN1808	A6
Propanethiols .....	UN2402	A6
Propylene oxide .....	UN1280	A3
1,2-Propylenediamine .....	UN2258	A6
Propyleneimine, stabilized .....	UN1921	A3
Selenium oxychloride .....	UN2879	A3, A6
Silicon tetrachloride .....	UN1818	A6
Sulfur chlorides .....	UN1828	A3
Sulfuric acid, <i>fuming with less than 30 percent free sulfur trioxide</i> .....	UN1831	A3
Trichloroacetic acid, solution .....	UN2564	A6
Trifluoroacetic acid .....	UN2699	A3, A6
Valeryl chloride .....	UN2502	A6
Vanadium oxytrichloride .....	UN2443	A6
Vanadium tetrachloride .....	UN2444	A3, A6
Vinyl ethyl ether, stabilized .....	UN1302	A3
Xylyl bromide, liquid .....	UN1701	A6

## Section 172.102 Special Provisions

Section 172.102 lists special provisions applicable to the transportation of specific hazardous materials. Special provisions contain packaging requirements, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. PHMSA is replacing the existing requirement for tightly closed metal receptacles in special provision A3 from § 172.102(b)(2), which applies only to transportation by aircraft, with a requirement for rigid and leakproof receptacles or intermediate packaging packed with absorbent material.

## Part 175

## Section 175.10

Section 175.10 provides exceptions for passengers, crewmembers, and air operators. PHMSA is revising § 175.10(a)(18)(i) to authorize passengers and crewmembers to carry on board aircraft portable medical electronic devices containing lithium metal batteries with a lithium content exceeding 2 grams per battery, but not exceeding 8 grams of lithium content per battery, and no more than two individually protected lithium metal spare batteries for these portable medical electronic devices each exceeding 2 grams of lithium content, but not exceeding 8 grams of lithium content, with the approval of the

operator. Consistent with the ICAO Technical Instructions and the current HMR prohibitions, spare lithium batteries (*i.e.*, batteries that are not packed with or contained in equipment) of any type and for any application continue to be prohibited from checked baggage. FAA's Safety Alert to Operators (SAFO) 15010 *Carriage of Spare Lithium Batteries in Carry-on and Checked Baggage*<sup>9</sup> provides additional guidance to operators on this issue.

## Section 175.30

Section 175.30 prescribes requirements for the inspection and acceptance of hazardous materials.

<sup>9</sup>(SAFO) 15010 *Carriage of Spare Lithium Batteries in Carry-on and Checked Baggage*.

PHMSA is revising § 175.30(c)(1) to no longer prohibit packages or overpacks containing hazardous materials from being transported on an aircraft if there are one or more holes present when the hole(s) or other indications do not indicate compromised integrity to the package or overpack.

#### Section 175.33

Section 175.33 establishes requirements for shipping papers and the information to the pilot-in-command when hazardous materials are transported by aircraft. PHMSA is making revisions to harmonize the information to the pilot-in-command requirements in the HMR with those found in the ICAO Technical Instructions. Specifically, we are making revisions to:

- Align the elements that are required to be provided in the information to the pilot-in-command;
- Clarify that information to the pilot-in-command may be in an electronic form;
- Ensure the information to the pilot-in-command is provided to flight dispatchers or, when flight dispatchers are not utilized, other ground support personnel with operational control of the aircraft;
- Harmonize with ICAO requirements addressing when the information must be provided to the pilot-in-command and flight dispatchers;
- Require confirmation via signature or other appropriate indication by the pilot-in-command to indicate that the required information was received;
- Clarify that UN3480, UN3481, UN3090, and UN3091 prepared in accordance with § 173.185(c), except § 173.185(c)(4)(vi), are not required to appear on the information to the pilot-in-command; and
- Require that the information provided to the pilot-in-command contain confirmation via signature or other appropriate indication by the person responsible for loading the aircraft that no damaged or leaking packages or packages showing evidence of damage or leakage have been loaded on the aircraft.

Consistent with the ICAO Technical Instructions, we are also amending § 175.33 by removing the requirement to include additional informational requirements in § 175.33(a)(1)(i) and (ii). This information will continue to be required on shipping papers.

PHMSA has restructured § 175.33 to separate the requirements for the information to the pilot-in-command from those for shipping papers to address comments to the NPRM from UPS stating that the proposed text is

confusing and suggesting revisions to improve clarity.

#### Section 175.88

Section 175.88 prescribes requirements for inspection, orientation, and securing packages of hazardous materials aboard aircraft. PHMSA is amending § 175.88(c) by separating the provisions of the existing paragraph (c) into new subparagraphs (1) and (4), and adding subparagraphs (2) and (3) to align with part 7;2.4.3 of the ICAO Technical Instructions. Specifically, these new paragraphs will require that hazardous materials be: (1) Secured in an aircraft in a manner that will prevent any change in the orientation of the packages; (2) protected from damage, including by the movement of baggage, mail, stores, or other cargo; (3) loaded so that accidental damage is not caused through dragging or mishandling; and (4) Class 7 (radioactive) materials be secured in a manner that ensures that the separation requirements of §§ 175.701 and 175.702 will be maintained at all times during flight.

### IV. Regulatory Analyses and Notices

#### A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the statutory authority of the Federal hazardous materials transportation law (Federal hazmat law). 49 U.S.C. 5101 *et seq.* Section 5103(b) of the Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. Section 5120(b) of the Federal hazmat law authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. The Secretary has delegated these authorizations to the Administrator for PHMSA. *See* 49 CFR 1.97.

This final rule amends regulations to increase alignment with international standards by incorporating various amendments, including changes to special provisions, packaging requirements, air transport information to the pilot-in-command requirements, and allowances for hazardous materials to be carried on board an aircraft by passengers and crewmembers. To this end, this final rule amends regulations to more fully align the HMR with the ICAO Technical Instructions. The large volume of hazardous materials transported in international commerce

warrants the harmonization of domestic and international requirements to the greatest extent possible.

Harmonization serves to facilitate international commerce, while also promoting the safety of people, property, and the environment by reducing the potential for confusion and misunderstanding that could result if shippers and operators were required to comply with two or more conflicting sets of regulatory requirements. PHMSA's goal is to harmonize without sacrificing the current HMR level of safety or imposing undue burdens on the regulated community. We consulted the FAA in the development of this rule.

#### B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993) and, therefore, was not reviewed by the Office of Management and Budget. Accordingly, this final rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation. 44 FR 11034 (Feb. 26, 1979).

#### Benefits of the Rule

PHMSA analyzed the expected benefits of these provisions in this final rule. Typically, the benefits of rules are derived from (1) enhanced health and safety factors and (2) reduced expenditures, such as private-sector savings, government administrative savings, gains in work time, harmonization impacts, and costs of compliance. In the case of this final rule, most of the benefits will be derived from health and safety factors, as well as reduced compliance costs.

The health and safety benefits specifically attributable to modifications of the information to the pilot-in-command requirements are not easily calculable with any degree of accuracy. The requirements for pilot-in-command's signature and confirmation from the person responsible for loading the aircraft will result in more effective and efficient response in the event of an aviation incident. The requirement that packages be protected from damage during loading operations will result in increased safety and environmental protection. Benefits will also be realized through a more efficient response time because of emergency response personnel having quicker access to hazardous materials information for each flight.

## Cost Reducing Aspects of Harmonization

The primary cost savings expected from this final rule result from reduced packaging costs in relation to the removal of special provision A3 from all assigned PG I HMT entries and special provision A6 from all assigned liquid HMT entries. Additionally, while they have not been quantified, PHMSA expects cost savings from the final rule's general harmonization of information to the pilot-in-command requirements and support for the use of electronic formats.

Currently, compliance with special provisions A3 and A6 requires domestic shippers to use extra<sup>10</sup> or more expensive<sup>11</sup> materials. Shippers also incur higher freight charges for shipping packages with higher package weights.<sup>12</sup> PHMSA estimates that the partial removal of A3 and complete removal of A6 for liquids, as well as that of the associated intermediate packaging requirements, will provide undiscounted annual cost savings of \$1,814,643 in reduced packaging costs to shippers.

To arrive at these cost savings, PHMSA (1) analyzed commodity flow survey data for commodities assigned A3, A6, or both in the HMR; (2) determined an estimate of total tons of freight for affected commodities offered for transportation by aircraft annually; (3) used this general commodity flow survey data to estimate the number of impacted packages; and (4) determined a cost basis for packages prepared under existing requirements versus requirements in this final rule.

A summary of the cost savings calculation method is as follows. PHMSA estimated the cost savings by comparing the difference in costs between the pre- and post-final rule options for each shipping scenario identified for commodities potentially subject to A3 or A6. For the purposes of this analysis, we assumed that relatively inexpensive metal, plastic, and glass packaging could be used for inner and intermediate receptacles. There are no costs specifically attributable to the A3 compliance requirements because the least cost option for shipping is to use metal or plastic containers, and A3 applies to shipments in glass containers. While some commodities are shipped in glass containers due to various factors (e.g. ensuring product composition is

maintained, customer demand, or specific retail requirements), the analysis assumed that shippers always choose the least cost option. We were unable to quantify the number of A3 shipments that are currently voluntarily offered in glass inner packagings. The potential cost savings per package are due to increased flexibility posed by the use of any rigid intermediate packaging instead of the single metal type currently required.

PHMSA estimated the compliance costs attributable to A6 compliance requirements, which vary by type of shipment and packaging type. For example, the difference in the compliance cost for a one-gallon shipment using UN specification packaging for materials corrosive to metal is estimated at \$3.82 for Packing Groups I, II or III. The estimated number of tons subject to A6 for UN specification packaging (corrosive to metal and PG I) is 641. The number of packages affected depends on the average inner receptacle volumes applicable to each packing group and restriction type. These calculations assume that the density of the chemicals is the same as that of water (i.e., one ton of each affected commodity has a volume of 239.65 gallons). Therefore, if the number of gallons per package for a commodity corrosive to metal and PG I is 0.66, the estimated number of packages per ton for that commodity is 363 (239.65/0.66). Thus, the total number of packages is 232,683 packages = 363 packages/ton multiplied by 641 tons. The total annual shipping cost difference is estimated at \$889,434 by multiplying the cost difference per package noted above of \$3.82 by the number of affected packages, 232,836. Similarly, PHMSA estimates the annual shipping cost difference for UN specification packaging for PG I materials not corrosive to metal at \$159,150 and the total annual shipping cost difference for PG II materials corrosive and not corrosive to metal at \$766,059. Therefore, the annual shipping cost difference for all PGs is estimated at \$1,814,643 (\$889,434 + \$159,150 + \$766,059).

The reduced expenditure cost savings associated with the general harmonization of the information to the pilot-in-command requirements are not easily calculable. Inconsistent hazardous materials regulations result in additional compliance costs for industry and increase compliance training efforts, whereas consistency of regulations reduces regulatory compliance costs and helps to avoid rejected or frustrated shipments. Clarifying that the term "written" in the

information to the pilot-in-command applies to handwritten, printed, or electronic formats supports the use of electronic methods as air operators continue to move away from paper documents and towards electronic systems. Cost savings may be realized by utilizing existing messaging systems for direct upload of information to and retrieval from, the cockpit. In addition, there may be cost savings for operators electing to use electronic information methods as they will not have to physically print the information for use and retention purposes. PHMSA expects the increased harmonization of the HMR and ICAO Technical Instructions to generate cost savings by streamlining the processes for information to the pilot-in-command generation.

## Costs of Harmonization

The primary costs associated with this final rule are time costs related to requirements for (1) confirmation via signature or other appropriate indication by the person responsible for loading the aircraft that no damaged or leaking packages were loaded on the aircraft, and (2) confirmation via signature or other appropriate indication by the pilot-in-command to indicate that the required information was received. PHMSA estimates the annual costs associated with harmonizing the HMR information to the pilot-in-command requirements with those found in the ICAO Technical Instructions to be \$795,318. This estimate is the total annual costs in 2016 dollars of the additional costs for pilot (\$465,966) and loader (\$106,845) acknowledgements plus HMR training costs (\$222,507).

A summary of the annual cost calculation is as follows. PHMSA estimates there are between 1,056 and 9,920 projected flights<sup>13</sup> daily carrying hazmat that would be subject to harmonized HMR and ICAO information to the pilot-in-command requirements with a mean daily value of 5,415 (1,976,475 annual). The estimated pilot acknowledgement cost of \$0.24<sup>14</sup> (based on average pilot salary and five seconds per action) per information received by the pilot-in-command multiplied by the estimated annual number of associated flights results in a total cost of \$465,966. Person(s) responsible for loading the aircraft costs were calculated in the same manner as pilots but with an estimated

<sup>10</sup> A metal container enclosing either a plastic or glass container.

<sup>11</sup> A metal or glass container rather than a plastic container.

<sup>12</sup> Having a metal container enclosing a plastic/glass container will add weight. Likewise, using a metal or glass container rather than a plastic container will add weight.

<sup>13</sup> PHMSA consulted with the FAA to derive the number of affected flights subject to this requirement.

<sup>14</sup> Bureau of Labor Statistics Occupational Employment and Wages, May 2016: 53–2011 Airline Pilots, Copilots, and Flight Engineers,

acknowledgement cost of \$0.05<sup>15</sup> per information to the pilot-in-command resulting in an estimated cost of \$106,845. Based on FAA air operator data, the number of additional employees requiring training is estimated at 2,086 at an estimated training cost of \$107 per trainee per year. The estimated annual expected industry training costs in 2016 dollars would then be \$222,507 = 2,086 employees multiplied by \$107 per employee. PHMSA notes that many air operators already comply with ICAO's information to the pilot-in-command requirements; therefore, it is likely that this analysis has overestimated the cost of harmonization. The HMR currently require confirmation that no damaged or leaking packages have been loaded on the aircraft. In satisfying this current requirement, it is assumed that many operators are already using the specific confirmation requirement (signature or other indication) from the person responsible for loading the aircraft, which would already be accounted for in time costs.

Under current practice, the information is transmitted to the pilot-in-command. We assume the additional provision of identical information to the flight dispatcher (or other personnel) will incur negligible costs, if any, especially as we understand this to be a common industry practice. In the NPRM, PHMSA invited comments on this assumption and on any unanticipated costs associated with the proposed requirement. While PHMSA did not receive any specific comments on additional costs associated with providing the same information to the flight dispatcher, all of the commenters provided strong support for harmonizing with the information to the pilot-in-command provisions of the ICAO Technical Instructions.

#### Net Cost Savings

Based on the previous discussions of benefits, costs, and cost savings PHMSA estimates the net annual cost savings associated with this final rule (2137–AF10) to be \$1,019,325.

#### C. Executive Order 13771

Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”), issued January 30, 2017, provides that “it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.” Toward that end, E.O. 13771 directs agencies to (1)

identify two potential deregulatory actions for each new E.O. 13771 regulatory action, and (2) limit the incremental costs of new regulations overall on a fiscal year basis. This final rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this final rule are described above.

#### D. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999). The regulatory changes in this final rule preempt State, local, and Indian tribe requirements but do not have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision, 49 U.S.C. 5125(b), that preempts State, local, and Indian tribe requirements on certain covered subjects, as follows:

- (1) The designation, description, and classification of hazardous material;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;
- (3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and
- (5) The design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This final rule addresses covered subject items (2), (3), and (5) above and preempts State, local, and Indian tribe requirements not meeting the “substantively the same” standard. This final rule is necessary to harmonize with international standards. If the changes are not adopted into the HMR, U.S. companies—including numerous small entities competing in foreign markets—would be at an economic disadvantage because of their need to comply with a dual system of regulations. The changes in this rulemaking are intended to avoid this

result. Federal hazardous materials transportation law provides that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. 49 U.S.C. 5125(b)(2). The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA is setting the effective date of Federal preemption to be 90 days from publication of a final rule in this matter.

#### E. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” 65 FR 67249 (Nov. 9, 2000). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

#### F. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures

This final rule was developed in accordance with Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (Aug. 16, 2002) and DOT's Policies and Procedures to promote compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and ensure that potential impacts of draft rules on small entities are properly considered. The Regulatory Flexibility Act requires an agency to review regulations to assess their economic impact on small entities, unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities.

This final rule facilitates the transportation of hazardous materials in international commerce by increasing consistency with international standards. It applies to offerors and carriers of hazardous materials, some of whom are small entities, such as chemical manufacturers, users and suppliers, packaging manufacturers, distributors, aircraft operators, and training companies. As previously discussed in Section IV, Subsection B (Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures), PHMSA expects that the majority of amendments in this final rule will result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international

<sup>15</sup> Occupational Employment and Wages, May 2016: 53–1011 Aircraft Cargo Handling Supervisors.

commerce, including trans-border shipments within North America. Many companies will realize economic benefits as a result of these amendments. Additionally, the changes effected by this final rule will relieve U.S. companies, including small entities competing in foreign markets, from the burden of complying with a dual system of regulations. Therefore, we certify that these amendments will not have a significant economic impact on a substantial number of small entities.

#### *G. Paperwork Reduction Act*

PHMSA currently has an approved information collection under Office of Management and Budget (OMB) Control Number 2137-0034, "Hazardous Materials Shipping Papers and Emergency Response Information." We anticipate that this final rule will result in an increase in the annual burden of this information collection because of an increase in the amount of time needed to complete the information to the pilot-in-command due to additional requirements for (1) confirmation via signature or other appropriate indication by the person responsible for loading the aircraft that no damaged or leaking packages were loaded on the aircraft, and (2) confirmation via signature or other appropriate indication by the pilot-in-command that the required information was received. PHMSA did not receive any comments on the changes to this information collection burden in response to the NPRM.

This rulemaking identifies a revised information collection that PHMSA will submit to OMB for approval based on the requirements in this final rule. PHMSA has developed burden estimates to reflect changes and estimates that the information collection and recordkeeping burden in this rule are as follows:

*OMB Control Number:* 2137-0034.

*Annual Increase in Number of*

*Respondents:* 150.

*Annual Increase in Annual Number of Responses:* 1,976,475.

*Annual Increase in Annual Burden Hours:* 5,474.

*Annual Increase in Annual Burden Costs:* \$572,811.

PHMSA will submit the revised information collection and recordkeeping requirements to OMB for approval.

#### *H. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified

Agenda in the Spring and Fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### *I. Unfunded Mandates Reform Act*

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 million or more, adjusted for inflation, to either State, local, or tribal governments, in the aggregate, or to the private sector in any one year, and is the least burdensome alternative that achieves the objective of the rule.

#### *J. Environmental Assessment*

The National Environmental Policy Act of 1969, 42 U.S.C. 4321-4375, requires that Federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality requires agencies to conduct an environmental review considering (1) the need for the proposed action, (2) alternatives to the proposed action, (3) probable environmental impacts of the action and the alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

##### *1. Purpose and Need*

In this final rule, PHMSA is amending the HMR to increase harmonization with international standards and to address four petitions for rulemaking submitted by shippers, carriers, manufacturers, and industry representatives. These revisions are intended to harmonize with international standards, while also maintaining or enhancing safety. Specifically, PHMSA, consistent with P-1487, is harmonizing the HMR with the 2017-2018 ICAO Technical Instructions' requirements for the information to the pilot-in-command, for the air operator to provide the information to the pilot-in-command to the flight dispatcher, and for the air operator to obtain and retain a confirmation that the information to the pilot-in-command was received by the pilot-in-command. This final rule addresses three additional petitions for rulemaking (P-1637, P-1649, and P-1671) to: (1) More closely harmonize with the ICAO Technical Instructions in regard to intermediate packaging requirements for certain low and medium danger hazardous materials; (2) add an exception to allow passengers to bring on board an aircraft portable medical electronic devices containing

lithium metal batteries that exceed the current lithium battery limits in § 175.10(a)(18)(i), as well as spare batteries for these devices with the approval of the operator; and (3) remove language prohibiting any package or overpack containing hazardous materials from being transported on an aircraft if it has holes when there is no indication that the integrity of the package or overpack has been compromised. All of these amendments more closely harmonize U.S. regulations with international standards.

This action is necessary to: (1) Fulfill PHMSA's statutory directive to promote transportation safety; (2) fulfill PHMSA's statutory directive under the Administrative Procedure Act (APA) that requires Federal agencies to give interested persons the right to petition an agency to issue, amend, or repeal a rule, 5 U.S.C. 553(e); (3) align the HMR with international transport standards and requirements to the extent practicable in accordance with Federal hazmat law, 49 U.S.C. 5120; and (4) simplify and clarify the regulations in order to promote understanding and compliance. Specifically, this rulemaking achieves these goals by responding to petitions (P-1487, P-1637, P-1649, and P-1671).

With this action, we are more closely align the HMR with international transport standards and requirements, without diminishing the level of safety currently provided by the HMR or imposing undue burdens on the regulated public.

##### *2. Alternatives*

In developing this rulemaking, PHMSA considered the following alternatives:

###### *No Action Alternative:*

If PHMSA had selected the No Action Alternative, regulations would remain in place and no new provisions would be added. However, efficiencies gained through harmonization in updates to information to the pilot-in-command requirements; intermediate packaging requirements; passenger carriage of portable medical electronic devices containing certain lithium metal batteries; acceptance/transport of packages with small holes that do not compromise the package integrity; ensuring that hazardous materials loaded in an aircraft are protected from damage; etc., would not be realized.

###### *Preferred Alternative:*

PHMSA selected the Preferred Alternative. The amendments included in this alternative are more fully addressed in the preamble and regulatory text sections of this final rule. However, they include the following:



(1) *Harmonize the HMR and ICAO Technical Instructions information to the pilot-in-command requirements.* In this final rule, PHMSA is more closely aligning the information to the pilot-in-command requirements in the HMR to the ICAO Technical Instructions. This includes information required, when the information must be provided to the pilot-in-command and flight dispatchers, and requirements for verifying that the information was received by the pilot-in-command.

(2) *More closely harmonize with the ICAO Technical Instructions in regard to intermediate packaging requirements for certain low and medium danger hazardous materials.* In this final rule, PHMSA is removing all references to special provision A6 assigned to liquids in the Hazardous Materials Table. Additionally, this final rule amends special provision A3 to authorize additional intermediate packagings.

(3) *Add an exception to allow passengers, with the approval of the operator, to bring on board an aircraft a portable medical electronic device that exceeds the lithium battery limits in § 175.10(a)(18)(i).* In this final rule, PHMSA is amending § 175.10(a)(18)(i) to increase the quantity limits applicable to the transportation of portable medical electronic devices containing lithium metal batteries and spare batteries for these devices carried on an aircraft. The current HMR limit all lithium metal batteries to a lithium content of not more than 2 grams per battery regardless of end use, whereas the ICAO Technical Instructions allow portable medical electronic devices containing lithium metal batteries with up to 8 grams of lithium (as well as spare batteries for these devices) to be carried on board an aircraft.

(4) *Amend the package inspection and securing requirements.* In this final rule, PHMSA is amending § 175.30(c)(1) to remove language prohibiting any package or overpack containing hazardous materials from being transported on an aircraft if it has holes. Additionally, PHMSA is revising § 175.88(c) to require hazardous materials loaded in an aircraft to be protected from damage, including by the movement of baggage, mail, stores, or other cargo, consistent with general loading requirements found in the ICAO Technical Instructions.

### 3. Probable Environmental Impacts of the Alternatives

#### *No Action Alternative:*

If PHMSA had selected the No Action Alternative, regulations would remain in place and no new provisions would be added. However, efficiencies gained

through harmonization of transport standards would not be realized. Foregone efficiencies in the No Action Alternative include freeing up limited resources to concentrate on air transport hazard communication issues of potentially much greater environmental impact.

Additionally, the Preferred Alternative encompasses enhanced and clarified regulatory requirements, which would result in increased compliance and less environmental and safety incidents. Not adopting the environmental and safety requirements under the No Action Alternative would result in a lost opportunity for reducing environmental and safety-related incidents.

Greenhouse gas emissions would remain the same under the No Action Alternative.

#### *Preferred Alternative:*

PHMSA selected the Preferred Alternative. We believe that safety and environmental risks will be reduced and that protections to human health and environmental resources will be increased. Consistency between U.S. and international information to the pilot-in-command requirements can enhance the safety and environmental protection of hazardous materials transportation, reduce compliance costs, increase the flow of hazardous materials from their points of origin to their points of destination (or diversion airport when required), and improve the emergency response in the event of a hazardous materials incident or accident.

Overall, harmonization will result in more targeted and effective training and thereby enhanced environmental protection. These amendments will reduce inconsistent hazardous materials regulations, which can increase the time and cost of compliance training. For ease of compliance with appropriate regulations, operators engaged in the transportation of hazardous materials generally elect to accept and transport hazardous materials in accordance with the ICAO Technical Instructions, as appropriate. Increasing consistency between these international regulations and the HMR allows shippers and carriers to more efficiently train hazmat employees in their responsible functions. PHMSA believes that these amendments, which will increase standardization and consistency of regulations, will result in greater protection of human health and the environment:

(1) *More closely harmonize the HMR and ICAO Technical Instructions information to the pilot-in-command requirements.* Harmonization of

information to the pilot-in-command requirements will (1) allow operators to streamline compliance and training programs, (2) result in emergency response personnel having quicker access to hazmat information for each flight, (3) remove the requirement to supply data elements required under shipping paper provisions, and (4) provide flight dispatchers access to hazmat information and relieve the pilot-in-command of the responsibility of communicating this information to Air Traffic Control (ATC) and Aircraft Rescue and Firefighting (ARFF) personnel.

Greenhouse gas emissions would remain the same under this amendment.

(2) *More closely harmonize with the ICAO Technical Instructions in regard to intermediate packaging requirements for certain low and medium danger hazardous materials.* Deleting the assignment of special provisions A3 (partial) and A6 (for liquids) more closely harmonizes the HMR with ICAO's packing instructions and removes a requirement that, according to the petitioner, is a barrier to trade for U.S. exports, while still maintaining an appropriate level of safety. Existing requirements in § 173.27(d) and (e) for inner packagings to have a secondary means of closure and to be placed in either a rigid and leakproof receptacle or an intermediate packaging with absorbent material make special provisions A3 and A6 redundant for PG I commodities. Additionally, the requirements in § 173.27(d) for inner packagings to have a secondary means of closure or a leakproof liner or bag adequately address the hazards that special provision A6 was designed to mitigate for PG II and III liquid materials.

Greenhouse gas emissions would remain the same under this amendment.

(3) *Add an exception to allow passengers, with the approval of the operator, to bring on board an aircraft a portable medical electronic device that exceeds the lithium metal battery limits in § 175.10(a)(18)(i).* Harmonizing with the ICAO Technical Instructions in this area will assist the traveling public who rely on their portable medical electronic devices powered by lithium metal batteries. This revision will be consistent with the FAA Modernization and Reform Act.

Greenhouse gas emissions would remain the same under this amendment.

(4) *Amend the package inspection and securing requirements.* Harmonizing with the ICAO Technical Instructions in this area will address the overly prescriptive requirements for package inspection and securing, which

currently result in acceptance rejections from operators and freight forwarders. Further, harmonization will result in more targeted and effective training and thereby enhanced environmental protection. These amendments will reduce inconsistent hazardous materials regulations, which hamper compliance training efforts.

Greenhouse gas emissions would remain the same under this amendment.

#### 4. Agencies Consulted

PHMSA coordinated with the U.S. Federal Aviation Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, and the U.S. Coast Guard, in the development of this final rule. PHMSA considered the views expressed in comments to the NPRM submitted by members of the public, State and local governments, and industry.

#### 5. Conclusion

The provisions of this final rule build on current regulatory requirements to enhance the transportation safety and security of shipments of hazardous materials transported by aircraft, thereby reducing the risks of an accidental or intentional release of hazardous materials and consequent environmental damage. PHMSA concludes that the net environmental impact will be positive and that there are no significant environmental impacts associated with this final rule.

#### K. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

#### L. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609, "Promoting International Regulatory Cooperation," 77 FR 26413 (May 4,

2012), agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979, Public Law 96-39, as amended by the Uruguay Round Agreements Act, Public Law 103-465, prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA and the FAA participate in the establishment of international standards to protect the safety of the American public. We have assessed the effects of this final rule to ensure that it does not cause unnecessary obstacles to foreign trade. In fact, the final rule is designed to facilitate international trade by eliminating differences between the domestic and international air transportation requirements. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

#### M. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995, 15

U.S.C. 272 note, directs Federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies. This final rule does not involve voluntary consensus standards.

#### List of Subjects

##### 49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

##### 49 CFR Part 175

Hazardous materials transportation, Incorporation by reference, Operators, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA is amending 49 CFR chapter I as follows:

#### **PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS**

■ 1. The authority citation for part 172 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 2. In § 172.101, the Hazardous Materials Table is amended by revising the following entries in the appropriate alphabetical sequence:

##### **§ 172.101 Purpose and use of the hazardous materials table.**

\* \* \* \* \*

BILLING CODE 4910-60-P

(1) Symbols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identification No.	(5) PG	(6) Label codes	(7) Special provisions (§ 172.102)	(8) Packaging (§ 173.34)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
		(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Acetaldehyde	* 3	UN1089	I	3	B16, T11, TP2, TP7	None	201	243	Forbidden	30 L	E	
	Acetic acid, glacial or Acetic acid solution, with more than 80 percent acid, by mass.	* 8	UN2789	II	8, 3	A3, A7, A10, B2, IB2, T7, TP2.	154	202	243	1 L	30 L	A	
	Acetic acid solution, not less than 50 percent but not more than 80 percent acid, by mass.	8	UN2790	II	8	148, A3, A7, A10, B2, IB2, T7, TP2.	154	202	242	1 L	30 L	A	
	Acetic anhydride	* 8	UN1715	II	8, 3	A3, A7, A10, B2, IB2, T7, TP2.	154	202	243	1 L	30 L	A	40
	Acetyl chloride	* 3	UN1717	II	3, 8	A3, A7, IB1, N34, T8, TP2.	150	202	243	1 L	5 L	B	40
	Alkali metal alloys, liquid, n.o.s.	* 4.3	UN1421	I	4.3	A2, A7, B48, N34, W31	None	201	244	Forbidden	1 L	D	13, 52, 148
	Alkali metal amalgam, liquid.	4.3	UN1389	I	4.3	A2, A7, N34, W31	None	201	244	Forbidden	1 L	D	13, 40, 52, 148
	Alkali metal dispersions, flammable or Alkaline earth metal dispersions.	* 4.3	UN3482	I	4.3, 3	A2, A7, W31	None	201	244	Forbidden	1 L	D	13, 52, 148
	Alkylphenols, liquid, n.o.s. (including C2-C12 homologues).	* 8	UN3145	I	8	T14, TP2	None	201	243	0.5 L	2.5 L	B	
	Allyl iodide	* 3	UN1723	II	3, 8	A3, IB1, N34, T7, TP2, TP13.	150	202	243	1 L	5 L	B	40
G	Amine, liquid, corrosive, flammable, n.o.s. or Polyamines, liquid, corrosive, flammable, n.o.s.	* 8	UN2734	I	8, 3	N34, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	A	52
		II			8, 3	IB2, T11, TP2, TP27	None	202	243	1 L	30 L	A	52

G	Amines, liquid, corrosive, n.o.s. or Polyamines, liquid, corrosive, n.o.s.	8	UN2735	I	8	B10, N34, T14, TP2, TP27.	None	201	243	0.5 L	2.5 L	A	52
				II	8	B2, IB2, T11, TP1, TP27.	154	202	242	1 L	30 L	A	52
				III	8	IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A	52
		*	3	UN1111	*	A3, IB2, T4, TP1	None	202	242	5 L	60 L	B	95, 102
		*	8	UN1732	II	8, 6.1	A3, A7, A10, IB2, N3, N36, T7, TP2.	202	243	Forbidden	30 L	D	40, 44, 89, 100, 141
		*	8	UN1739	I	8	B4, N41, T10, TP2, TP13.	201	243	Forbidden	2.5 L	D	40
		*	8	UN2604	I	8, 3	A19, T10, TP2, W31	201	243	0.5 L	2.5 L	D	40
		*	3	UN2347	II	3	A3, IB2, T4, TP1	202	242	5 L	60 L	D	52, 95, 102
		*	8	UN1908	II	8	A3, A7, B2, IB2, N34, T7, TP2, TP24.	202	242	1 L	30 L	B	26, 44, 89, 100, 141
				III	8	A3, A7, B2, IB3, N34, T4, TP2, TP24.	154	203	241	5 L	60 L	B	26, 44, 89, 100, 141
		*	3	UN2456	I	3	N36, T11, TP2	201	243	1 L	30 L	E	
		*	8	UN1758	I	8	A7, B10, N34, T10, TP2	201	243	0.5 L	2.5 L	C	40, 66, 74, 89, 90
		*	8	UN2240	I	8	A7, B4, B6, N34, T10, TP2, TP13.	201	243	0.5L	2.5L	B	40, 66, 74, 89, 90
		*	8	UN3264	I	8	B10, T14, TP2, TP27	201	243	0.5 L	2.5 L	B	40
				II	8	386, B2, IB2, T11, TP2, TP27.	154	202	242	1 L	30 L	B	40
				III	8	IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A	40
		8	UN3265	I	8	B10, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	B	40
				II	8	148, B2, IB2, T11, TP2, TP27.	154	202	242	1 L	30 L	B	40
				III	8	386, IB3, T7, TP1, TP28.	154	203	241	5 L	60 L	A	40
		8	UN3266	I	8	T14, TP2, TP27	None	201	243	0.5 L	2.5 L	B	40, 52
				II	8	386, B2, IB2, T11, TP2, TP27.	154	202	242	1 L	30 L	B	40, 52
				III	8	IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A	40, 52
		8	UN3267	I	8	B10, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	B	40, 52
				II	8	B2, IB2, T11, TP2, TP27.	154	202	242	1 L	30 L	B	40, 52
				III	8	IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A	40, 52

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)			(10)	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)	
G	Corrosive liquid, self-heating, n.o.s.	8	UN3301	I	8, 4.2	B10	None	201	243	0.5 L	2.5 L	D.		
G	Corrosive liquids, flammable, n.o.s.	8	UN2920	II	8, 4.2	B2, IB1	154	202	242	1 L	30 L	D.		
				I	8, 3	B10, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	C	25, 40	
				II	8, 3	B2, IB2, T11, TP2, TP27	154	202	243	1 L	30 L	C	25, 40	
G	Corrosive liquids, n.o.s.	8	UN1760	I	8	A7, B10, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	B	40	
				II	8	B2, IB2, T11, TP2, TP27	154	202	242	1 L	30 L	B	40	
G	Corrosive liquids, oxidizing, n.o.s.	8	UN3093	III	8	IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A	40	
				I	8, 5.1	A7	None	201	243	Forbidden	2.5 L	C	89	
G	Corrosive liquids, toxic, n.o.s.	8	UN2922	I	8, 5.1	A7, IB2	None	202	243	1 L	30 L	C	89	
				II	8, 6.1	A7, B10, T14, TP2, TP13, TP27	None	201	243	0.5 L	2.5 L	B	40	
				II	8, 6.1	B3, IB2, T7, TP2	154	203	243	1 L	30 L	B	40	
				III	8, 6.1	IB3, T7, TP1, TP28	154	203	241	5 L	60 L	B	40	
G	Corrosive liquids, water-reactive, n.o.s.	8	UN3094	I	8, 4.3	A7	None	201	243	Forbidden	1 L	E	13, 148	
				II	8, 4.3	A7	None	202	243	1 L	5 L	E	13, 148	
	Dichloroacetic acid	*	UN1764	*	*	A3, A7, B2, IB2, N34, T8, TP2	154	202	242	1 L	30 L	A.		
	Dichloroacetyl chloride	*	UN1765	*	*	A3, A7, B2, B6, IB2, N34, T7, TP2	154	202	242	1 L	30 L	D	40	
	Difluorophosphoric acid, anhydrous	*	UN1768	*	*	A7, B2, IB2, N5, N34, T8, TP2	None	202	242	1 L	30 L	A	40	
G	Disinfectant, liquid, corrosive, n.o.s.	*	UN1903	*	*	A7, B10, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	B.		
	Dyes, liquid, corrosive, n.o.s. or Dye intermediates, liquid, corrosive, n.o.s.	*	UN2801	*	*	11, B10, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	A.		
				II	8	11, B2, IB2, T11, TP2, TP27	154	202	242	1 L	30 L	A		
				III	8	11, IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A.		
	Ethyl mercaptan	*	UN2363	*	*	T11, TP2, TP13	None	201	243	Forbidden	30 L	E	95, 102	
	Ethylchlorosilane	*	UN1183	*	4.3, 8, 3	A2, A7, N34, T14, TP2, TP7, TP13, W31	None	201	244	Forbidden	1 L	D	21, 40, 49, 100	

* 8	UN1775	...	II	.....	8	.....	*	A7, B2, B15, IB2, N3, N34, T7, TP2.	154	.....	*	202	.....	242	.....	*	1 L	.....	30 L	.....	A.		
	8	UN1776	...	II	.....	8	.....	A7, B2, IB2, N3, N34, T8, TP2.	None	.....	*	202	.....	242	.....	*	1 L	.....	30 L	.....	A.		
* 8	UN1778	...	II	.....	8	.....	*	A7, B2, B15, IB2, N3, N34, T8, TP2.	None	.....	*	202	.....	242	.....	*	1 L	.....	30 L	.....	A.		
	8	UN1777	...	I	.....	8	.....	A7, A10, B6, B10, N3, N36, T10, TP2.	None	.....	*	201	.....	243	.....	*	0.5 L	.....	2.5 L	.....	D	.....	40
* 8	UN2029	...	I	.....	8, 3, 6.1	....	*	A7, A10, B7, B16, B53	None	.....	*	201	.....	243	.....	*	Forbidden	.....	2.5 L	.....	D	.....	40, 52, 125
	* 8	UN1787	...	II	.....	8	.....	*	A3, B2, IB2, N41, T7, TP2.	154	.....	*	202	.....	242	.....	*	1 L	.....	30 L	.....	C.	
III		.....	III	.....	8	.....	*	IB3, T4, TP1	154	.....	*	203	.....	241	.....	*	5 L	.....	60 L	.....	C	.....	8
* 8	UN1788	...	II	.....	8	.....	*	A3, B2, B15, IB2, N41, T7, TP2.	154	.....	*	202	.....	242	.....	*	1 L	.....	30 L	.....	C.		
	* 8	UN1789	...	II	.....	8	.....	*	386, A3, B3, B15, B133, IB2, N41, T8, TP2.	154	.....	*	202	.....	242	.....	*	1 L	.....	30 L	.....	C.	
III		.....	III	.....	8	.....	*	A3, IB3, T4, TP1	154	.....	*	203	.....	241	.....	*	5 L	.....	60 L	.....	C	.....	8
* 8	UN1786	...	I	.....	8, 6.1	.....	*	A7, B15, B23, N5, N34, T10, TP2, TP13.	None	.....	*	201	.....	243	.....	*	Forbidden	.....	2.5 L	.....	D	.....	40
	* 8	UN1790	...	I	.....	8, 6.1	.....	*	A7, B4, B15, B23, N5, N34, T10, TP2, TP13.	None	.....	*	201	.....	243	.....	*	0.5 L	.....	2.5 L	.....	D	.....
8		UN1790	...	II	.....	8, 6.1	.....	A7, B15, IB2, N5, N34, T8, TP2.	154	.....	*	202	.....	243	.....	*	1 L	.....	30 L	.....	D	.....	12, 25, 40
* 5.1	UN3149	...	II	.....	5.1, 8	.....	*	145, A2, A3, B53, IB2, IP5, T7, TP2, TP6, TP24.	None	.....	*	202	.....	243	.....	*	1 L	.....	5 L	.....	D	.....	25, 66, 75
	* 5.1	UN2014	...	II	.....	5.1, 8	.....	A2, A3, B53, IB2, IP5, T7, TP2, TP6, TP24, TP37.	None	.....	*	202	.....	243	.....	*	1 L	.....	5 L	.....	D	.....	25, 66, 75
* 4.3		UN1411	...	I	.....	4.3, 3	.....	A2, A11, N34	None	.....	*	201	.....	244	.....	*	Forbidden	.....	1 L	.....	D	.....	13, 40, 148

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identifica- tion No.	PG	Label codes	Special provisions (§ 172.102)	(8)			(9)		(10)	
							Packaging (§ 173.***)			Quantity limitations (see §§ 173.27 and 175.75)		Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo air- craft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*		*	*	*			*	*			
	Mercaptans, liquid, flammable, toxic, n.o.s. or Mercaptan mixtures, liquid, flammable, toxic, n.o.s.	3	UN1228 ...	II	3, 6.1	IB2, T11, TP2, TP27	None	202	243	Forbidden	60 L	B	40, 95, 102
	Mercaptans, liquid, toxic, flammable, n.o.s. or Mercaptan mixtures, liquid, toxic, flammable, n.o.s., flash point not less than 23 degrees C.	6.1	UN3071 ...	III	3, 6.1 6.1, 3	B1, IB3, T7, TP1, TP28 IB2, T11, TP2, TP13, TP27	150 153	203 202	242 243	5 L 5 L	220 L 60 L	A C	40, 95, 102 40, 102, 121
	Methyldichlorosilane	4.3	UN1242 ...	I	4.3, 8, 3	A2, A7, B6, B77, N34, T14, TP2, TP7, TP13, W31.	None	201	243	Forbidden	1 L	D	21, 40, 49, 100
	Morpholine	8	UN2054 ...	I	8, 3	T10, TP2	None	201	243	0.5 L	2.5 L	A	
	Nitric acid other than red fuming, with at least 65 percent, but not more than 70 percent nitric acid.	8	UN2031 ...	II	8, 5.1	B2, B47, B53, IB2, IP15, T8, TP2.	None	158	242	Forbidden	30 L	D	66, 74, 89, 90
	Nitric acid other than red fuming, with more than 20 percent and less than 65 percent nitric acid.	8	UN2031 ...	II	8	A212, B2, B47, B53, IB2, IP15, T8, TP2.	None	158	242	Forbidden	30 L	D	44, 66, 74, 89, 90
	Nitric acid other than red fuming with not more than 20 percent nitric acid.	8	UN2031 ...	II	8	B2, B47, B53, IB2, TP2.	None	158	242	1 L	30 L	D	
	Nitric acid other than red fuming, with more than 70 percent nitric acid.	8	UN2031 ...	I	8, 5.1	B47, B53, T10, TP2, TP12, TP13.	None	158	243	Forbidden	2.5 L	D	44, 66, 89, 90, 110, 111
	Nitrohydrochloric acid	8	UN1798 ...	I	8	B10, N41, T10, TP2, TP13.	None	201	243	Forbidden	2.5 L	D	40, 66, 74, 89, 90
	Nitrosylsulfuric acid, liquid.	8	UN2308 ...	II	8	A3, A7, B2, IB2, N34, T8, TP2.	154	202	242	1 L	30 L	D	40, 66, 74, 89, 90



Organotin compounds, liquid, n.o.s.	* 6.1 UN2788 ...	I	6.1	*	N33, N34, T14, TP2, TP13, TP27	None	*	201	243	*	1 L	30 L	B	40
	II	II	6.1	*	A3, IB2, N33, N34, T11, TP2, TP13, TP27	153	*	202	243	*	5 L	60 L	A	40
	III	III	6.1	*	IB3, T7, TP2, TP28	153	*	203	241	*	60 L	220 L	A	40
Oxidizing liquid, corrosive, n.o.s.	* 5.1 UN3098 ...	I	5.1, 8	*	62	None	*	201	244	*	Forbidden	2.5 L	D	13, 56, 58, 138
	II	II	5.1, 8	*	62, IB1	None	*	202	243	*	1 L	5 L	B	13, 56, 58, 138
	III	III	5.1, 8	*	62, IB2	152	*	203	242	*	2.5 L	30 L	B	13, 56, 58, 138
Oxidizing liquid, n.o.s.	5.1 UN3139 ...	I	5.1	*	62, 127, A2	None	*	201	243	*	Forbidden	2.5 L	D	56, 58, 138
	II	II	5.1	*	62, 127, 148, A2, IB2	152	*	202	242	*	1 L	5 L	B	56, 58, 138
	III	III	5.1	*	62, 127, 148, A2, IB2	152	*	203	241	*	30 L	30 L	B	56, 58, 138
Oxidizing liquid, toxic, n.o.s.	5.1 UN3099 ...	I	5.1, 6.1	*	62	None	*	201	244	*	Forbidden	2.5 L	D	56, 58, 138
	II	II	5.1, 6.1	*	62, IB1	152	*	202	243	*	1 L	5 L	B	56, 58, 95, 138
	III	III	5.1, 6.1	*	62, IB2	152	*	203	242	*	2.5 L	30 L	B	56, 58, 95, 138
Perchloric acid with more than 50 percent but not more than 72 percent acid, by mass.	* 5.1 UN1873 ...	I	5.1, 8	*	A2, N41, T10, TP1	None	*	201	243	*	Forbidden	2.5 L	D	66
	II	II	8	*	A3, A7, B2, B25, IB2, N34, N43, T7, TP2	None	*	202	242	*	Forbidden	30 L	C	40
	III	III	3	*	IB2, T4, TP1, TP13	150	*	202	242	*	5 L	60 L	E	95, 102
Propanethiols	* 3 UN2402 ...	II	3	*	IB2, T4, TP1, TP13	150	*	202	242	*	5 L	60 L	E	95, 102
	III	III	3	*	N34, T11, TP2, TP7	None	*	201	243	*	1 L	30 L	E	40
	IV	IV	3	*	N34, T11, TP2, TP7	None	*	201	243	*	1 L	30 L	E	40
Propylene oxide	* 8 UN2258 ...	II	8, 3	*	A3, IB2, N34, T7, TP2	None	*	202	243	*	1 L	30 L	A	40
	3 UN1921 ...	I	3, 6.1	*	N34, T14, TP2, TP13	None	*	201	243	*	1 L	30 L	D	40
	IV	IV	3	*	N34, T11, TP2, TP7	None	*	201	243	*	1 L	30 L	E	40
Selenium oxychloride	* 8 UN2879 ...	I	8, 6.1	*	A7, N34, T10, TP2, TP13	None	*	201	243	*	0.5 L	2.5 L	E	40
	II	II	8	*	A3, B2, B6, T10, TP2, TP7, TP13	None	*	202	242	*	Forbidden	30 L	C	40
	III	III	8	*	5, A7, A10, B10, B77, N34, T20, TP2	None	*	201	243	*	Forbidden	2.5 L	C	40
Sulfur chlorides	* 8 UN1828 ...	I	8	*	A7, N34, T20, TP2, TP13	None	*	201	243	*	Forbidden	2.5 L	C	40
	II	II	8	*	A7, N34, T20, TP2, TP13	None	*	201	243	*	Forbidden	2.5 L	C	40
	III	III	8	*	A7, N34, T20, TP2, TP13	None	*	201	243	*	Forbidden	2.5 L	C	40
Sulfuric acid, fuming with less than 30 percent free sulfur trioxide.	* 8 UN1831 ...	I	8	*	A7, N34, T20, TP2, TP13	None	*	201	243	*	Forbidden	2.5 L	C	14, 40
	II	II	8	*	A3, A7, B2, IB2, N34, T7, TP2	154	*	202	242	*	1 L	30 L	B	
	III	III	8	*	A3, A7, B2, IB2, N34, T7, TP2	154	*	202	242	*	1 L	30 L	B	

[illegible]

■ 3. In § 172.102, in paragraph (c)(2), special provision A3 is revised as follows:

**§ 172.102 Special provisions.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

A3 For combination packagings, if glass inner packagings (including ampoules) are used, they must be packed with absorbent material in tightly closed rigid and leakproof receptacles before packing in outer packagings.

\* \* \* \* \*

**PART 175—CARRIAGE BY AIRCRAFT**

■ 4. The authority citation for part 175 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81 and 1.97.

■ 5. In § 175.10, paragraphs (a)(18) introductory text and (a)(18)(i) are revised to read as follows:

**§ 175.10 Exceptions for passengers, crewmembers, and air operators.**

(a) \* \* \*

(18) Except as provided in § 173.21 of this subchapter, portable electronic devices (e.g., watches, calculating machines, cameras, cellular phones, laptop and notebook computers, camcorders, medical devices, etc.) containing dry cells or dry batteries (including lithium cells or batteries) and spare dry cells or batteries for these devices, when carried by passengers or crewmembers for personal use. Portable electronic devices powered by lithium batteries may be carried in either checked or carry-on baggage. Spare lithium batteries must be carried in carry-on baggage only. Each installed or spare lithium battery must be of a type proven to meet the requirements of each test in the UN Manual of Tests and Criteria, part III, sub-section 38.3 and each spare lithium battery must be individually protected so as to prevent short circuits (e.g., by placement in original retail packaging, by otherwise insulating terminals by taping over exposed terminals, or placing each battery in a separate plastic bag or protective pouch). In addition, each installed or spare lithium battery must not exceed the following:

(i) For a lithium metal battery, the lithium content must not exceed 2 grams. With the approval of the operator, portable medical electronic devices (e.g., automated external defibrillators (AED), nebulizer, continuous positive airway pressure (CPAP), etc.) may contain lithium metal batteries exceeding 2 grams, but not

exceeding 8 grams. With the approval of the operator, no more than two lithium metal batteries each exceeding 2 grams, but not exceeding 8 grams, may be carried as spare batteries for portable medical electronic devices in carry-on baggage and must be carried with the portable medical electronic device the spare batteries are intended to operate;

\* \* \* \* \*

■ 6. In § 175.30, paragraphs (b) introductory text, (c) introductory text, and (c)(1) are revised to read as follows:

**§ 175.30 Inspecting shipments.**

\* \* \* \* \*

(b) Except as provided in paragraph (d) of this section, no person may carry a hazardous material in a package or overpack aboard an aircraft unless the package or overpack is inspected by the operator of the aircraft immediately before placing it:

\* \* \* \* \*

(c) A hazardous material may be carried aboard an aircraft only if, based on the inspection by the operator, the package or overpack containing the hazardous material:

(1) Has no leakage or other indication that its integrity has been compromised; and

\* \* \* \* \*

■ 7. Section 175.33 is revised to read as follows:

**§ 175.33 Shipping paper and information to the pilot-in-command.**

(a) When a hazardous material subject to the provisions of this subchapter is carried in an aircraft, the operator of the aircraft must provide the pilot-in-command and the flight dispatcher or other ground support personnel with responsibilities for operational control of the aircraft with accurate and legible written information (e.g., handwritten, printed, or electronic form) as early as practicable before departure of the aircraft, but in no case later than when the aircraft moves under its own power, which specifies at least the following:

(1) The date of the flight;

(2) The air waybill number (when issued);

(3) The proper shipping name (the technical name(s) shown on the shipping paper is not required), hazard class or division, subsidiary risk(s) corresponding to a required label(s), packing group and identification number of the material as specified in § 172.101 of this subchapter or the ICAO Technical Instructions (IBR, see § 171.7 of this subchapter). In the case of Class 1 materials, the compatibility group letter also must be shown.

(4) The total number of packages;

(5) The exact loading location of the packages;

(6) The net quantity or gross mass, as applicable, for each package except those containing Class 7 (radioactive) materials. For a shipment consisting of multiple packages containing hazardous materials bearing the same proper shipping name and identification number, only the total quantity and an indication of the quantity of the largest and smallest package at each loading location need to be provided. For consumer commodities, the information provided may be either the gross mass of each package or the average gross mass of the packages as shown on the shipping paper;

(7) For Class 7 (radioactive) materials, the number of packages overpacks or freight containers, their category, transport index (if applicable), and their exact loading location;

(8) Confirmation that the package must be carried on cargo-only aircraft;

(9) The airport at which the package(s) is to be unloaded;

(10) An indication, when applicable, that a hazardous material is being carried under terms of a special permit or under a State exemption as prescribed in the ICAO Technical Instructions (IBR, see § 171.7 of this subchapter);

(11) The telephone number from whom the information contained in the information to the pilot-in-command can be obtained. The aircraft operator must ensure the telephone number is monitored at all times the aircraft is in flight. The telephone number is not required to be placed on the information to the pilot-in-command if the phone number is in a location in the cockpit available and known to the pilot-in-command;

(12) For UN1845, Carbon dioxide, solid (dry ice), the information required by this paragraph (a) may be replaced by the UN number, proper shipping name, hazard class, total quantity in each cargo compartment aboard the aircraft, and the airport at which the package(s) is to be unloaded; and

(13)(i) For UN3480, Lithium ion batteries, and UN3090, Lithium metal batteries, the information required by this paragraph (a) may be replaced by the UN number, proper shipping name, hazard class, total quantity at each specific loading location, and whether the package must be carried on cargo-only aircraft.

(ii) For UN3480, Lithium ion batteries, and UN3090, Lithium metal batteries, carried under a special permit or a State exemption as prescribed in the ICAO Technical Instructions (IBR, see § 171.7 of this subchapter), must

meet all of the requirements of this section.

(iii) For UN3480, UN3481, UN3090, and UN3091 prepared in accordance with § 173.185(c), except those prepared in accordance with § 173.185(c)(4)(vi), are not required to appear on the information to the pilot-in-command.

(b)(1) The information provided to the pilot-in-command must also include a signed confirmation or some other indication from the person responsible for loading the aircraft that there was no evidence of any damage to or leakage from the packages or any leakage from the unit load devices loaded on the aircraft;

(2) The information to the pilot-in-command and the emergency response information required by subpart G of part 172 of this subchapter shall be readily available to the pilot-in-command and flight dispatcher during flight.

(3) The pilot-in-command must indicate in writing (*e.g.*, handwritten, printed, or electronic form) that the information to the pilot-in-command has been received.

(c) The aircraft operator must—

(1) *For shipping papers.* (i) Ensure a copy of the shipping paper required by § 175.30(a)(2) accompanies the shipment it covers during transportation aboard the aircraft.

(ii) Retain a copy of the shipping paper required by § 175.30(a)(2) or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper available, upon request, to an authorized official of a federal, state, or local government agency at reasonable times and locations. For a

hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained by the operator for one year after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the carrier. The date on the shipping paper may be the date a shipper notifies the air carrier that a shipment is ready for transportation, as indicated on the air waybill or bill of lading, as an alternative to the date the shipment is picked up or accepted by the carrier. Only an initial carrier must receive and retain a copy of the shipper's certification, as required by § 172.204 of this subchapter.

(2) *For information to the pilot-in-command.* Retain for 90 days at the airport of departure or the operator's principal place of business.

(3) Have the shipping paper and information to the pilot-in-command readily accessible at the airport of departure and the intended airport of arrival for the duration of the flight.

(4) Make available, upon request, to an authorized official of a Federal, State, or local government agency (which includes emergency responders) at reasonable times and locations, the documents or information required to be retained by this paragraph. In the event of a reportable incident, as defined in § 171.15 of this subchapter, the aircraft operator must make immediately available to an authorized official of a Federal, State, or local government agency (which includes emergency responders), the documents or

information required to be retained by this paragraph (c).

(5) Specify the personnel to be provided the information required by paragraph (a) of this section in their operations manual and/or other appropriate manuals.

(d) The information required by paragraph (a) of this section and the shipping paper required by (c)(1) of this section may be combined into one document.

■ 8. In § 175.88, paragraph (c) is revised to read as follows:

**§ 175.88 Inspection, orientation and securing packages of hazardous materials.**

\* \* \* \* \*

(c) Packages containing hazardous materials must be:

(1) Secured in an aircraft in a manner that will prevent any shifting or change in the orientation of the packages;

(2) Protected from being damaged, including by the shifting of baggage, mail, stores, or other cargo;

(3) Loaded so that accidental damage is not caused through dragging or mishandling; and

(4) When containing Class 7 (radioactive) materials, secured in a manner that ensures that the separation requirements of §§ 175.701 and 175.702 will be maintained at all times during flight.

Issued in Washington, DC, on October 5, 2018 under authority delegated in 49 CFR 1.97.

**Howard R. Elliott,**

*Administrator, Pipeline and Hazardous Materials Safety Administration.*

[FR Doc. 2018-22114 Filed 10-17-18; 8:45 am]

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## Part III

### Commodity Futures Trading Commission

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17 CFR Part 4

Registration and Compliance Requirements for Commodity Pool Operators  
and Commodity Trading Advisors; Proposed Rule

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 4

RIN 3038-AE76

#### Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC or Commission) is proposing amendments to its regulations to permit commodity pool operators (CPOs) that only solicit and/or accept funds from non-U.S. persons for participation in offshore commodity pools to claim an exemption from CPO registration and compliance requirements with respect to such pools, while permitting the maintenance of registration with respect to commodity pools for which CPO registration is required. The Commission also is proposing to allow U.S.-based CPOs of offshore commodity pools with U.S. participants to maintain the commodity pool's original books and records in the offshore location of the pool, in lieu of the CPO's main U.S. business location. Additionally, the Commission is proposing to prohibit a person that would be statutorily disqualified from registering with the Commission as a CPO from claiming or affirming an exemption from CPO registration. The Commission also is proposing registration relief for the CPOs and CTAs of entities qualifying as "family offices" and investment advisers of "business development companies," as defined in the proposed regulations. The Commission is further proposing to permit qualifying CPOs to engage in general solicitation in their pool offerings, as contemplated by the Jumpstart Our Business Start-ups Act of 2012 (JOBS Act). Finally, the Commission is proposing to relieve certain CPOs and commodity trading advisors (CTAs) of the requirement to file Forms CPO-PQR and CTA-PR.

**DATES:** Comments must be received on or before December 17, 2018.

**ADDRESSES:** You may submit comments, identified by RIN number 3038-AE76, by any of the following methods:

- *CFTC Comments Portal:* <https://comments.cftc.gov>. Select the "Submit Comments" link for this rulemaking and follow the instructions on the Public Comment Form.

- *Mail:* Send to Christopher Kirkpatrick, Secretary of the

Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://comments.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.<sup>1</sup>

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://comments.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

**FOR FURTHER INFORMATION CONTACT:** For any of the proposed amendments: Amanda Olear, Associate Director, at 202-418-5283 or [aolear@cftc.gov](mailto:aolear@cftc.gov); for the proposed amendments to §§ 4.7 and 4.13: Elizabeth Groover, Special Counsel, at 202-418-5985, [egroover@cftc.gov](mailto:egroover@cftc.gov); for the proposed amendments related to family offices: Peter Sanchez, Special Counsel, at 202-418-5237, [psanchez@cftc.gov](mailto:psanchez@cftc.gov); for the proposed amendments to § 4.27: Michael Ehrstein, Special Counsel, at 202-418-5957, [mehrstein@cftc.gov](mailto:mehrstein@cftc.gov), Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

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## I. Background

### A. Statutory and Regulatory Background

As amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),<sup>2</sup> section 1a(11) of the Commodity Exchange Act (CEA or Act) defines the term “commodity pool operator,” as any person<sup>3</sup> engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, with respect to that commodity pool, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests.<sup>4</sup> CEA section 1a(12) defines a

“commodity trading advisor” as any person who for compensation or profit engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in commodity interests.<sup>5</sup> CEA section 4m(1) generally requires each person who satisfies the CPO or CTA definitions to register as such with the Commission.<sup>6</sup> With respect to CPOs, the CEA also authorizes the Commission, acting by rule or regulation, to include within, or exclude from, the term “commodity pool operator” any person engaged in the business of operating a commodity pool if the Commission determines that the rule or regulation will effectuate the purposes of the Act.<sup>7</sup> CEA section 1a(12)(B) provides multiple exclusions from the CTA definition, and similarly affords the Commission the authority to exclude such other persons not within the intent of that provision as the Commission may specify by rule, regulation, or order.<sup>8</sup>

The Commission also has the power to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate the provisions or to accomplish any purposes of the CEA.<sup>9</sup> Part 4 of the Commission's regulations governs the operations and activities of CPOs and CTAs.<sup>10</sup> Those regulations implement the statutory authority provided to the Commission by the CEA and establish multiple registration exemptions and exclusions for CPOs and CTAs. Part 4 also contains regulations that establish the ongoing compliance requirements applicable to CPOs and CTAs registered or required to be registered; these requirements pertain to the commodity pools and separate accounts that the CPOs and CTAs

operate and advise, and provide customer protection, disclosure, and reporting to a registrant's commodity pool participants or advisory clients.

In March of 2017, Commission staff initiated an agency-wide internal review of CFTC regulations and practices to identify those areas that could be simplified to make them less burdensome.<sup>11</sup> The Commission subsequently published in the **Federal Register** on May 9, 2017, a Request for Information soliciting suggestions from the public regarding how the Commission's existing rules, regulations, or practices could be applied in a simpler, less burdensome manner.<sup>12</sup>

The Investment Advisers Association (IAA) submitted suggested modifications for numerous rules in response to the Commission's Request for Information.<sup>13</sup> One area identified by the IAA that could result in the reduction of regulatory burden would be the incorporation into the Commission's regulations of registration and other types of relief to members of the asset management industry that meet the definitions of CPO and/or CTA that is currently provided in various staff letters.

In response to the information received as part of the Project KISS initiative, as well as CFTC staff's internal review of the Commission's regulatory regime, the Commission has today determined to propose several amendments to part 4 (the Proposal or NPRM). Specifically, the CFTC is proposing to amend § 4.13 to permit CPOs that solicit and/or accept funds from only non-U.S. persons for participation in offshore commodity pools to claim an exemption from CPO registration requirements with respect to such pools, while permitting the maintenance of registration with respect to commodity pools for which CPO registration is required. This proposed amendment would have the effect of expanding relief currently available

<sup>5</sup> 7 U.S.C. 1a(12)(A)(i). The CTA definition also includes any person who for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning the value of or advisability of trading in commodity interests, and any person that is registered with the Commission as a CTA. 7 U.S.C. 1a(12)(A)(ii)–(iii).

<sup>6</sup> 7 U.S.C. 6m(1).

<sup>7</sup> 7 U.S.C. 1a(11)(B).

<sup>8</sup> 7 U.S.C. 1a(12)(B)(vii). The Commission recently utilized the authority in this provision in issuing an Order excluding Farm Credit System institutions from that definition, due to their similarities to banks, a type of entity that is already excluded by CEA section 1a(12)(B)(i). See Order Excluding Farm Credit System Institutions From the Commodity Exchange Act's Definition of “Commodity Trading Advisor,” 81 FR 89447 (Dec. 12, 2016). CEA section 1a(12)(C) requires that the exclusions in the preceding paragraph only apply if the furnishing of such excluded CTA services is solely incidental to the conduct of their business or profession. 7 U.S.C. 1a(12)(C).

<sup>9</sup> 7 U.S.C. 12a(5).

<sup>10</sup> See 17 CFR part 4, generally.

<sup>11</sup> See Remarks of Acting Chairman J. Christopher Giancarlo before the 42nd Annual International Futures Industry Conference in Boca Raton, FL (Mar. 15, 2017), available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20> (last retrieved July 31, 2018).

<sup>12</sup> Project KISS, 82 FR 21494 (May 9, 2017); amended by 82 FR 23765 (May 24, 2017). The **Federal Register** Request for Information and the suggestion letters filed by the public are available at the Commission's website: <https://comments.cftc.gov/KISS/KissInitiative.aspx> (last retrieved July 31, 2018).

<sup>13</sup> See Letter from Monique Botkin, Associate General Counsel, Investment Advisers Association, (Sept. 29, 2017) (IAA Letter), available at <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61480&SearchText> (last retrieved July 31, 2018).

<sup>2</sup> Public Law 111–203, H.R. 4173 (2010).

<sup>3</sup> Section 1.3 defines “person” as including individuals, associations, partnerships, corporations, and trusts. 17 CFR 1.3.

<sup>4</sup> 7 U.S.C. 1a(11). The CEA is found at 7 U.S.C. 1 *et seq.* (2017). The Commission's regulations are found at 17 CFR Ch. I (2017). Both the Act and the Commission's regulations are accessible through the Commission's website, <http://www.cftc.gov>.



under Staff Advisory 18–96 (the Advisory or Advisory 18–96),<sup>14</sup> and incorporate it into the Commission's existing regulatory framework in 17 CFR part 4. In conjunction with this NPRM, the Commission is also proposing to adopt a prohibition on statutory disqualifications applicable to most exemptions claimed under § 4.13, and to amend the *de minimis* exemption in § 4.13(a)(3) to explicitly permit persons located outside of the United States as exempt *de minimis* commodity pool participants without consideration of their financial sophistication. The Commission is further proposing to adopt under §§ 4.13 and 4.14 new CPO and CTA registration exemptions consistent with existing Commission staff no-action letter relief available to persons considered CPOs or CTAs in connection with the operation and advising of qualifying family offices. Similarly, through proposed revisions to the exclusion from the definition of CPO in § 4.5 applicable to registered investment companies (RICs), the Commission is proposing to provide relief to the investment advisers of business development companies (BDCs) in a manner also consistent with existing no-action letter relief.

Moreover, the Commission plans to continue its efforts to amend 17 CFR part 4 by proposing regulatory exemptions consistent with existing CFTC staff exemptive relief letters available to qualifying CPOs. These efforts include proposing to add exemptive relief consistent with that provided by CFTC Staff Letter 14–116, which permits the use of general solicitation by qualifying CPOs, as contemplated by the Jumpstart Our Business Start-ups Act of 2012 (as defined above, the JOBS Act), through targeted amendments to §§ 4.7 and 4.13(a)(3) in a manner consistent with that exemptive letter.<sup>15</sup> Additionally, in its Project KISS submission, the IAA recommended that the Commission adopt regulatory amendments to incorporate in part 4 exemptive relief from filing Form CPO–PQR, provided currently under CFTC Staff Letter 14–115 for CPOs that only operate commodity pools in accordance with §§ 4.5 and 4.13.<sup>16</sup> The IAA also

recommended that the Commission amend part 4 to adopt the commensurate relief under CFTC Staff Letter 15–47 for registered CTAs that do not direct trading of any commodity interest accounts.<sup>17</sup>

In response, the Commission is proposing to adopt amendments that would provide relief from filing Form CPO–PQR to registered CPOs that only operate commodity pools exempt or excluded under §§ 4.5 and 4.13, consistent with CFTC Staff Letter 14–115,<sup>18</sup> and from filing Form CTA–PR to registered CTAs that do not direct trading of any commodity interest accounts, consistent with CFTC Staff Letter 15–47.<sup>19</sup> Finally, the Commission further proposes to provide additional relief from filing Form CTA–PR to registered CTAs that only advise pools for which the CTA is also CPO. Although the Proposal includes several potential regulatory amendments in a single notice, the CFTC may, in the future, issue separate adopting releases for any aspect of today's proposed rulemaking that is finalized.<sup>20</sup>

#### B. Advisory 18–96

##### 1. Introduction

The Commission is aware that a number of CPOs only operate U.S.-based commodity pools soliciting and accepting funds from persons located in the U.S., whereas other CPOs solicit and accept funds from participants, whether U.S. or non-U.S., for investment in commodity pools in both domestic and international locales; still others solicit and accept funds solely from persons located outside the United States for investment in offshore pools. Based on communications with industry and Commission registrants, the Commission preliminarily believes that the variety of location in CPO business activities continues to grow, and that CPOs today frequently participate in the markets of, solicit and/or accept funds for investment from potential participants in, and operate commodity pools simultaneously in multiple jurisdictions.

<sup>17</sup> *Id.*

<sup>18</sup> CFTC Staff Letter 14–115, available at <https://www.cftc.gov/idx/groups/public/%40lrlettergeneral/documents/letter/14-115.pdf> (last retrieved July 31, 2018).

<sup>19</sup> CFTC Staff Letter 15–47, available at <https://www.cftc.gov/sites/default/files/idx/groups/public/@lrlettergeneral/documents/letter/15-47.pdf> (last retrieved July 31, 2018).

<sup>20</sup> See *Inv. Co. Institute v. CFTC*, 720 F.3d 370, 379 (DC Cir. 2013) (“[A]s the Supreme Court has emphasized, ‘[n]othing prohibits federal agencies from moving in an incremental manner.’”) (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 522 (2009)).

In promulgating relief from registration, through the adoption of § 3.10(c)(3),<sup>21</sup> for firms located outside the U.S. engaged in intermediating commodity interest transactions on U.S. designated contract markets only on behalf of persons located outside the U.S., the Commission cited its own historic statements regarding its jurisdictional scope: “[G]iven this agency’s limited resources, it is appropriate at this time to focus [the Commission’s] customer protection activities upon domestic firms and upon firms soliciting or accepting orders from domestic users of the futures markets and that the protection of foreign customers of firms confining their activities to areas outside this country, its territories, and possessions may best be for local authorities in such [jurisdictions].”<sup>22</sup> The Commission preliminarily believes that this rationale continues to be true with respect to CPOs and commodity pools, notwithstanding the expansion of CFTC jurisdiction after the passage of the Dodd-Frank Act.

The Commission also preliminarily believes that the operation of offshore pools by exempt CPOs, who may also register solely with respect to the pools they operate that solicit and/or accept funds from persons in the U.S., would pose limited risk to the participants in those pools requiring registration due to the application of § 4.20. Section 4.20(c), in particular, prohibits a CPO from commingling the property of any commodity pool that it operates, or that it intends to operate, with the property of any other person.<sup>23</sup> This provision thereby limits the potential for trading activity or losses experienced in exempt offshore pools to negatively impact U.S. customers invested in pools for which a CPO is so registered.

Consequently, the Commission preliminarily believes that providing CPO registration relief beyond that currently provided by § 3.10(c)(3)(i) and by the staff relief in Advisory 18–96 would be beneficial and consistent with the Commission’s past prioritization of agency resources for the regulation of intermediary activities affecting U.S. participants. The Commission is, therefore, proposing to adopt, among other amendments, an exemption from CPO registration in § 4.13 that would permit a CPO that solicits,<sup>24</sup> and/or

<sup>21</sup> 17 CFR 3.10(c)(3).

<sup>22</sup> Exemption From Registration for Certain Foreign Persons, Final Rule, 72 FR 63976, 63976–77 (Nov. 14, 2007) (citing 48 FR 35248, 35261 (Aug. 3, 1983)).

<sup>23</sup> 17 CFR 4.20(c).

<sup>24</sup> In adopting § 3.10(c)(3)(i), the Commission emphasized the significance of solicitation as a CPO

<sup>14</sup> Advisory 18–96, “Offshore Commodity Pools—Relief for Certain Registered CPOs From Rules 4.21, 4.22 and 4.23(a)(10) and (a)(11) and From the Location of Books and Records Requirement of Rule 4.23,” available at <https://www.cftc.gov/sites/default/files/tm/advisory18-96.htm> (last retrieved July 31, 2018).

<sup>15</sup> CFTC Staff Letter 14–116, available at <https://www.cftc.gov/idx/groups/public/@lrlettergeneral/documents/letter/14-116.pdf> (last retrieved July 31, 2018).

<sup>16</sup> IAA Letter at 16.

accepts funds from, solely persons located outside the U.S. for participation in an offshore commodity pool operated by it to claim a registration exemption with respect to such pool.<sup>25</sup> The proposed amendments are largely based upon the requirements of Advisory 18–96, the conditions of which are presented and explained below.

## 2. The History of Advisory 18–96 and the Commission’s Rationale for Proposing Superseding Part 4 Amendments

On April 11, 1996, staff from the Commission’s Division of Trading and Markets (T&M), a predecessor of today’s Division of Swap Dealer and Intermediary Oversight (DSIO or Division), issued Advisory 18–96,<sup>26</sup> under which two types of relief are currently available. Qualifying, registered CPOs operating offshore commodity pools may claim exemptive relief from the disclosure, reporting, and recordkeeping requirements of §§ 4.21, 4.22, and 4.23(a)(10) and (a)(11) with regard to their offshore commodity pools.<sup>27</sup> Alternatively, Advisory 18–96

activity, stating “[a]ny person seeking to act in accordance with any of the foregoing exemptions from registration should note that the prohibition on contact with U.S. customers applies to solicitation as well as acceptance of orders. If a person located outside the U.S. were to solicit prospective customers located in the U.S. as well as outside of the U.S., these exemptions would *not* be available, even if the only customers resulting from the efforts were located outside the U.S.” *Id.* at 63977–78 (emphasis in original) (footnote omitted).

<sup>25</sup> The Commission intends by the proposed amendments to permit CPOs to maintain registration with respect to the operation of commodity pools soliciting, accepting, or managing assets sourced from participants located in the U.S., while availing themselves of an exemption from registration with respect to pools located offshore for which participants located in the U.S. are solicited or permitted as participants.

<sup>26</sup> Advisory 18–96, “Offshore Commodity Pools—Relief for Certain Registered CPOs From Rules 4.21, 4.22 and 4.23(a)(10) and (a)(11) and From the Location of Books and Records Requirement of Rule 4.23,” at p. 1, available at <https://www.cftc.gov/sites/default/files/tm/advisory18-96.htm> (last retrieved July 31, 2018).

<sup>27</sup> Section 4.21, subject to certain conditions, requires each CPO registered or required to be registered under the CEA to deliver or cause to be delivered to a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool that complies with §§ 4.24 and 4.25 by no later than the time it delivers to the prospective participant a subscription agreement for the pool. 17 CFR 4.21; *see also* 17 CFR 4.24–4.25.

Section 4.22 governs the periodic reporting required for commodity pools and generally requires each CPO registered or required to be registered to periodically distribute to each participant in a pool it operates periodic Account Statements and Annual Reports, which also must be filed with the Commission through the National Futures Association. 17 CFR 4.22.

Section 4.23 requires each CPO registered or required to be registered to make and keep certain

also permits qualifying, registered onshore CPOs to claim exemptive relief from solely the books and records location requirement in § 4.23,<sup>28</sup> thereby allowing such CPOs to maintain their offshore pool’s original books and records at the pool’s offshore location, rather than at the CPO’s main business address in the U.S.

Generally, to qualify for the broadest relief available under Advisory 18–96, a CPO must meet the following requirements:

1. The CPO claiming the relief is registered as such with the Commission;
2. The commodity pool is, and will remain, organized and operated outside of the United States;
3. The commodity pool will not hold meetings or conduct administrative activities within the United States;
4. No shareholder or other participant in the commodity pool is or will be a United States person;
5. The commodity pool will not receive, hold or invest any capital directly or indirectly contributed from sources within the United States; and
6. The CPO, the commodity pool and any person affiliated therewith will not undertake any marketing activity for the purpose, or that could reasonably have the effect, of soliciting participation from United States persons.<sup>29</sup>

To qualify for the recordkeeping location relief under the Advisory, a registered CPO must represent the following:

1. The CPO will maintain the original books and records of the commodity pool at the main business office of the commodity pool located outside the United States;
2. The CPO desires to maintain such books and records outside the United States in furtherance of compliance with the Internal Revenue Service (IRS) requirements for relief from United States federal income taxation;
3. The CPO will maintain duplicate books and records of the commodity pool at a designated office in the United States; and
4. Within 72 hours after the request of a representative from the Commission,

books and records concerning both the commodity pool(s) it operates and the CPO itself; paragraphs (a)(10) and (a)(11) particularly require a CPO to make and keep with respect to a commodity pool it operates a Statement of Financial Condition on a monthly or quarterly basis dependent on the amount of the net assets of the commodity pool, as well as a corresponding Statement of Income (Loss). 17 CFR 4.23(a)(10) and (a)(11).

At the time of its adoption in 1996, Advisory 18–96 provided relief from the more robust compliance burdens then applicable to CPOs, *i.e.*, the disclosure and periodic reporting requirements.

<sup>28</sup> 17 CFR 4.23.

<sup>29</sup> Advisory 18–96, at 1.

the United States Department of Justice, or the National Futures Association (NFA), the original books and records will be provided to such representative at a place located in the United States that is specified by the representative.<sup>30</sup>

The Advisory additionally requires all claimants of either type of relief thereunder to represent that, “neither the CPO nor any of its principals is subject to any statutory disqualification under CEA section 8a(2) or 8a(3) unless such disqualification arises from a matter which (a) was previously disclosed in connection with a previous application for registration if such registration was granted, or (b) was disclosed to the Commission or the NFA more than thirty days prior to the filing of this notice.”<sup>31</sup> Notices claiming relief under Advisory 18–96 were originally required to be submitted in writing and filed with both Commission staff and NFA, to provide basic business location and contact information for the CPO, to specify which type of relief the CPO sought to claim for its commodity pool(s), and to be signed by a representative duly authorized to bind the CPO (“if a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer”).<sup>32</sup>

Given the increase in the Commission’s jurisdiction resulting from the passage of the Dodd-Frank Act,<sup>33</sup> as well as the adoption of

<sup>30</sup> The Advisory states further, “[f]iling a notice of a claim for exemption under [this section] of the Advisory, however, does not eliminate the requirement to comply with the location of the CPO’s own books and records under Rule 4.23(b) or, in the case of a CPO of a Rule 4.7 exempt pool, the location requirement for the CPO’s own books and records under Rule 4.7(a)(2)(iv).” Advisory 18–96 at 2.

<sup>31</sup> Advisory 18–96, at 2; *see also* 7 U.S.C. 12a(2) and 12a(3).

<sup>32</sup> Advisory 18–96, at 3. In 1997, the Commission authorized the NFA to, among other things, accept and process Advisory 18–96 notices of claim for exemption from the part 4 requirements. *See* Performance of Certain Functions by National Futures Association with Respect to Commodity Pool Operators and Commodity Trading Advisors, 62 FR 52088 (Nov. 1, 1997). Notably, “[n]otwithstanding any notice of a claim of exemption filed under this Advisory, persons claiming such relief remain subject to all other applicable requirements contained in the Act and the Commission’s regulations issued thereunder, including, without limitation, the antifraud provisions of Sections 4b and 4c of the Act, the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commissions regulations, and all other provisions of [part 4.]” Advisory 18–96, at 3.

<sup>33</sup> For instance, the Dodd-Frank Act amended the CPO definition in CEA section 1a(11) to include any person engaged in a business that is of the nature of a commodity pool that trades in swap transactions. *See* 7 U.S.C. 1a(11), as amended by the

additional compliance requirements for which Advisory 18–96 currently provides no relief,<sup>34</sup> the Commission preliminarily believes that the adoption of a CPO registration exemption based on the conditions of Advisory 18–96 (18–96 Exemption) would benefit industry participants, prioritize the use of Commission resources on the customer protection of actual and potential commodity pool participants located in the U.S., and provide relief to persons with respect to their commodity pool operations that have a limited nexus with markets or participants within the Commission's jurisdiction. Importantly, a CPO claiming the 18–96 Exemption, as proposed, would still be subject to the anti-manipulation and anti-fraud provisions of the CEA, and by virtue of § 4.13(c), would be required to make and keep books and records for the exempt pool, and to submit to such special calls as the Commission may make to demonstrate eligibility for and compliance with the criteria of the 18–96 Exemption.<sup>35</sup>

The amendments proposed today would incorporate both types of relief provided by Advisory 18–96 in their entirety in the Commission's existing part 4 regulatory framework by providing registration and compliance exemptions for qualifying persons operating offshore pools, with respect to CPO registration and, in the case of those domestic, registered CPOs operating offshore pools, with respect to the books and records location requirement in § 4.23.<sup>36</sup> The

Commission intends that the 18–96 Exemption, if adopted as proposed, would replace the exemptive relief currently provided to registered CPOs relying upon Advisory 18–96 for their offshore pool operations. Similarly, the Commission also intends that the proposed amendments to § 4.23, which would provide a qualifying, registered onshore CPO an exemption from the requirement that the CPO maintain the original books and records of its offshore commodity pool(s) at its main business office in the U.S., would replace that aspect of the Advisory.<sup>37</sup> The Commission preliminarily believes that these proposed amendments, if adopted, would ultimately provide more comprehensive relief from CPO and pool regulation than the Advisory alone and more flexibility than the terms of § 3.10(c)(3)(i).

### 3. Expanding the Prohibition on Statutory Disqualifications to Exemptions Under § 4.13 and Permitting Non-U.S. Person Participants in *De Minimis* Commodity Pools

Currently, none of the CPO registration exemptions in § 4.13 prohibits statutory disqualifications as a condition of relief. In contrast, one of the requirements to obtain relief under Advisory 18–96 is that neither the registered CPO nor its principals is subject to any statutory disqualification under sections 8a(2) or 8a(3) of the Act,<sup>38</sup> unless such disqualification arises from a matter which was previously disclosed in connection with a previous application, if such registration was granted, or which was disclosed more than thirty days prior to the claim of this exemption. The Commission is considering, therefore, whether there could be a substantial number of CPOs that claimed a § 4.13 exemption and are subject to statutory disqualifications or that employ statutorily disqualified principals, and whether those statutorily disqualified individuals should be permitted to

operate commodity pools as exempt CPOs.

The Commission is concerned that it poses undue risk from a customer protection standpoint for its regulations in their current form to permit statutorily disqualified persons or entities to legally operate exempt commodity pools, especially when those same persons would not be permitted to register with the Commission.<sup>39</sup> The Commission preliminarily believes that preserving the prohibition on statutory disqualifications from Advisory 18–96 and applying it to exemptions under § 4.13 would provide a substantial customer protection benefit by prohibiting statutorily disqualified persons from operating and soliciting participants for investment in exempt commodity pools.

Consequently, the Commission is proposing to require any person claiming a registration exemption under § 4.13(a)(1), (2), (3), or (5), or proposed § 4.13(a)(4),<sup>40</sup> to represent that neither the claimant nor any of its principals is subject to statutory disqualifications under sections 8a(2) or 8a(3) of the CEA. However, the Commission also proposes to incorporate certain limited exceptions already present in Advisory 18–96 that would permit statutory disqualifications that were previously disclosed in registration applications that were granted, or that were disclosed more than 30 days prior to the claim of exemption. The Commission preliminarily believes this approach addresses customer protection concerns regarding statutory disqualifications, while preserving flexibility in Commission regulations applicable to CPOs. As proposed, the prohibition would apply to current claimants under § 4.13 as they renew their claims on an annual basis—*i.e.*, existing claimants would be required to represent that

Dodd-Frank Act, Public Law 111–203, sec. 721(a)(2).

<sup>34</sup> See, e.g., 17 CFR 4.27 (imposing obligations on certain CPOs to periodically file detailed information regarding pools and other funds that the CPOs operate on Form CPO-PQR).

<sup>35</sup> 17 CFR 4.13(c).

<sup>36</sup> In 2006–2007, based on a rulemaking petition from NFA, the Commission previously considered and proposed to rescind Advisory 18–96, which was thought to be rendered superfluous or duplicative by the 2003 adoption of the CPO registration exemptions in § 4.13(a)(3) and (4). See Electronic Filing of Notices of Exemption and Exclusion Under Part 4 of the Commission's Regulations, 71 FR 60454 (Oct. 13, 2006) (Proposing Release), and 72 FR 1658 (Jan. 16, 2007) (Adopting Release) (declining to supersede Advisory 18–96, in light of the 2003 adoption of § 4.13(a)(4)). Section 4.13(a)(4), prior to its 2012 rescission, permitted a qualifying person to claim an exemption from registration with the Commission as a CPO, where the commodity pool it operates is exempt from registration under the Securities Act of 1933 and the natural and non-natural person participants meet certain levels of sophistication, e.g., qualified eligible persons or accredited investors. Although Advisory 18–96 and § 4.13(a)(4) overlapped significantly, the Commission declined to alter Advisory 18–96, in an effort to preserve the relief from the books and record location requirement in § 4.23 for any registered, onshore CPOs utilizing the Advisory 18–96 relief with respect to their

qualifying offshore commodity pools. See 72 FR at 1661.

<sup>37</sup> The Commission simultaneously proposes certain structural amendments to § 4.23 to increase that regulation's readability and ease of application.

<sup>38</sup> 7 U.S.C. 12a(2) and 12a(3). Under CEA section 8a(2), for instance, the Commission may refuse to register a person who has been temporarily or permanently enjoined by order not to act as a Commission registrant, or to refrain from engaging in financially criminal activities, or who, within ten years preceding the application for registration with the Commission, has been convicted of a felony for criminal activities involving commodity interests or securities, or been found by the Commission or another governmental body or agency to have violated the CEA, Commission regulations, or securities laws. 7 U.S.C. 12a(2).

<sup>39</sup> Commission staff previously became aware of a number of statutorily disqualified CPOs operating commodity pools pursuant to the registration exemption available in former § 4.13(a)(4). Because that exemption was rescinded in 2012, those particular CPOs would have been required to modify their operations to comply with another exemption under § 4.13 that did not bar statutorily disqualified CPOs, to cease participating in the commodity interest markets, or to receive relief from the Commission to register and continue operating.

<sup>40</sup> The Commission is not proposing to extend the prohibition to the proposed exemption for qualifying family offices, discussed *infra* as proposed § 4.13(a)(8). By the terms of that proposed exemption, such CPOs would be prohibited from soliciting non-family members/clients to participate in their pool(s), necessarily limiting their contact with prospective participants drawn from the general public, and as a result, reducing the Commission's customer protection concerns in that context.

neither they nor their principals are subject to statutory disqualifications under CEA sections 8a(2) or 8a(3), when they annually affirm their continued reliance on a § 4.13 exemption next year. CPOs filing new claims of a § 4.13 exemption, however, would be required to comply with this prohibition upon filing, if and when the amendments are adopted as proposed, and become effective.

Additionally, the Commission is proposing to amend the *de minimis* commodity pool exemption in § 4.13(a)(3) to explicitly permit non-U.S. person participants, regardless of their financial sophistication.<sup>41</sup> The Commission understands that, relying on CFTC Staff Letter 04–13,<sup>42</sup> for purposes of determining whether a person qualifies for exemption from CPO registration under § 4.13(a)(3), market participants are generally not considering whether non-U.S. person participants meet one of the investor sophistication criteria listed in § 4.13(a)(3)(iii).<sup>43</sup>

The Commission preliminarily believes that permitting non-U.S. person participants, regardless of their financial sophistication, in § 4.13(a)(3) exempt

pools would generally be consistent with the Commission's policy approach in proposing to add the 18–96 Exemption to the 17 CFR part 4 regulatory framework. With limited participation in U.S. commodity interest markets subject to Commission jurisdiction, commodity pools exempt under § 4.13(a)(3) do not trigger the same level of regulatory interest for the Commission as commodity pools requiring CPO registration and compliance with all or part of the requirements in 17 CFR part 4. Additionally, § 4.7 already permits non-U.S. persons,<sup>44</sup> regardless of their “qualified eligible person” (QEP) status, to participate in commodity pools operated thereunder, which are not subject to *de minimis* commodity interest trading thresholds. The Commission also preliminarily believes that it would be consistent with the Commission's other part 4 regulations, including those amendments proposed today, to generally permit non-U.S. person participants in § 4.13(a)(3) exempt pools. Therefore, the Commission proposes today to also amend § 4.13(a)(3)(iii) to specifically permit non-U.S. person participants.<sup>45</sup>

#### *C. Proposed CPO and CTA Registration Exemptions for Qualifying Family Offices*

The Commission is also proposing today amendments consistent with two Commission staff no-action letters that currently provide relief from CPO<sup>46</sup> and CTA<sup>47</sup> registration to qualifying family offices (Family Offices) with respect to investment management and advisory activities conducted on behalf of their family clients (Family Clients).

##### 1. Defining Family Offices

A Family Office is generally understood to be a professional organization that is wholly-owned by clients in a family, including members of a family and/or entities controlled by a family or family member, *e.g.*, charitable trusts, and that is operated as a wealth management tool for their benefit.<sup>48</sup> In granting no-action relief

from CPO registration to qualifying Family Offices, Commission staff has previously stated that, “[t]ypically, a family office structure is employed when one or more direct members of a family create substantial wealth, and share that wealth in whole or in part with other members of that family, either through direct transfer, inheritance, or similar means.”<sup>49</sup> The Division noted further that, “[t]he family office is then used to provide personalized services to that family, including advice regarding issues of tax, estate planning, investment, and charitable giving.”<sup>50</sup> According to the Private Investors Coalition, which frequently comments on regulatory efforts impacting Family Offices and which requested the relief from CTA registration granted by DSIO in 2014 via CFTC Staff Letter 14–143, “single family offices have existed for over 100 years . . . [and] were formed to implement very important and complex objectives, including investment management, corporate succession, estate, gift, and income tax planning and charitable giving issues that are important to members of the family.”<sup>51</sup>

##### 2. Family Offices as Commodity Pools and the Rescission of § 4.13(a)(4)

As discussed above, the operations of a Family Office frequently involve the collective management of pooled assets from a variety of sources, notwithstanding that those sources may all be members of a single family, or organizations, trusts, or foundations for the benefit of those family members. If such pooled assets are invested in commodity interests,<sup>52</sup> then it is highly likely that the managing member of the Family Office, or similarly situated persons providing services to the Family Office, is engaging in activities that would otherwise require registration with the Commission as a CPO or CTA. Consequently, absent an exemption,

Vlasic Family, to the Securities and Exchange Commission, at 1 (Nov. 17, 2010), available at <https://www.sec.gov/comments/s7-25-10/s72510-83.pdf> (last retrieved July 31, 2018), submitted as a comment to Family Offices, Investment Advisers Act Release No. 3098, 75 FR 63753 (Oct. 18, 2010).

<sup>49</sup> CPO Family Office No-Action Letter, at 1.

<sup>50</sup> *Id.*

<sup>51</sup> Letter from the Private Investors Coalition to the SEC, at 2 (Nov. 11, 2010), available at <https://www.sec.gov/comments/s7-25-10/s72510-11.pdf> (last retrieved July 31, 2018), submitted as a comment to Family Offices, Investment Advisers Act Release No. 3098, 75 FR 63753 (Oct. 18, 2010). The Private Investors Coalition also emphasized that although Family Offices may be formed by a single family member who created the wealth to be managed, they are also commonly formed by one or more lineal descendants of such family members.

*Id.*

<sup>52</sup> 17 CFR 1.3.

<sup>41</sup> 17 CFR 4.13(a)(3). Section 4.13(a)(3) provides an exemption from CPO registration for any person who offers a pool that: (1) Is exempt from registration under the Securities Act of 1933 and offered and sold without marketing to the public in the U.S., (2) at all times, is traded subject to *de minimis* trading thresholds, (3) is limited to certain types of investors that the person believes to be, at the time of investment or conversion to an exempt pool, accredited investors and/or qualified eligible persons, and (4) is not marketed as or in a vehicle for trading in commodity interests. *Id.*

<sup>42</sup> CFTC Staff Letter 04–13 (Apr. 14, 2004), available at <https://www.cftc.gov/sites/default/files/tm/letters/04letters/tm04-13.htm> (last retrieved July 31, 2018).

<sup>43</sup> In April 2004, the Division of Clearing and Intermediary Oversight (DCIO), the most recent predecessor to DSIO, responded to a request for clarification or interpretation of the *de minimis* exemption from CPO registration in § 4.13(a)(3). The requester asked DCIO staff for confirmation that “a [CPO] claiming exemption from registration under new Rule 4.13(a)(3) may permit Non-United States persons to participate in pools operated pursuant to such exemptive relief, regardless of whether such Non-United States persons meet the investor sophistication requirements of Rule 4.13(a)(3)(iii).” CFTC Staff Letter 04–13, at 1. DCIO staff concluded that because the exemption in § 4.13(a)(4) permitted non-U.S. person participants in pools exempt thereunder, regardless of their financial sophistication, by virtue of the “qualified eligible person” definition in § 4.7(a)(2), then it would be “consistent with the intent and purpose of Rule 4.13(a)(3)” to also generally permit non-U.S. person investors to participate in § 4.13(a)(3) pools. *Id.* at 2. In 2012, the Commission rescinded the exemption originally provided by § 4.13(a)(4), the features of which comprise the legal underpinnings for the analysis in CFTC Staff Letter 04–13. See Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 FR 11252 (Feb. 24, 2012); correction notice published at 77 FR 17328 (Mar. 26, 2012) (CPO CTA Final Rule).

<sup>44</sup> 17 CFR 4.7(a)(1)(iv).

<sup>45</sup> If adopted, the proposed rule would supersede prior staff positions on this subject, including CFTC Staff Letter 04–13.

<sup>46</sup> CFTC Staff Letter 12–37 (Nov. 29, 2012), available at <https://www.cftc.gov/idc/groups/public/%40rlettergeneral/documents/letter/12-37.pdf> (last retrieved July 31, 2018) (CPO Family Office No-Action Letter).

<sup>47</sup> CFTC Staff Letter 14–143 (Nov. 5, 2014), available at <https://www.cftc.gov/idc/groups/public/%40rlettergeneral/documents/letter/14-143.pdf> (last retrieved July 31, 2018) (CTA Family Office No-Action Letter).

<sup>48</sup> See, *e.g.*, Letter from the Vlasic Investments, L.L.C., an entity formed to manage the wealth of the

exclusion, or other Commission staff letter relief, registration and compliance requirements under the CEA and Commission regulations would be triggered, requiring such Family Offices or members of their staff to register with the Commission as CPOs and/or CTAs with respect to those activities.

In the 1990s and early 2000s, Commission staff frequently responded to individual requests from Family Offices for relief from CPO and CTA regulation with one-off relief letters determining the Family Office not to be a commodity pool or providing no-action relief from such registration to certain family members or staff.<sup>53</sup> In 2003, the Commission adopted former § 4.13(a)(4), which provided an exemption from CPO registration for a person operating a commodity pool: (1) Whose interests are exempt from registration under the Securities Act of 1933,<sup>54</sup> and are offered and sold without marketing to the public in the U.S.; and (2) whose participants are reasonably believed, at the time of investment or conversion of the pool to an exempt pool, to be QEPs as defined in § 4.7(a)(2)<sup>55</sup> if natural persons, or QEPs or “accredited investors,” in the case of non-natural person participants.<sup>56</sup>

Prior to the exemption’s rescission in 2012, many Family Offices claimed former § 4.13(a)(4) to legally operate their investment vehicles, invest in commodity interests, and provide commodity trading advice to Family Clients, without being required to register with the Commission in any capacity.<sup>57</sup> In 2011, the Commission proposed to rescind § 4.13(a)(4)<sup>58</sup> and the potential impact on Family Offices

was immediately noted; the Commission received comments suggesting that the Commission allow Family Offices already in existence and then relying on the exemption in § 4.13(a)(4) to be grandfathered, such that they could continue to operate without registration even after the exemption’s rescission.<sup>59</sup> In declining to do so, the Commission stated in the 2012 Adopting Release:

The Commission does not believe that “grandfathering” is appropriate in this context. As the Commission stated in its Proposal, part of the purpose of rescinding § 4.13(a)(4) is to ensure that entities that are engaged in derivatives trading are subject to substantively identical registration and compliance obligations and oversight by the Commission. Grandfathering is not consistent with the stated goals of the Commission’s rescission and would result in disparate treatment of similarly situated entities. Therefore, the Commission will implement the rescission of § 4.13(a)(4) for all entities currently claiming exemptive relief thereunder.<sup>60</sup>

Alternatively, other commenters requested that “the Commission adopt an exemption from registration for family offices that is consistent with the exemption adopted by the [Securities and Exchange Commission (SEC)],” discussed *infra*.<sup>61</sup> The Commission declined, however, to adopt the SEC’s relief for Family Offices in 2012, because:

The Commission, therefore, believes that it is prudent to withhold consideration of a family offices exemption until the Commission has developed a comprehensive view regarding such firms to enable the Commission to better assess the universe of firms that may be appropriate to include within the exemption, should the Commission decide to adopt one. Therefore, the Commission is directing its staff to look into the possibility of adopting a family offices exemption in the future.<sup>62</sup>

Finally, the Commission stated that Family Offices would “continue to be permitted to write in on a firm by firm basis to request interpretative relief from the registration and compliance obligations under the Commission’s

rules and to rely on those interpretative letters already issued to the extent permissible under the Commission’s regulations.”<sup>63</sup> Thus, pursuant to the amendments to 17 CFR part 4 adopted in 2012, among which was the rescission of § 4.13(a)(4), many Family Offices were required to register with the Commission as CPOs, if they could not qualify for an alternative exemption or otherwise obtain relief from Commission staff.<sup>64</sup>

### 3. The SEC’s Exclusion for Family Offices and CFTC Staff Letters 12–37 and 14–143

In 2011, the SEC adopted an exclusion from the term “investment adviser,” (IA) as defined by the Investment Advisers Act of 1940, as amended (IA Act),<sup>65</sup> for Family Offices (SEC Family Office Exclusion), thus excluding Family Offices from regulation under the IA Act.<sup>66</sup> Specifically, § 275.202(a)(11)(G)–1(a) provides that a family office, as defined in that section, shall not be considered to be an investment adviser for purpose of the IA Act, and § 275.202(a)(11)(G)–1(b) defines “family office” as a company (including its directors, partners, members, managers, trustees, and employees acting within the scope of their position or employment) that: Has no clients other than family clients, is wholly owned by family clients and is exclusively controlled (directly or indirectly) by one or more family members and/or family entities; and does not hold itself out to the public as an investment adviser.<sup>67</sup>

Because Family Offices, as such term is commonly understood, are not intended to be marketed as an option for investing by the general public, Family Offices are restricted, by definition and in practice, to accepting assets for management from or providing services to solely “family clients.” As a result, the SEC Family Office Exclusion defines a Family Client as including family members, including non-blood relatives such as spouses and adopted children, former family members, key employees of the Family Office, former key employees (under certain conditions), as

<sup>53</sup> See, e.g., CFTC Staff Letter 00–100 (Nov. 1, 2000) (finding that a limited partnership consisting of immediate family members that invests family assets in commodity futures is not a pool), available at <https://www.cftc.gov/idc/groups/public/%40rlrlettergeneral/documents/letter/00-100.pdf> (last retrieved July 31, 2018); CFTC Staff Letter 97–78 (Sept. 24, 1997) (finding that a partnership consisting of family members, former family members, and trusts for the benefit of family members is not a commodity pool within the meaning and intent of § 4.10(d)), available at <https://www.cftc.gov/idc/groups/public/%40rlrlettergeneral/documents/letter/97-78.pdf> (last retrieved July 31, 2018).

<sup>54</sup> 15 U.S.C. 77a *et seq.*

<sup>55</sup> 17 CFR 4.7(a)(2).

<sup>56</sup> 17 CFR 4.13(a)(4) (2010).

<sup>57</sup> Further, as CPOs exempt pursuant to § 4.13(a)(4), such Family Offices also routinely relied upon the self-executing exemption in § 4.14(a)(5), which provides an exemption from CTA registration to a person that is exempt from registration as a CPO and the person’s commodity trading advice is directed solely to, and for the sole use of, the pool or pools for which it is so exempt. See 17 CFR 4.14(a)(5).

<sup>58</sup> Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations, 76 FR 7976 (Feb. 11, 2011).

<sup>59</sup> See comment letters from New York State Bar Association (Apr. 12, 2011); Alternative Investment Management Association, Ltd. (Apr. 12, 2011); Schulte Roth & Zabel LLP (Apr. 12, 2011); Fulbright & Jaworski L.L.P. (Apr. 12, 2011); Securities Industry and Financial Markets Association (Apr. 12, 2011); Seward & Kissel, LLP (Apr. 12, 2011); Katten, Muchin, Rosenman LLP (Apr. 12, 2011); all available at <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=973> (last retrieved July 31, 2018).

<sup>60</sup> See CPO CTA Final Rule, 77 FR at 11263.

<sup>61</sup> *Id.* (citing the SEC’s Family Office exclusion from the investment adviser definition at 17 CFR 250.202(a)(11)(G)–1).

<sup>62</sup> *Id.* (citing 17 CFR 140.99(a)(3) and a variety of historic Family Office relief letters).

<sup>63</sup> *Id.* (concluding that “an exemption for family offices is not necessary at this time”).

<sup>64</sup> The Commission noted then that “family offices previously relying on the exemption under Regulation § 4.13(a)(3) will not be affected by the rules adopted herein, as the Commission is not rescinding the § 4.13(a)(3) exemption and it will remain available to entities meeting its criteria.” CPO CTA Final Rule, 77 FR at 11263.

<sup>65</sup> 15 U.S.C. 80b–1, *et seq.*

<sup>66</sup> Family Offices; Final Rule, 76 FR 37983 (Jun. 29, 2011) (SEC Family Office Final Rule).

<sup>67</sup> 17 CFR 275.202(a)(11)(G)–1(a) and 275.202(a)(11)(G)–1(b).

well as certain organizations, like non-profit organizations, charitable foundations, charitable trusts or other charitable organizations for which all the funding of such foundation, trust or organization came exclusively from one or more other Family Clients.<sup>68</sup> Family Clients also may include the estate of a family member, former family member, key employee, or subject to certain conditions, former key employees.<sup>69</sup> Additionally, investment and estate planning vehicles, such as irrevocable trusts, in which one or more other Family Clients are the only current beneficiaries, are also permitted Family Clients.<sup>70</sup>

Pursuant to the Commission's instructions in the CPO CTA Final Rule, many Family Offices sought relief from DSIO staff following the 2012 rescission of § 4.13(a)(4). Certain representatives of the Family Office industry requested relief that would be available to Family Offices on a global basis and would be based upon the SEC Family Office Exclusion. In the request for relief, industry representatives asserted that Family Offices are not operations of the type and nature that warrant regulatory oversight by the Commission, because, by definition, a Family Office is not a vehicle in which non-Family Clients would be solicited or permitted to invest. Because a Family Office is comprised of participants with close relationships, and there is a direct relationship between the clients and the CPO or advisor, it was argued that such relationships greatly reduce the need for the customer protections available pursuant to the regulations in 17 CFR part 4.<sup>71</sup>

Having met with Family Office industry representatives and observed the SEC's experience after adopting the SEC Family Office Exclusion, Commission staff thoroughly considered the issue and ultimately determined to grant registration relief for Family Offices meeting the requirements of the SEC Family Office Exclusion. On November 29, 2012, DSIO issued CFTC Staff Letter 12-37, a no-action letter permitting Family Offices complying with the SEC Family Office Exclusion to operate and manage the assets of Family Clients without having to register with

the Commission as a CPO.<sup>72</sup> Subsequently, in responding to a request for relief from the Private Investors Coalition, DSIO issued another no-action letter permitting Family Offices to provide their Family Clients with commodity trading advice, without CTA registration, provided that the Family Office did not hold itself out to the public as a CTA and restricted any commodity trading advice given to the Family Office itself and/or Family Clients.<sup>73</sup>

In granting the no-action relief from CPO registration, DSIO staff considered the requesters' assertion that, "this issue has similarly been addressed by the [SEC], which resulted in an exclusion for family offices that would otherwise be required to register as an investment adviser[.]" and that "SEC staff ha[d] devoted substantial time and resources to addressing this issue."<sup>74</sup> In determining to issue relief, the Division reasoned that "the fundamental issue of the appropriate application of investor protection standards as required by each respective agency's regulations is substantially similar."<sup>75</sup> Further, the Division concluded that granting the relief would place "both agencies on equal footing with respect to the application of investor protections relevant to this issue [and] will facilitate compliance with both regulatory regimes."<sup>76</sup> Consequently, through CFTC Staff Letters 12-37 and 14-143, the Division provided no-action relief with respect to CPO registration for any person filing a claim that operates a Family Office, as that term is defined in 17 CFR 275.202(a)(11)(G)-1(b), and with respect to CTA registration, for any person filing a claim whose advisory services are limited to a Family Office and/or Family Clients, as defined in 17 CFR 275.202(a)(11)(G)-1(d)(4).<sup>77</sup> Under each letter, the claimant is required to remain in compliance with the SEC Family Office Exclusion, regardless of whether the Family Office actually seeks such exclusion.<sup>78</sup>

In the six years since the rescission of § 4.13(a)(4) and the issuance of the CPO Family Office No-Action Letter, Commission staff has gained additional familiarity with the Family Office industry. This experience was gained through the continued availability of the CPO Family Office No-Action Letter and the subsequent issuance and utilization

by industry of the CTA Family Office No-Action Letter, as well as through the consideration of and response to the few additional requests received by DSIO from Family Offices unable to meet the criteria of either of the global no-action letters.<sup>79</sup> The Commission notes that DSIO has received a total of more than 500 claims of the no-action relief provided by the CPO Family Office No-Action Letter and the CTA Family Office No-Action Letter.

Based on this experience, and pursuant to the Commission's instructions to its staff in 2012 to consider the future adoption of registration exemptions for Family Offices, the Commission is proposing to adopt for qualifying Family Offices CPO and CTA registration exemptions with terms similar to those in the CPO Family Office No-Action Letter and the CTA Family Office No-Action Letter by amending §§ 4.13 and 4.14. The Commission preliminarily believes that the familial relationships inherent in Family Offices provide a reasonable mechanism for protecting the interests of Family Clients and resolving disputes amongst them, and that the regulatory interest is lower than in typical, arms-length transactions where the CPO and the pool participants, or the CTA and its advisory clients, do not have close relationships and/or long-standing family history between them. The Commission also preliminarily believes that these characteristics are a reasonable substitute for the benefits and protections afforded by the Commission's regulatory regime for CPOs and CTAs.

Consistent with its statements in prior rulemakings impacting Family Offices, the Commission notes that Family Offices unable to meet the requirements of the exemptions proposed herein today may still avail themselves of the relief provided in § 4.13(a)(3), if they so qualify, or they may continue to seek relief on an individual, firm-by-firm basis through requests submitted to Commission staff.

#### *D. Proposed Amendments Permitting General Solicitation by CPOs Pursuant to the JOBS Act of 2012.*

1. The JOBS Act of 2012, Regulation D, and Rule 144A

On April 5, 2012, Congress enacted the JOBS Act for the stated purpose of increasing American job creation and

<sup>68</sup> 17 CFR 275.202(a)(11)(G)-1(d)(4) (extensively defining "Family Client").

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* See Staff Responses to Questions About the Family Office Rule, available at <https://www.sec.gov/divisions/investment/guidance/familyofficefaq.htm>.

<sup>71</sup> CPO Family Office No-Action Letter, at 1-2. This rationale is also noted in the adopting release of the SEC Family Office Exclusion. See also SEC Family Office Final Rule, 76 FR at 37984.

<sup>72</sup> CPO Family Office No-Action Letter.

<sup>73</sup> CTA Family Office No-Action Letter.

<sup>74</sup> CPO Family Office No-Action Letter, at 2.

<sup>75</sup> CPO Family Office No-Action Letter, at 2.

<sup>76</sup> *Id.*

<sup>77</sup> CPO Family Office No-Action Letter, at 2; CTA Family Office No-Action Letter, at 3.

<sup>78</sup> *Id.*

<sup>79</sup> See, e.g., CFTC Staff Letter 14-104 (Jun. 20, 2014), available at <https://www.cftc.gov/ido/groups/public/%40rlettergeneral/documents/letter/14-104.pdf> (last retrieved July 31, 2018) (granting no-action relief to an entity providing advisory services to two families with longstanding and extensive financial and personal relationships).

economic growth by improving access to the public capital markets for emerging growth companies.<sup>80</sup> Among other things, the JOBS Act amended various sections of the Securities Act of 1933 (“33 Act”) and required the SEC to revise its regulations to implement certain of the new JOBS Act provisions. Certain provisions of the JOBS Act expanded the availability and marketability of privately offered securities by loosening restrictions otherwise applicable to such offerings.

Section 5 of the 33 Act requires the registration of securities offerings with the SEC and compliance with prospectus delivery requirements, unless an exemption is available.<sup>81</sup> Section 4(a)(2) (formerly section 4(2)) of the 33 Act provides a statutory exemption from these requirements for “transactions by an issuer not involving any public offering.”<sup>82</sup> Rule 506 of the SEC’s Regulation D, “Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act,” (Regulation D) was adopted to provide a regulatory analog to the statutory exemption.<sup>83</sup> Rule 506(b) of Regulation D<sup>84</sup> was originally adopted by the SEC as a non-exclusive safe harbor under the 33 Act section 4(a)(2) exemption for securities offerings by an issuer, without regard to dollar amount, to an unlimited number of “accredited investors,” as defined in § 230.501(a),<sup>85</sup> and to no more than 35 non-accredited investors who meet certain sophistication requirements.<sup>86</sup> Offerings under § 230.506(b) are subject to the terms and conditions of §§ 230.501 and 230.502, including § 230.502(c), which states that neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation (General Marketing Restriction).<sup>87</sup>

Through JOBS Act Section 201, Congress directed the SEC to amend 17 CFR 230.506 of Regulation D, to provide that the prohibition against general solicitation or general advertising in section 230.502(c) of title 17 shall not apply to offers and sales of securities made pursuant to section 230.506, provided that all purchasers are

accredited investors.<sup>88</sup> In 2012–2013, the SEC proposed and adopted amendments to § 230.506 consistent with the congressional directives of the JOBS Act.<sup>89</sup> By adding § 230.506(c), the SEC adopted an exemption that permits issuers to engage in general solicitation or advertising to offer and sell securities under Regulation D, provided that the issuer meets the terms and conditions of §§ 230.501 and 230.502(a) and (d), that all purchasers of the offered securities are accredited investors, and that the issuer takes reasonable steps to verify the accredited investor status of each purchaser.<sup>90</sup> In other words, the General Marketing Restriction in § 230.502(c) is not applicable to securities offerings made pursuant to § 230.506(c).

The SEC explained that it was retaining the exemption for traditional Regulation D offerings in § 230.506(b), “for those issuers that either do not wish to engage in general solicitation in their Rule 506 offerings . . . or wish to sell privately to non-accredited investors who meet Rule 506(b)’s sophistication requirements.”<sup>91</sup> Further, the SEC emphasized that the “mandate [in JOBS Act Section 201(a)(1)] affects only [§ 230.506], and not Section 4(a)(2) offerings in general, which means that . . . an issuer relying on Section 4(a)(2) outside of the Rule 506(c) exemption will be restricted in its ability to make public communications to solicit investors for its offering because public advertising will continue to be incompatible with a claim of exemption under Section 4(a)(2).”<sup>92</sup> The SEC also adopted substantively similar amendments to Rule 144A<sup>93</sup> eliminating offering and marketing restrictions in the resale of certain

securities sold to qualified institutional buyers (QIBs).<sup>94</sup>

## 2. Impact of JOBS Act Amendments on CPOs and DSIO’s 2014 JOBS Act Relief Letter

Under certain circumstances, persons relying on the new exemption in § 230.506(c) (506(c) Issuers) or reselling securities pursuant to Rule 144A (144A Resellers) may also be issuing interests in a commodity pool, the CPOs of which are subject to Commission regulation. Certain of the Commission’s regulations applicable to CPOs currently contain restrictions on marketing and solicitation that conflict with the statutory and regulatory amendments effected and prompted by the passing of the JOBS Act. Specifically, certain persons who offer, market, or sell securities from 506(c) Issuers or 144A Resellers may be subject to Commission regulation under §§ 4.7 or 4.13(a)(3), both of which currently prohibit the general marketing and solicitation that is now permitted by the JOBS Act.

Section 4.7 provides relief from certain of the disclosure, periodic and annual reporting, and recordkeeping requirements in Part 4 of the Commission’s regulations to registrants who file claims pursuant to § 4.7(d).<sup>95</sup> The relief in § 4.7(b) is available to: (1) A registered CPO who offers or sells pool participations solely to QEPs in an offering that qualifies for an exemption from the registration requirements of the 33 Act pursuant to section 4(2) (now section 4(a)(2)) of that Act or pursuant to Regulation S, or (2) any bank registered as a CPO in connection with a pool that is a collective trust fund whose securities are exempt from registration under the 33 Act pursuant to section 3(a)(2) of that Act and are offered or sold, without marketing to the public, solely to QEPs.<sup>96</sup> Section 4.13(a)(3) provides a registration exemption for CPOs that operate pools meeting the conditions enumerated in that regulation. One of those conditions, § 4.13(a)(3)(i), requires that interests in

<sup>88</sup> JOBS Act, Public Law 112–206, sec. 201(a)(1), 126 Stat. 306, 313. Further, the JOBS Act amendments made clear that offers and sales exempt under Rule 506 (as revised pursuant to JOBS Act Section 201) shall not be deemed public offerings under the Federal securities laws as a result of general advertising or solicitation. *Id.* at 201(b) (adding 33 Act Section 4(b), 15 U.S.C. 77d(b)).

<sup>89</sup> Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, 77 FR 54464 (Sept. 5, 2012) and 78 FR 44771 (Jul. 24, 2013) (JOBS Act Adopting Release).

<sup>90</sup> 17 CFR 230.506(c)(1)–(2). In the JOBS Act Adopting Release, the SEC stated that, “because the issuer has the burden of demonstrating that its offering is entitled to an exemption from the registration requirements of the [33 Act], it will be important for issuers and their verification service providers to retain adequate records regarding the steps taken to verify that a purchaser was an accredited investor.” 78 FR at 44779.

<sup>91</sup> *Id.* at 44776.

<sup>92</sup> 78 FR at 44774.

<sup>93</sup> 17 CFR 230.144A.

<sup>94</sup> Rule 144A is a non-exclusive safe harbor exemption from the registration and prospectus delivery requirements under the 33 Act for resales of certain securities to QIBs, as defined in § 230.144A(a)(1), provided that certain conditions are met. Through the JOBS Act, Congress directed the SEC to also adopt amendments to § 230.144A in order to permit general solicitation. JOBS Act, Pub. L. 112–206, sec. 201(a)(2), 126 Stat. 306, 313. In the JOBS Act Adopting Release, the SEC eliminated references to “offer” and “offeree” in Rule 144A, such that, today, the provision only requires that such resold securities “be sold to a QIB or to a purchaser that the seller and any person acting on behalf of the seller reasonably believe is a QIB.” 78 FR at 44786.

<sup>95</sup> 17 CFR 4.7; 17 CFR 4.7(d).

<sup>96</sup> 17 CFR 4.7(b).

<sup>80</sup> Public Law 112–206, 126 Stat. 306 (Apr. 5, 2012).

<sup>81</sup> 15 U.S.C. 77e.

<sup>82</sup> 15 U.S.C. 77d(a)(2).

<sup>83</sup> Proposed Revision of Certain Exemptions from the Registration Provisions of the Securities Act of 1933 for Transactions Involving Limited Offers and Sales, 33 Act Rel. No. 6339 (Aug. 7, 1981).

<sup>84</sup> 17 CFR 230.506(b).

<sup>85</sup> 17 CFR 230.501(a).

<sup>86</sup> 17 CFR 230.506(b).

<sup>87</sup> 17 CFR 230.501, 230.502; 230.502(c).



each pool for which the CPO claims the exemption be exempt from registration under the 33 Act and “offered and sold without marketing to the public.”<sup>97</sup> Additionally, § 4.13(a)(3)(iii) requires that the CPO reasonably believes, at the time of purchase, that each person who participates in the exempt pool is, among other things, an accredited investor or QEP.<sup>98</sup>

Generally, all commodity pools relying on the exemption in 33 Act section 4(a)(2), including pursuant to § 230.506(b), remain subject to prohibitions on general solicitation and general advertising, and such pools’ CPOs may continue to claim relief under §§ 4.7(b) or 4.13(a)(3) in their current states. However, as noted above, amendments to securities regulations prompted by the JOBS Act and the requirements for exemptive relief under §§ 4.7(b) or 4.13(a)(3) are incompatible. In response to the SEC’s amendments, the Division issued CFTC Staff Letter 14–116, an exemptive letter clarifying how securities issuers and resellers, and their CPOs, could avail themselves of relief both in the securities and commodity interest sectors.<sup>99</sup>

Subject to certain conditions, the JOBS Act Relief Letter provides exemptive relief to claimants from the specific provisions of §§ 4.7(b) or 4.13(a)(3) outlined above, to make the relief provided by those regulations compatible with amended Regulation D and Rule 144A. Specifically, the CPOs of 506(c) Issuers and 144A Resellers that filed a notice with DSIO staff received exemptive relief from the requirements in § 4.7(b) that an offering be exempt pursuant to section 4(a)(2) of the 33 Act and offered solely to QEPs, and from the requirement in § 4.13(a)(3)(i) that the securities “be offered and sold without marketing to the public.”<sup>100</sup>

In an effort to harmonize the impact of the JOBS Act on, and to provide legal certainty with respect to the transactions engaged in by, dually-regulated CFTC and SEC entities, the

Commission is proposing to adopt tailored amendments to §§ 4.7(b) and 4.13(a)(3) that would generally be consistent with the JOBS Act Relief Letter, as explained further below.

#### *E. Proposed Exclusionary Relief for BDCs*

##### 1. The CPO Exclusion in § 4.5

Section 4.5 provides an exclusion for certain otherwise regulated persons from the CPO definition with respect to the operation of a “qualifying entity” specified in that regulation.<sup>101</sup> Examples of excluded persons include insurance companies regulated by any State<sup>102</sup> with respect to the offering of a separate account;<sup>103</sup> a bank regulated by a State or the United States<sup>104</sup> with respect to the assets of any trust, custodial account, or other separate unit of investment for which it is acting as a fiduciary and for which it has investment authority;<sup>105</sup> the trustee of a plan subject to title I of the Employee Retirement Income Security Act of 1974 (ERISA)<sup>106</sup> with respect to the operations of that plan;<sup>107</sup> and most relevant to the discussion herein, the operator of an investment company registered as such under the Investment Company Act of 1940, as amended (ICA),<sup>108</sup> with respect to the operated RIC.<sup>109</sup>

##### 2. BDCs: Exempt Investment Companies Restricted in Their Use of Commodity Interests

BDCs are closed-end companies subject to regulation by the SEC under the ICA. Although BDCs meet the definition of an “investment company” under ICA section 3,<sup>110</sup> they are exempt from investment company registration by virtue of the filing of an election under section 54 of the ICA to be subject to various provisions of that act.<sup>111</sup> Despite not being registered as such, BDCs do operate in a manner similar to closed-end RICs and are subject to many

of the same operational requirements of the ICA.<sup>112</sup> Most BDCs have external advisers, which generally must be registered with the SEC as investment advisers under the IA Act.<sup>113</sup> BDCs, like RICs, are subject to periodic examination by the SEC. Further, BDCs must either have a class of equity securities that is registered under, or filed a registration statement for a class of equity securities pursuant to, the Securities Exchange Act of 1934, as amended,<sup>114</sup> which, in turn, requires filing with the SEC: Annual reports on Form 10–K,<sup>115</sup> quarterly reports on Form 10–Q,<sup>116</sup> current reports on Form 8–K,<sup>117</sup> and proxy solicitation statements in connection with annual stockholder meetings.<sup>118</sup> Additionally, almost all BDCs are listed for trading on national securities exchanges, and thus, are subject to exchange rules governing listed companies.<sup>119</sup> BDCs are also subject to certain regulations and corporate governance guidelines under the Sarbanes-Oxley Act of 2002.<sup>120</sup>

BDCs are primarily engaged in investing in, and providing managerial assistance to, operating companies.<sup>121</sup> Specifically, BDCs are required to invest at least 70% of their assets in “eligible portfolio companies,”<sup>122</sup> which are generally defined as small- or mid-sized U.S. companies that have no outstanding listed securities.<sup>123</sup> BDCs typically limit their use of commodity interests to interest rate and currency swaps, with some limited use of credit default swaps and other commodity interests.<sup>124</sup> Because BDCs primarily

<sup>112</sup> See, e.g., 15 U.S.C. 80a–18 (providing asset coverage requirements among others subject to certain limitations); 15 U.S.C. 80a–61 (making section 18 of the ICA applicable to BDCs with certain modifications).

<sup>113</sup> 15 U.S.C. 80b–1, *et seq.*

<sup>114</sup> 15 U.S.C. 78a *et seq.*

<sup>115</sup> 17 CFR 249.310.

<sup>116</sup> 17 CFR 249.308a.

<sup>117</sup> 17 CFR 249.308.

<sup>118</sup> 17 CFR 240.14a–4.

<sup>119</sup> See, e.g., NYSE Listed Company Manual, available at <http://wallstreet.cch.com/LCM/> (last retrieved Apr. 25, 2018).

<sup>120</sup> Public Law 107–204, 116 Stat. 745 (July 30, 2002) (codified in U.S.C. Titles 15, 18, 28, and 29).

<sup>121</sup> 15 U.S.C. 80a–2(a)(48).

<sup>122</sup> *Id.* See also 15 U.S.C. 80a–54(a).

<sup>123</sup> 15 U.S.C. 80a–2(a)(46) (defining “eligible portfolio company”). See 17 CFR 270.2a–46 (providing additional criteria regarding “eligible portfolio companies”).

<sup>124</sup> See Use of Derivatives by Registered Investment Companies, U.S. Securities and Exchange Commission, Division of Economic Risk and Analysis, available at <https://www.sec.gov/files/derivatives12-2015.pdf> (last retrieved July 31, 2018). Staff in the SEC’s Division of Economic Risk and Analysis pulled a random sample of investment companies, including BDCs, to examine the use of derivatives by such companies. Within the sampled BDCs, none used derivatives, which appears to be

Continued

<sup>97</sup> 17 CFR 4.13(a)(3)(i).

<sup>98</sup> 17 CFR 4.13(a)(3)(iii).

<sup>99</sup> CFTC Staff Letter 14–116 (Sept. 9, 2014) (JOBS Act Relief Letter), available at <https://www.cftc.gov/idc/groups/public/%40rlettergeneral/documents/letter/14-116.pdf> (last retrieved July 31, 2018) (JOBS Act Relief Letter).

<sup>100</sup> JOBS Act Relief Letter, p. 6. The Commission notes that § 4.13(a)(3) requires only that interests in an exempt pool be “exempt from registration” under the 33 Act, whereas § 4.7(b) has a more restrictive requirement that the pools qualify for exemption specifically under 33 Act section 4(a)(2). As noted above, the SEC emphasized, while amending Regulation D, that issuers claiming a 33 Act section 4(a)(2) exemption or § 230.506(b) would still be restricted in marketing or advertising to the public, based on the format of the congressional directive in the JOBS Act. 78 FR at 44774.

<sup>101</sup> 17 CFR 4.5(a) and (b).

<sup>102</sup> 17 CFR 4.5(a)(2).

<sup>103</sup> 17 CFR 4.5(b)(2).

<sup>104</sup> 17 CFR 4.5(a)(3).

<sup>105</sup> 17 CFR 4.5(b)(3).

<sup>106</sup> 17 CFR 4.5(a)(4).

<sup>107</sup> 17 CFR 4.5(b)(4).

<sup>108</sup> 15 U.S.C. 80a–1, *et seq.*

<sup>109</sup> 17 CFR 4.5(a)(1) and (b)(1). As discussed, *infra*, § 4.5 lists the RIC as both the excluded person and the qualifying entity. Given that the Commission has previously determined that the RIC’s investment adviser is the appropriate person to serve as the CPO of a RIC for regulatory purposes, the Commission is proposing herein to amend § 4.5(a)(1) to designate the investment adviser as the excluded entity. See CPO CTA Final Rule, 77 FR at 11259.

<sup>110</sup> 15 U.S.C. 80a–3.

<sup>111</sup> *Id.* at 80a–53. See *id.* at 80a–6(f).



invest in private companies to which they are required to offer managerial assistance, BDCs generally use commodity interests for purposes of hedging, reducing, or otherwise managing investment and commercial risks of the operating companies in which they invest. Section 61 of the ICA<sup>125</sup> applies, among other things, the limitations on the issuance of “senior securities” of section 18 of the ICA to BDCs,<sup>126</sup> subject to certain modifications to the limitation on multiple classes on senior security indebtedness and to the asset coverage requirements. BDCs, like registered closed-end funds, may issue senior securities that either represent indebtedness or stock (e.g., preferred stock), subject to the limitations of ICA section 61.<sup>127</sup>

### 3. CFTC Staff Letter 12–40 and the Proposed Amendments

In 2012, DSIO staff received correspondence requesting interpretative guidance from the Division regarding BDCs<sup>128</sup> and the availability of the exclusion from the CPO definition in § 4.5.<sup>129</sup> DSIO understood that the request was prompted generally by the inclusion of swaps within the jurisdiction of the Commission pursuant to the Dodd-Frank Act, as well as the specific addition of “swaps” to the list of commodity interests referenced within the CEA’s definitions of “commodity pool” and CPO.<sup>130</sup>

Following internal deliberations and further discussions with the requester, the Division determined to issue no-action relief, rather than interpretative guidance, which was accomplished on December 4, 2012, through the publication of CFTC Staff Letter 12–40 (BDC No-Action Letter).<sup>131</sup> In the BDC No-Action Letter, DSIO recited numerous ways in which BDCs are regulated in a manner similar to RICs under the ICA.<sup>132</sup> Pursuant to the terms of that letter, an entity claiming relief thereunder is subject to the following criteria: (1) The entity must have elected to be treated as a BDC under section 54

of the ICA<sup>133</sup> and will remain regulated as such, and (2) the entity has not marketed and will not market participations in the BDC to the public as investment in a commodity pool, or otherwise as an investment in a vehicle for the trading of commodity interests.<sup>134</sup> Additionally, the claimant must represent that it limits its use of commodity interests in the BDC consistent with the trading thresholds in § 4.5(c)(2)(iii)(A)–(B).<sup>135</sup> Finally, to claim the relief provided, an entity must file via email to DSIO the requisite notice, which is then electronically forwarded by CFTC staff to the NFA for inclusion in its public database, the Background Affiliation Status Information Center (BASIC).<sup>136</sup>

Since the issuance of CFTC Staff Letter 12–40, the Commission has received 55 claims of relief. Division staff issued the BDC No-Action Letter because BDCs are subject to oversight by

the SEC that is comparable to the regulation of RICs, and because BDCs use commodity interests primarily for bona fide hedging purposes. For these same reasons, the Commission has determined to exercise its authority to propose to amend § 4.5 to provide IAs of BDCs with comparable exclusionary relief.

### F. Relief From § 4.27

#### 1. History

The Commission adopted § 4.27 on November 16, 2011,<sup>137</sup> and subsequently amended it to implement Forms CPO–PQR and CTA–PR on February 24, 2012.<sup>138</sup> Section 4.27 generally requires each CPO that is registered or required to be registered as such to provide information regarding its operations as a CPO and each commodity pool that it operates.<sup>139</sup> It also requires each CTA that is registered or required to be registered as such to provide information, including financial information, regarding its operations and the pool assets that it directs.<sup>140</sup> The data collected is intended to, among other things, facilitate monitoring of systemically important impacts to the financial markets, as required by the Commission’s obligations as part of the Financial Stability Oversight Council (FSOC).<sup>141</sup>

#### 2. Reporting Person Definition

The entities required to file a Form CPO–PQR for CPOs, or a Form CTA–PR for CTAs, are identified by the “reporting person” definition (Reporting Person) contained in § 4.27(b).<sup>142</sup> Pursuant to that definition, Reporting Persons include CPOs and CTAs that are registered or required to be registered under the CEA and the Commission’s regulations thereunder.<sup>143</sup> After several filing cycles for both forms, the data revealed a substantial number of Reporting Persons that were filing Forms CPO–PQR and CTA–PR, but that had no other obligations under part 4 of the Commission’s regulations. Specifically, the CPOs were operating pursuant to an exclusion or exemption from registration for all pools and accounts that they operated and/or directed, and the CTAs did not direct any client accounts, yet these CPOs and CTAs elected to maintain an active

<sup>133</sup> 15 U.S.C. 80a–53.

<sup>134</sup> BDC No-Action Letter, at 3.

<sup>135</sup> Specifically, the BDC must represent that it uses commodity interests solely for bona fide hedging purposes within the meaning and intent of §§ 1.3(z)(1) and 151.5 (17 CFR 1.3 and 151.5) (2012)); provided, however, that in addition, with respect to positions in commodity futures or commodity option contracts, or swaps which do not come within the meaning and intent of §§ 1.3(z)(1) and 151.5, as those provisions existed in 2012, the aggregate initial margin and premiums required to establish such positions does not exceed five percent of the liquidation value of the BDC’s portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; and, provided further, that in the case of an option that is in-the-money at the time of purchase, the in-the-money amount may be excluded in computing such five percent; or the aggregate net notional value of commodity futures, commodity options contracts, or swaps positions not used solely for bona fide hedging purposes within the meaning and intent of §§ 1.3 and 151.5 (17 CFR 1.3 and 151.5) (2012)), determined at the time the most recent position was established, does not exceed 100 percent of the liquidation value of the BDC’s portfolio, after taking into account unrealized profits and losses on any such position it has entered into.

On September 28, 2012, the U.S. District Court for the District of Columbia vacated §§ 1.3(z)(1) and 151.5 as part of the total vacation of the Commission’s position limits rule. See *Int’l Swaps & Derivatives Ass’n v. CFTC*, 887 F.Supp.2d 259 (D.D.C. Sept. 28, 2012). This created some legal uncertainty as to the effect of the incorporation of those regulations in the CFTC’s amendments to § 4.5. On October 12, 2012, DSIO issued interpretative guidance providing that § 4.5(c)(2)(iii)(A) and (B) continue to incorporate the substance of vacated §§ 1.3(z)(1) and 151.5 for purposes of those provisions only. See CFTC Staff Letter 12–19 (Oct. 12, 2012), available at <https://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/12-19.pdf> (last retrieved July 31, 2018). The Commission is not proposing to remove the cross-references to §§ 1.3(z)(1) and 151.5 (2012) at this time, but instead, intends to consider amendments to the “bona fide hedging” definition in § 4.5, when it adopts final rules replacing the vacated regulatory provisions.

<sup>136</sup> NFA’s BASIC website can be accessed at <https://www.nfa.futures.org/basicnet>.

consistent with assertions from members of industry that the usage of derivatives by BDCs is generally very limited. *Id.*

<sup>125</sup> 15 U.S.C. 80a–60.

<sup>126</sup> *Id.* at 80a–18.

<sup>127</sup> *Id.* at 80a–18(a)(2), 80a–60.

<sup>128</sup> BDCs are subject to regulation under the ICA, but are not RICs.

<sup>129</sup> 17 CFR 4.5.

<sup>130</sup> 7 U.S.C. 1a(10) and 1a(11).

<sup>131</sup> CFTC Staff Letter 12–40, available at <https://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/12-40.pdf> (Dec. 4, 2012) (last retrieved July 31, 2018).

<sup>132</sup> *Id.*

<sup>137</sup> Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, 76 FR 71128 (Nov. 16, 2011).

<sup>138</sup> CPO CTA Final Rule, 77 FR at 11252.

<sup>139</sup> 17 CFR part 4, appendix A.

<sup>140</sup> 17 CFR part 4, appendix C.

<sup>141</sup> CPO CTA Final Rule, 77 FR at 11267.

<sup>142</sup> 17 CFR 4.27(b).

<sup>143</sup> *Id.*

registration with the Commission. This registration was sufficient to qualify the entity as a Reporting Person under § 4.27(b), and consequently, it required these entities to file either a Form CPO-PQR or Form CTA-PR, as applicable. However, because these Reporting Persons did not operate pools or direct any accounts, or operated only exempt pools that are not subject to reporting requirements under § 4.27, their Form CPO-PQR and Form CTA-PR filings did not contain meaningful information to assess systemic risk.

### 3. Current Commission Staff Letter Relief

To address this issue, DSIO issued several staff letters that provided exemptive relief from the requirement to file either a Form CPO-PQR or CTA-PR, for CPOs<sup>144</sup> and CTAs<sup>145</sup> that do not otherwise have reporting obligations under part 4 of the Commission's regulations. In so doing, DSIO believed that the data eliminated from the dataset "provide limited additional information . . . beyond that already available to the Commission as part of the registration process and the [person's] ongoing obligations as a registrant."<sup>146</sup>

### 4. Proposing Amendments Consistent With Current Staff Letter Relief

The Commission is proposing today to amend § 4.27 in a manner consistent with the exemptive relief currently made available in CFTC Staff Letters 14-115 and 15-47, such that CPOs that operate only pools for which they are otherwise excluded from the CPO definition or exempt from CPO registration are not required to file a Form CPO-PQR, and CTAs that do not direct client accounts are not required to file a Form CTA-PR.<sup>147</sup> As such, the

Commission proposes to exclude these CPOs and CTAs from the Reporting Person definition in § 4.27(b).

### 5. Expanding Relief From § 4.27 to Additional Categories of CTAs

Section 4.14(a)(4) provides that a person is exempt from registering as a CTA, if that person is registered under the CEA and the Commission's regulations as a CPO, and the person's commodity trading advice is directed solely to the commodity pool or pools for which it is registered as a CPO.<sup>148</sup> Under § 4.14(a)(4), the person in question is registered as the CPO of a pool, and therefore, already has an obligation to file a Form CPO-PQR with respect to that pool, which requires the reporting of more information when compared to Form CTA-PR.<sup>149</sup> As such, the value of any data that would be collected by requiring that same Reporting Person to also file a Form CTA-PR is significantly outweighed by the burden to that entity of an extra filing, as well as any inefficiency resulting from the collecting and processing of duplicative data by NFA and Commission staff. As such, the Commission today also proposes to exclude from the Reporting Person definition under § 4.27(b) those CTAs who comply with the terms of the exemption from registration set forth in § 4.14(a)(4), and who limit their activities to those described by that exemption, but nevertheless elect to register as CTAs.

Further, consistent with the foregoing, the Commission also proposes to exclude from the Reporting Person definition any CTA that directs only the accounts of a pool that it operates as an exempt CPO. Specifically, § 4.14(a)(5) exempts from CTA registration any person that is exempt from CPO registration, if that person's commodity trading advice is directed solely to the pool for which it is exempt from CPO registration.<sup>150</sup> Consistent with the relief provided in CFTC Staff Letter 14-115, the exempt CPO of the pool would not be required to report on a Form CPO-PQR.<sup>151</sup> It is therefore incongruent to require the same person to report on Form CTA-PR with respect to the operation of a pool for which it is not required to file a Form CPO-PQR. Accordingly, the Commission proposes

registered, but operates no pools, it is not required to file a Form CPO-PQR, as the terms of that form only require completion if the CPO also operates at least one pool. See CFTC Staff Letter 14-115, at 2.

<sup>148</sup> 17 CFR 4.14(a)(4).

<sup>149</sup> See 17 CFR part 4, appendix A and appendix C.

<sup>150</sup> 17 CFR 4.14(a)(5).

<sup>151</sup> See CFTC Staff Letter 14-115 at 2.

to remove the § 4.27 filing obligation for such CTAs by excluding from the Reporting Person definition any CTA that directs only the accounts of a pool for which it is exempt from registration as a CPO, and for which the CTA complies with the terms of a registration exemption under § 4.14(a)(5), but nevertheless elects to register as a CTA.

## II. Proposed Regulations

### A. Providing CPOs of Offshore Pools With Registration and Recordkeeping Relief Consistent With Advisory 18-96

#### 1. New § 4.13(a)(4): The 18-96 Exemption

The Commission is proposing to amend § 4.13 by adding a new exemption from CPO registration in the currently reserved paragraph (a)(4) for qualifying persons operating commodity pools outside of the United States. The 18-96 Exemption would incorporate the vast majority of the requirements in the Advisory (with the exception of requiring CPO registration) and would be limited in application to each pool for which the person claims exemption from registration under paragraph (a)(4).

Proposed § 4.13(a)(4)(i) through (vi) explain the substantive conditions that must be met to be eligible for the exemption. Because the 18-96 Exemption is based on the location of the pool and/or its participants, the exemption requirements, much like the Advisory, would focus on the location or base of activities for the pool, including the location and source of any capital invested in the exempt offshore pool. The 18-96 Exemption would include the following parameters: (i) The pool is, and will remain, organized and operated outside of the United States; (ii) the pool will not hold meetings or conduct administrative activities within the United States; (iii) no shareholder or of other participant in the pool is or will be a U.S. person; (iv) the pool will not receive, hold or invest any capital directly or indirectly contributed from sources within the United States; and (v) the person, the pool, and any person affiliated therewith will not undertake any marketing activity for the purpose, or that could reasonably be expected to have the effect, of soliciting participation in the pool from U.S. persons.

Consistent with its past prioritization of resources, the Commission intends that the requirements of the 18-96 Exemption would limit that exemption's availability to those persons operating commodity pools offshore, soliciting, accepting funds from, and managing assets from solely persons located

<sup>144</sup> CFTC Staff Letter 14-115 (Sept. 8, 2014), available at <https://www.cftc.gov/idc/groups/public/%40rlettergeneral/documents/letter/14-115.pdf> (last retrieved July 31, 2018) (providing relief from filing a Form CPO-PQR to CPOs that optionally registered as such with the Commission, but operated only pools for which they were excluded from the definition of "commodity pool operator," and/or pursuant to a claim of exemption for registration with respect to the operated pools).

<sup>145</sup> CFTC Staff Letter 15-47 (July 21, 2015), available at <https://www.cftc.gov/idc/groups/public/%40rlettergeneral/documents/letter/15-47.pdf> (last retrieved July 31, 2018) (providing similar relief from filing a Form CTA-PR to CTAs who are registered as such with the Commission, but do not direct trading for any commodity interest accounts).

<sup>146</sup> CFTC Staff Letter 14-115 at 2. See also CFTC Staff Letter 15-47 at 2 ("The same rationale applies in the instant scenario—requiring a registered CTA that does not direct any trading of commodity interest accounts to file a Form CTA-PR would similarly provide limited additional information regarding that CTA.").

<sup>147</sup> It should be noted that similar to a discussion in CFTC Staff Letter 14-115, where a CPO is

outside the United States, and otherwise having a very limited nexus with the Commission's jurisdiction and regulated markets. By virtue of providing a CPO registration exemption, the 18–96 Exemption, once claimed by a qualifying CPO for its offshore pool(s), would result in the claiming CPO receiving relief from the vast majority of significant compliance requirements in part 4, including § 4.27, which requires the filing of Form CPO–PQR with respect to the directed assets of each commodity pool under the advisement of any CPO that is registered or required to be registered, including any CPO currently claiming Advisory 18–96.

## 2. New § 4.13(a)(6): The Proposed Prohibition on Statutory Disqualifications

The Commission also proposes to amend § 4.13(a) by adding a new paragraph (a)(6). Proposed § 4.13(a)(6) would require any person claiming an exemption under paragraphs (a)(1) through (a)(5) of § 4.13 to represent that neither the person nor any of its principals is subject to any statutory disqualification under sections 8a(2) or 8a(3) of the Act, unless such disqualification arises from a matter which was previously disclosed in connection with a previous application, if such registration was granted, or which was disclosed more than thirty days prior to the claim of this exemption. As discussed above, the Commission believes preliminarily that this proposed amendment would provide additional customer protection because statutorily disqualified, unregistrable persons would no longer be permitted to claim the CPO exemptions under § 4.13(a)(1) through (a)(5).

## 3. Amendments to § 4.13: Claiming the Proposed 18–96 Exemption

The Commission is proposing to amend § 4.13(b) to incorporate the 18–96 Exemption into the existing timing and claims process for other CPO exemptions, which the Commission preliminarily believes establishes a reasonable timing requirement for such claims. Once adopted, this provision would apply to persons claiming the 18–96 Exemption for newly established offshore commodity pools. If this rulemaking is adopted, the Commission intends to permit all existing claimants under Advisory 18–96 to claim the 18–96 Exemption.

As proposed, § 4.13(b)(2)(i) would require a person claiming the 18–96 Exemption to do so within 30 days of

engaging in CPO activities that would make relief under § 3.10(c)(3)(i) unavailable to that person. Until that point in time, the person could freely rely on § 3.10(c)(3)(i), which is self-executing; such reliance would no longer be permitted, however, once the person is required to register or claim a CPO exemption with respect to a commodity pool that is marketed to U.S. persons, that contains funds belonging to U.S. persons, or that is otherwise operated in the U.S., its territories, or possessions. Therefore, proposed § 4.13(b)(2)(i) would require a person to claim the 18–96 Exemption within 30 days of such an occurrence, which the Commission preliminarily believes is sufficient time for a person to achieve compliance with the terms of the 18–96 Exemption.

## 4. Making the 18–96 Exemption Available on a Pool-by-Pool Basis

It is crucial to the proper functioning of the 18–96 Exemption that it be available on a pool-by-pool basis. This feature would permit claiming CPOs to be exempt with respect to their qualifying offshore commodity pools, while permitting them to maintain CPO registration for any commodity pools engaged in activities requiring such registration, *i.e.*, the CPO has solicited or accepted funds from U.S. persons for investment in the commodity pool. This characteristic would effectively differentiate the 18–96 Exemption from the relief currently provided under both Advisory 18–96 and § 3.10(c)(3)(i). Therefore, the Commission proposes to adopt in § 4.13 a new paragraph (e)(3), which would establish the 18–96 Exemption as clearly available on a pool-by-pool basis. Specifically, the Commission proposes to add § 4.13(e)(3), which would permit a CPO to claim the 18–96 Exemption with respect to qualifying offshore pools and to simultaneously register as a CPO with respect to other pools that require registration or are otherwise not exempt pools, and also to amend § 4.13(e)(1) to note the addition of new § 4.13(e)(3).

## 5. Other Amendments to Miscellaneous Provisions in § 4.13

Without any additional amendment, current § 4.13(a)(6) (proposed to be renumbered as paragraph (a)(7)) contains a reference to § 4.13(a)(4), where the 18–96 Exemption is proposed to be housed. That reference is a holdover from the original exemption in § 4.13(a)(4) rescinded by the Commission in 2012, and would require any person claiming the 18–96 Exemption to furnish in written

communication physically delivered or delivered through electronic transmission to each prospective participant in the pool: (A) A statement that the person is exempt from registration with the Commission as a commodity pool operator, and that therefore, unlike a registered commodity pool operator, it is not required to deliver a Disclosure Document and a certified annual report to participants in the pool; and (B) a description of the criteria pursuant to which it qualifies for such exemption from registration.<sup>152</sup> Section 4.13(a)(6)(ii) (proposed paragraph (a)(7)(ii)) would also require a person claiming any exemption thereunder to make these disclosures by no later than the time it delivers a subscription agreement for the pool to a prospective participant in the pool.

Because disclosure documents and certified annual reports are two of the most significant compliance burdens in part 4 of the Commission's regulations, it is critical that prospective participants be informed as to which, if any, customer protections apply to them and their investment, and as to what information they are entitled to receive from the CPO of their pool. Nonetheless, the Commission understands that currently, as proposed, only non-U.S. persons would be the participants in qualifying pools operated by persons claiming the 18–96 Exemption. The Commission notes that such disclosures generally would be more informative or helpful to U.S. person investors in exempt pools, but inquires whether non-U.S. persons would expect or otherwise benefit from such disclosures, such that the reference to § 4.13(a)(4) should be retained.<sup>153</sup> The Commission specifically requests comment on this issue below.

The Commission is also amending § 4.13(a)(3)(iii)(E) to remove a cross-reference to rescinded § 4.13(a)(4) and replace it with “non-U.S. persons.” This amendment would effectively adopt the interpretation in CFTC Staff Letter 04–13, discussed *supra*, by permitting non-U.S. person participants, regardless of their financial sophistication, to invest in § 4.13(a)(3) exempt pools.

<sup>152</sup> 17 CFR 4.13(a)(6).

<sup>153</sup> Indeed, one of several comments received on the Commission's 2006 proposal to rescind Advisory 18–96 stated that, “it is unnecessary and confusing to the non-U.S. domiciled investors to explain why the sponsor is not registered with a U.S. futures regulator, and recommended that Advisory 18–96 be retained as an option for CPOs,” because of the required disclosures in § 4.13. See 72 FR at 1661.

#### 6. Preserving Advisory 18–96’s Recordkeeping Location Relief With Amendments to § 4.23 and Certain Technical Amendments

As discussed above, the Commission has also determined to preserve Advisory 18–96’s relief from the generally applicable recordkeeping location requirement in § 4.23. Specifically, the Commission is proposing to amend § 4.23 by adding a new paragraph (c), such that registered onshore CPOs operating offshore commodity pools may seek relief from the requirement in that regulation that all books and records concerning the pool and CPO be kept at the CPO’s main business office, provided that the person meets the requirements thereunder incorporated from the Advisory. Proposed § 4.23(c) contains exemptive relief for this specific type of CPO with regard to the offshore commodity pool(s) it operates, and contains the vast majority of the requirements for claiming the equivalent relief under Advisory 18–96. Because § 4.23 applies to CPOs registered or required to be registered, the Commission preliminarily believes it is not necessary to incorporate the prohibition on statutory disqualifications in the requirements for claiming this proposed exemptive relief.

The Commission is also proposing a series of organizational, non-substantive amendments to § 4.23, which the Commission preliminarily believes would clarify the existing recordkeeping location requirement applicable to all CPOs registered or required to be registered, would retain current exemptive relief provided by that regulation, and overall, would make the regulation easier to read and understand, even with the addition of the exemptive relief also being proposed today. The Commission requests comment on whether these proposed amendments effectively incorporate in § 4.23 the recordkeeping location requirement relief currently found in Advisory 18–96, and whether the proposed technical amendments improve or otherwise alter that regulation or its application in any way.

#### *B. Proposed Family Office Exemptions*

Consistent with the CPO Family Office No-Action Letter, the Commission proposes to adopt for qualifying Family Offices a new regulatory exemption in § 4.13(a)(8). New § 4.13(a)(8) would provide relief from registration equivalent to the CPO Family Office No-Action letter, and the exemption’s availability would be contingent on the Family Office: (1)

Meeting the requirements for being deemed a Family Office pursuant to the SEC Family Office Exclusion in 17 CFR 275.202(a)(11)G–1; (2) restricting its investing and advisory activities solely to Family Clients, as defined in the SEC Family Office Exclusion; and (3) not engaging in the solicitation of persons other than Family Clients permitted under the SEC Family Office Exclusion. The prohibition against solicitation of non-Family Clients ensures that the exempt CPO is limiting its activities to those associated with the operation of a Family Office, as contemplated by the SEC Family Office Exclusion, which the Commission preliminarily believes would reduce its regulatory interest in such investment vehicles, when compared to other commodity pools.

As part of claiming exemptive relief under § 4.13, each person must file an annual notice under § 4.13(b)(4) confirming that the person remains exempt from registration. The Commission proposes to maintain the annual notice filing for all persons claiming relief under § 4.13, including persons claiming the new proposed exemption for Family Offices. The Commission believes that the notice requirement should ensure at least an annual assessment of whether the CPO of the Family Office remains eligible to rely upon the proposed exemption.

With respect to the CTA Family Office No-Action Letter, the Commission also proposes adding a new CTA registration exemption at § 4.14(a)(11) consistent with that relief. The Commission preliminarily believes that Family Offices that are also claiming relief from CPO registration under proposed § 4.13(a)(8) would already be eligible for relief from CTA registration by virtue of the existing exemption in § 4.14(a)(5), which provides an exemption from CTA registration for persons exempt from CPO registration that only advise a pool or pools for which the person is so exempt.<sup>154</sup> Therefore, the Commission is proposing to limit the new exemption in § 4.14(a)(11) to the advice provided to individual Family Clients. Consistent with most exemptions available under § 4.14, the Commission is also proposing that the new exemption for qualifying CTAs of Family Offices and Family Clients be self-executing, and is, therefore, not proposing to require a notice filing from claimants thereunder.

#### *C. Proposed Amendments Consistent With the JOBS Act Relief Letter*

The Commission proposes today to add to part 4 regulatory harmonization consistent with the JOBS Act Relief

Letter, through specific amendments to §§ 4.7(b) and 4.13(a)(3). In § 4.7, the paragraph (b) introductory text currently sets forth the eligibility requirements for CPOs claiming relief thereunder with respect to certain pools they operate. The Commission proposes to remove the reference to “section 4(2) of [the 33] Act,” to remove references to the act of “offering” the § 4.7 exempt pool, and to delete the text, “without marketing to the public.” The Commission intends that these amendments would permit CPOs claiming the exemptive relief in § 4.7(b) to engage in general solicitation or marketing, if eligible to do so under their securities law exemptions.<sup>155</sup>

Additionally, the Commission is proposing to break out the eligible claimants of the relief in § 4.7(b) into two new paragraphs, paragraphs (b)(1)(i) and (b)(1)(ii), and to renumber the remaining subparagraphs of § 4.7(b). These changes are intended to improve the readability and clarity of that regulation. With today’s proposed amendments, the operative requirements remaining in § 4.7(b) for non-bank CPOs claiming relief thereunder are that: (1) The CPO must be registered with respect to the exempt pool/offering; (2) participations in the exempt pool must be exempt from the Securities Act and/or offered and sold pursuant to Regulation D (under either § 230.506(b) or 230.506(c)) or resold pursuant to Rule 144A, 17 CFR 230.144A, or offered pursuant to Regulation S;<sup>156</sup> (3) the participations must be sold solely to QEPs; and (4) the registered CPO must file the required notice and otherwise comply with the requirements in § 4.7(d)<sup>157</sup> in operating the exempt pool. The Commission preliminarily believes that the amendments, as proposed, would achieve its goal of permitting commodity pools operated by CPOs claiming relief under § 4.7(b) to avail themselves of the JOBS Act relief adopted by the SEC, while retaining the other requirements currently set forth in that regulation.

The Commission is also proposing similar amendments to the registration exemption provided to eligible CPOs in § 4.13(a)(3). In § 4.13(a)(3)(i), the Commission proposes to delete the language, “such interests are offered and sold without marketing to the public in the United States,” and to replace it with a conditional statement

<sup>155</sup> The Commission notes that the amendments effectively give claiming CPOs the option to rely on the JOBS Act relief. CPOs continuing to offer traditional Regulation D issuances will still be able to rely on § 4.7(b) for relief as well.

<sup>156</sup> 17 CFR 230.901–230.904.

<sup>157</sup> 17 CFR 4.7(d).

<sup>154</sup> 17 CFR 4.14(a)(5).

incorporating Regulation D and Rule 144A by reference. Consequently, the proposed amendments to § 4.13(a)(3)(i) would require the interests to be exempt from registration under the 33 Act, and to the extent those interests are marketed and advertised in the U.S., the amendments would also require those interests only be so marketed or advertised in compliance with the provisions of Regulation D or of Rule 144A, as amended by the JOBS Act. Consistent with the proposed amendments to § 4.7(b) discussed above, the Commission preliminarily believes that the amendments, as proposed, would achieve its goal of permitting CPOs claiming relief under § 4.13(a)(3) to avail themselves of the JOBS Act relief adopted by the SEC with respect to those exempt commodity pools, while retaining the other requirements currently set forth under that section.

#### *D. Proposed BDC Exclusion*

The Commission proposes to amend § 4.5 to include investment advisers (as defined above, IAs) of BDCs under paragraph (a) as a type of entity that shall be excluded from the CPO definition with respect to the operation of a “qualifying entity,”<sup>158</sup> and to include BDCs as a type of “qualifying entity” under paragraph (b), for which an exclusion may be so claimed.<sup>159</sup> Because BDCs are similarly situated to RICs, the Commission preliminarily believes that IAs of BDCs should be subject to the same operational requirements as CPOs of RICs, an approach consistent with that taken by Commission staff through the BDC No-Action Letter. Because the CPOs of both RICs and BDCs would be their IAs, the Commission also proposes revising § 4.5(a)(1)<sup>160</sup> to refer to the registered IA, rather than the investment company itself, as the entity claiming the CPO exclusion. Because of the similarities between BDCs and RICs, the Commission preliminarily believes IAs of BDCs should be required to reaffirm their § 4.5 exclusion claim on an annual basis, which is consistent with the existing requirements for IAs of RICs under § 4.5(c)(5).<sup>161</sup> Finally, the Commission concludes that the existing language in § 4.6 should be sufficient to provide exclusionary relief for IAs of BDCs with respect to the CTA definition without additional proposed amendments.<sup>162</sup>

#### *E. § 4.27 Relief*

The Commission proposes to amend § 4.27 to exclude certain registered CPOs and CTAs from the definition of “reporting person” in § 4.27(b). Specifically, the Commission proposes to place the definition of “reporting person” in a new paragraph (b)(1) and to add a new paragraph § 4.27(b)(2) that would limit the application of the “reporting person” definition, such that the registered CPOs and CTAs discussed above would no longer be required to report on Forms CPO-PQR and CTA-PR, as applicable. The Commission is also proposing to revise the title of § 4.27 to more accurately reflect the substance of the section.

### **III. Request for Comments**

The Commission requests comment on all aspects of the Proposal. Additionally, the Commission would appreciate consideration of the following specific questions.

#### *A. Advisory 18–96 and the Proposed 18–96 Exemption*

1. Should CPOs claiming the 18–96 Exemption be required to disclose the exemption to participants in their offshore commodity pools? Would such disclosure be meaningful to offshore investors? If the Commission were to require such disclosure, what timing requirement should be established? Should it be identical to, or different from, the timing requirement proposed in the NPRM for claiming the 18–96 Exemption?

2. Do the proposed amendments to § 4.13(e) clearly establish that the 18–96 Exemption is available to CPOs for each individual commodity pool meeting the terms therein, without regard to the claimant’s registration status? If not, how could the amendments be improved?

3. The Commission also requests comment on the prohibition on statutory disqualifications proposed in § 4.13 generally, the impact of adopting this provision on industry participants and currently exempt CPOs, and also, on what, if any, other statutory disqualifications should be permissible for exempt CPOs and their principals. In particular, comments should address any or all of the following questions: What are the concerns and benefits associated with the expansion of the prohibition on statutory disqualifications to the CPO registration

exemptions set forth in § 4.13(a)(1), (a)(2), (a)(3), and (a)(5), or proposed to be set forth in § 4.13(a)(4)? Do the limited exceptions that would permit certain statutory disqualifications successfully address any unintended consequences of adding the prohibition to § 4.13, while still providing a base level of customer protection by preventing statutorily disqualified individuals from legally operating exempt commodity pools? Generally, how should the Commission handle the implementation of the statutory disqualification prohibition? Specifically, how should the prohibition apply to current claimants under § 4.13? How much time should the Commission allow for filing updated exemption claims subject to the prohibition? How much time should the Commission allow for an exempt CPO to replace statutorily disqualified principals, in order to maintain eligibility for a § 4.13 exemption?

4. When a qualifying CPO is transitioning from reliance upon § 3.10(c)(3)(i) to the 18–96 Exemption, is 30 days sufficient time in which to claim the 18–96 Exemption for qualifying offshore pools? Generally, please provide comment on whether the interaction between § 3.10(c)(3)(i) and the 18–96 Exemption, as proposed, is understood.

5. Is the language in proposed § 4.13(e)(3) effective to make the 18–96 Exemption available on a pool-by-pool basis, such that a claim for the 18–96 Exemption would be able to co-exist with a simultaneous CPO registration or even other exemption claims? If not, why not?

6. Should the Commission adopt all of the proposed requirements for the relief under proposed § 4.23(c)? Which requirements could be dropped? Why? Are there additional or different conditions to this relief that the Commission should consider adopting?

#### *B. Proposed Family Office Exemptions*

7. Should CPOs of Family Offices organized as commodity pools be required to annually recertify their eligibility for the proposed exemption under § 4.13(a)(8)? What are the costs and burdens that an annual notice requirement would impose?

8. Information on BASIC is provided to the public as a means of ensuring that basic information regarding a person’s registration status with the Commission is readily available. Given that the persons claiming the proposed CPO exemption for the operation of Family Offices are proposed to be prohibited from soliciting non-Family Client participants, should notices filed by

<sup>158</sup> 17 CFR 4.5(a).

<sup>159</sup> 17 CFR 4.5(b).

<sup>160</sup> 17 CFR 4.5(a)(1).

<sup>161</sup> 17 CFR 4.5(c)(5).

<sup>162</sup> 17 CFR 4.6. Section 4.6 provides an exclusion from the CTA definition to, among others, a person

excluded from the CPO definition by § 4.5, whose commodity interest advisory activities are solely incidental to its operation of those trading vehicles for which § 4.5 provides relief, *i.e.*, in this case, an IA of a BDC. *Id.*

Family Offices claiming the proposed CPO exemption in § 4.13(a)(8) be included in NFA's public BASIC database?

9. Does the proposed bifurcation of the CTA relief provided to (a) CTAs of Family Offices organized as commodity pools, and (b) CTAs of individual Family Clients clearly and effectively provide relief from registration for CTAs that advise Family Offices in their capacity as an exempt CPO and/or as a CTA to individual Family Clients? Is there a clearer or more advantageous way to effectuate such relief?

10. Should a notice be required in order to claim the proposed exemption in § 4.14(a)(11) for CTAs of Family Clients? If so, should such CTAs be required to recertify eligibility for such exemption on an annual, or longer term, basis? What are the costs and burdens that such an annual notice requirement would impose on those CTAs?

#### *C. Proposed Amendments Consistent With the JOBS Act Relief Letter*

11. Do the amendments to §§ 4.7(b) and 4.13(a)(3) effectively incorporate in 17 CFR part 4 the general marketing and solicitation permitted by the JOBS Act, consistent with the JOBS Act Relief Letter? Are there additional amendments the Commission should consider that would ensure this relief is completely added to the part 4 regulatory regime?

#### *D. Proposed Adoption and Expansion of Exemptive Letter Relief From § 4.27 Filings*

12. Are there any additional classes of registered CPOs or CTAs that should be excluded from the definition of "Reporting Person" in § 4.27(b)? If yes, please identify the class or classes, and explain why they should be so excluded.

### **IV. Related Matters**

#### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires Federal agencies, in promulgating regulations, to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities. Each Federal agency is required to conduct an initial and final regulatory flexibility analysis for each rule of general applicability for which the agency issues a general notice of proposed rulemaking.<sup>163</sup>

The regulatory amendments proposed by the Commission in this release would affect only persons registered or required to be registered as CPOs and CTAs, persons claiming exemptions from registration as such, and certain persons excluded from the CPO definition. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the requirements of the RFA.<sup>164</sup> With respect to CPOs, the Commission previously has determined that a CPO is a small entity for purposes of the RFA, if it meets the criteria for an exemption from registration under § 4.13(a)(2).<sup>165</sup> Because these proposed regulations generally apply to persons registered or required to be registered as CPOs with the Commission, and/or provide relief to qualifying persons from registration as such, as well as from related compliance burdens, the RFA is not applicable to this Proposal with respect to CPOs.

Regarding CTAs, the Commission has previously considered whether such registrants should be deemed small entities for purposes of the RFA on a case-by-case basis, in the context of the particular Commission regulation at issue.<sup>166</sup> As certain of these registrants may be small entities for purposes of the RFA, the Commission considered whether this rulemaking would have a significant economic impact on such registrants.

The portions of this Proposal directly impacting CTAs propose a registration exemption consistent with DSIIO's CTA Family Office No-Action Letter, as well as expanded exemptive relief from the Form CTA-PR filing requirement in § 4.27 for certain categories of CTAs. These proposed amendments are not expected to impose any new burdens on market participants or Commission registrants. Rather, to the extent that this Proposal provides an exemption from the requirement to register as a CTA or from the Form CTA-PR filing requirement in § 4.27, the Commission preliminarily believes it is reasonable to infer that such exemptions would be

<sup>164</sup> See, e.g., Policy Statement and Establishment of Definitions of "Small Entities" for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18620 (Apr. 30, 1982).

<sup>165</sup> *Id.* at 18619–20. Section 4.13(a)(2) exempts a person from registration as a CPO when: (1) None of the pools operated by that person has more than 15 participants at any time, and (2) when excluding certain sources of funding, the total gross capital contributions the person receives for units of participation in all of the pools it operates or intends to operate do not, in the aggregate, exceed \$400,000. See 17 CFR 4.13(a)(2).

<sup>166</sup> See *id.* at 18620.

much less burdensome to those persons than either CTA registration or the preparation and filing of Form CTA-PR. In fact, the Commission has not proposed herein to require a notice filing for either the proposed exemption for CTAs of Family Offices and Family Clients, or the expanded relief proposed for certain CTAs under § 4.27.<sup>167</sup> Consequently, the Commission does not expect small entities to incur any additional costs as a result of the Proposal, as applicable to CTAs.

Similarly, the Commission preliminarily does not believe that the benefits associated with the exemption from CTA registration for CTAs of Family Offices and Family Clients, or the expanded relief from the requirement to prepare and file Form CTA-PR, will result in a significant economic impact on small CTAs. The regulatory obligations associated with CTA registration and compliance are not significantly burdensome, being limited to the completion of a registration application, the preparation and distribution of a disclosure document (if required), the maintenance of certain books and records, and the annual completion of Form CTA-PR, which consists of two questions with several subparts. Although relief from these obligations is beneficial to small CTAs, the Commission preliminarily believes that this does not rise to the level of significant economic impact.

Therefore, the Commission has preliminarily determined that, to the extent that the Proposal affects CTAs, it will not create a significant economic impact on a substantial number of small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities.

#### *B. Paperwork Reduction Act*

##### **1. Overview**

The Paperwork Reduction Act (PRA) imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA.<sup>168</sup> Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a

<sup>167</sup> The Commission notes that it requests comment on whether the Commission should adopt regulations requiring CPOs of Family Offices to file a notice to claim the proposed exemption under § 4.13(a)(8) and to annually affirm that claim, and/or requiring CTAs of Family Offices to file a notice to claim the proposed exemption in § 4.14(a)(11). See *supra* pt. III, Request for Comments.

<sup>168</sup> See 44 U.S.C. 3501 *et seq.*

<sup>163</sup> 5 U.S.C. 601 *et seq.*

collection of information unless it displays a currently valid control number from the Office of Management and Budget (OMB). This Proposal, if adopted, would result in a collection of information within the meaning of the PRA, as discussed below. The Commission is therefore submitting this NPRM to OMB for review.

The Proposal amends two collections of information for which the Commission has previously received control numbers from OMB. The first collection of information is, “Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants, OMB control number 3038–0005” (Collection 3038–0005). Collection 3038–0005 primarily accounts for the burden associated with part 4 of the Commission’s regulations that concern compliance obligations generally applicable to CPOs and CTAs, as well as certain enumerated exemptions from registration as such and exclusions from those definitions, and available relief from compliance with certain regulatory requirements. The Commission is proposing to amend this collection to reflect the notices proposed to be required to claim certain of the registration exemptions and the CPO exclusion proposed herein, as well as the expected reduction in the number of registered CPOs and CTAs filing Forms CPO–PQR and CTA–PR, pursuant to the proposed revisions to § 4.27.

The Commission also proposes to amend a second collection entitled, “Part 3—Registration, OMB control number 3038–0023” (Collection 3038–0023), which pertains to the registration of intermediaries generally, to reduce the number of persons registering as CPOs and CTAs as a result of the regulatory amendments proposed herein. Therefore, the Commission is proposing adjustments to each of these collections accordingly. The responses to these collections of information are mandatory.

The collections of information in the Proposal would make available to eligible persons: (1) The 18–96 Exemption in proposed § 4.13(a)(4), which incorporates the majority of the relief provided by Advisory 18–96, and which would exempt from CPO registration qualifying CPOs with regard to their offshore pools; (2) the Advisory 18–96 recordkeeping location relief for qualifying, registered CPOs, which is proposed to be added to § 4.23; (3) the exemptions from CPO and CTA registration for qualifying Family Offices in proposed §§ 4.13(a)(8) and

4.14(a)(11); (4) the proposed expansion of the exclusion in § 4.5 for IAs of BDCs; and (5) the proposed exemptive relief made available through amendments to the Reporting Person definition in § 4.27(b), such that qualifying CPOs and CTAs no longer have to file Forms CPO–PQR or CTA–PR.

In each instance, eligible persons have the option to elect the proposed registration or compliance exemption or exclusion if they are so qualified, but have no obligation to do so. For this reason, except to the extent that the Commission is amending Collection 3038–0005 for PRA purposes to reflect these alternatives, and Collection 3038–0023 to reduce the number of persons registering as CPOs or CTAs, today’s Proposal is not expected to impose any significant new burdens on CPOs or CTAs. Rather, to the extent that the proposed amendments provide registration exemptions or definitional exclusions, and/or alternatives to comprehensive compliance with Commission regulations, through the adoption of amendments consistent with existing exemptive and no-action letter relief, it is reasonable for the Commission to infer that the proposed amendments will generally prove to be less burdensome for persons eligible to claim the proposed alternative relief.

## 2. Revisions to the Collections of Information

### a. OMB Control Number 3038–0005

Collection 3038–0005 is currently in force with its control number having been provided by OMB, and it was renewed recently on March 14, 2017.<sup>169</sup> As stated above, Collection 3038–0005 governs responses made pursuant to part 4 of the Commission’s regulations, pertaining to the operations of CPOs and CTAs. Generally, under Collection 3038–0005, the estimated average time spent per response will not be altered; however, the Commission has made adjustments, discussed below, to the collection to account for new and/or lessened burdens expected under the NPRM due to persons claiming the proposed registration exemptions or exclusion and proposed relief.

For example, the Commission estimates that the number of persons responding to the portion of the collection associated with § 4.13(b)(1) (the requirement to file a claim for an exemption under that section) will increase by at least the number of

persons currently claiming the CPO Family Office No-Action Letter, *i.e.*, 200 CPOs.<sup>170</sup> The Commission also preliminarily believes that there may be increased notice filings under § 4.13(b)(1), if the 18–96 Exemption is adopted as proposed. Due to the flexibility of the proposed 18–96 Exemption as compared to § 3.10(c)(3)(i), its adoption may cause more CPOs to claim relief from registration on a pool-by-pool basis through the 18–96 Exemption with respect to their offshore pools, rather than with respect to their operations as a whole.

Conversely, no adjustments need to be made to Collection 3038–0005 to account for the proposed JOBS Act amendments because persons relying on the exemptive relief therein are, as a condition of relief, currently required to claim an exemption under §§ 4.7 or 4.13, as applicable to them, and therefore, are already counted in this collection. The Commission further proposes an increase to the number of respondents under § 4.5, which will account for new claims the Commission anticipates receiving from IAs of BDCs seeking to claim the expanded exclusion from the CPO definition.

With regard to § 4.27, the Commission is proposing to reduce the number of persons filing all schedules of Forms CPO–PQR and CTA–PR to reflect the categories of registered CPOs and CTAs that are proposed to be considered outside the Reporting Person definition in § 4.27(b). Because there is no notice filing required for this relief, there is no new burden associated with the actual claiming of the relief provided under the revisions to § 4.27 proposed herein.

The currently approved total burden associated with Collection 3038–0005, in the aggregate, is as follows:

*Estimated number of respondents:*

45,270.

*Annual responses for all respondents:*

129,042.

*Estimated average hours per response:*

2.83.<sup>171</sup>

*Annual reporting burden:* 365,764.

The Commission estimates that the proposed amendments to § 4.23 will add the following burden:

*Estimated number of respondents:* 50.

<sup>170</sup> No adjustments are proposed to be made to account for the CTA Family Office No-Action Letter claims (100 claims received) because the Commission has not proposed a filing requirement for that new exemption. Rather, like the majority of the exemptions in § 4.14, the Commission has proposed to add that relief as a self-executing exemption in § 4.14, though it has requested comment on this feature of the Proposal.

<sup>171</sup> The Commission rounded the average hours per response to the second decimal place for ease of presentation.

<sup>169</sup> See Notice of Office of Management and Budget Action, OMB Control No. 3038–0005, available at [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201701-3038-005](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201701-3038-005) (last retrieved July 31, 2018).



*Annual responses by each respondent:* 3.

*Estimated average hours per response:* 0.5.

*Annual reporting burden:* 75.

The Commission estimates that the proposed CPO registration exemptions under § 4.13(a)(4) and 4.13(a)(8) will result in 250 additional notice filings under § 4.13(b)(1). Therefore, the Commission proposes to increase the burden associated with § 4.13(b)(1) to be as follows:

*Estimated number of respondents:* 3,872.

*Annual responses by each respondent:* 3.

*Estimated average hours per response:* 0.5.

*Annual reporting burden:* 1,936.

The Commission estimates that the proposed exclusion for IAs of BDCs under § 4.5 will result in 50 additional notice filings under § 4.5. Therefore, the Commission proposes to increase the burden associated with § 4.5 to be as follows:

*Estimated number of respondents:* 7,940.

*Annual responses by each respondent:* 1.

*Estimated average hours per response:* 0.5.

*Annual reporting burden:* 3,970.

With respect to the burden associated with the proposed amendments to § 4.27, the Commission is updating the number of respondents. Specifically, the Commission is modifying the number of respondents to better reflect the average number of CPOs registered with the Commission, less those CPOs that will be eligible for the relief provided by the proposed amendments to the Reporting Person definition in § 4.27. The Commission has historically averaged approximately 1,800 registered CPOs. Based on the number of exemptions filed by CPOs pursuant to §§ 4.5 and 4.13, and filed under Advisory 18–96, the Commission estimates that approximately 100 of those CPOs would be eligible for relief from filing Form CPO–PQR under the proposed amendments to § 4.27. Therefore, the Commission is proposing to set the number of respondents filing Schedule A of Form CPO–PQR on an annual basis at 1,700. The total respondents for this revised collection is further broken out below into two categories, based on the size of the CPO and whether the CPO files Form PF: 1,450 respondents on Schedule A of Form CPO–PQR for non-large CPOs and CPOs filing Form PF, and 250 respondents on Schedule A of Form CPO–PQR for Large CPOs not filing Form PF.

The Commission is similarly considering the number of registered CTAs with respect to the filing of Form CTA–PR, and then reducing the number of filers by the number of CTAs the Commission anticipates will be eligible for the relief proposed herein. Specifically, the Commission has historically averaged approximately 1,600 registered CTAs. Based on the information collected on Form CTA–PR, the Commission estimates that 720 registered CTAs would be eligible for the relief proposed herein, resulting in the difference of 880 CTAs being required to file Form CTA–PR. Therefore, the Commission estimates that the total burden associated with the proposed amendments to § 4.27, reflecting the revised average number of CPOs and CTAs registered with the Commission, to be as follows:

For Schedule A of Form CPO–PQR for non-Large CPOs and Large CPOs filing Form PF:

*Estimated number of respondents:*

1,450.

*Annual responses by each respondent:* 1.

*Estimated average hours per response:* 6.

*Annual reporting burden:* 8,700.

For Schedule A of Form CPO–PQR for Large CPOs not filing Form PF:

*Estimated number of respondents:*

250.

*Annual responses by each respondent:* 4.

*Estimated average hours per response:* 6.

*Annual reporting burden:* 6,000.

For Schedule B of Form CPO–PQR for Mid-size CPOs:

*Estimated number of respondents:*

400.

*Annual responses by each respondent:* 1.

*Estimated average hours per response:* 4.

*Annual reporting burden:* 1,600.

For Schedule B of Form CPO–PQR for Large CPOs not filing Form PF:

*Estimated number of respondents:*

250.

*Annual responses by each respondent:* 4.

*Estimated average hours per response:* 4.

*Annual reporting burden:* 4,000.

For Schedule C of Form CPO–PQR for Large CPOs not filing Form PF:

*Estimated number of respondents:*

250.

*Annual responses by each respondent:* 4.

*Estimated average hours per response:* 18.

*Annual reporting burden:* 18,000.  
For Form CTA–PR:

*Estimated number of respondents:* 880.

*Annual responses by each respondent:* 1.

*Estimated average hours per response:* 0.5.

*Annual reporting burden:* 440.

The total new burden associated with Collection 3038–0005, in the aggregate, reflecting the reduction in burden associated with § 4.27 and the new burden associated with the other amendments proposed by the NPRM, is as follows:

*Estimated number of respondents:* 43,912.

*Annual responses for all respondents:* 112,715.

*Estimated average hours per response:* 3.13.

*Annual reporting burden:* 352,279.

b. OMB Control Number 3038–0023

The Commission expects that persons that are currently counted among the estimates for Collection 3038–0023 with respect to CPO and CTA registration with the Commission will deregister as such, due to the availability of the additional registration exemptions and exclusion proposed herein. Therefore, the Commission proposes to deduct the expected claimants of that relief from the total number of persons required to register with the Commission as CPOs and CTAs.

The currently approved total burden associated with Collection 3038–0023, in the aggregate, excluding the burden associated with § 3.21(e), is as follows:

*Respondents/Affected Entities:* 77,857.

*Estimated number of responses:*

78,109.

*Estimated average hours per response:* 0.09.

*Estimated total annual burden on respondents:* 7,029.8.

*Frequency of collection:* Periodically.

The currently approved total burden associated with § 3.21(e) under Collection 3038–0023, which remains unchanged under the Proposal, is as follows:

*Respondents/Affected Entities:* 396.

*Estimated number of responses:* 396.

*Estimated average hours per response:* 1.25.

*Estimated total annual burden on respondents:* 495.

*Frequency of collection:* Annually.

The Commission is proposing to reduce the number of registrants by the estimated number of claimants with respect to each of the registration exemptions and exclusion proposed today. Specifically, the Commission estimates 50 persons will claim relief from CPO registration under the 18–96



Exemption, 200 persons will claim relief from registration as the CPO of a qualifying Family Office, 100 persons will claim relief from registration as the CTA of a qualifying Family Office or Family Clients, and 50 persons will claim relief from registration associated with the operation of a BDC pursuant to the expanded exclusion in § 4.5. Therefore, the Commission proposes to reduce the burden associated with Collection 3038–0023, such that the total burden associated with the collection, excluding the burden associated with § 3.21(e), will be as follows:

*Respondents/Affected Entities:*  
77,457.

*Estimated number of responses:*  
77,689.

*Estimated average hours per response:*  
0.09.

*Estimated total annual burden on respondents:* 6,992 hours.

### 3. Request for Comments on Collection

The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to (i) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information proposed to be collected; and (iv) minimize the burden of the proposed collections of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology.

Those desiring to submit comments on the proposed information collection requirements should submit them directly to the Office of Information and Regulatory Affairs, OMB, by fax at (202) 395–6566, or by email at [OIRAsubmissions@omb.eop.gov](mailto:OIRAsubmissions@omb.eop.gov). Please provide the Commission with a copy of submitted documents, so that all comments can be summarized and addressed in the final rule preamble. Refer to the **ADDRESSES** section of this NPRM for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting <http://www.RegInfo.gov>. OMB is

required to make a decision concerning the collections of information between 30 and 60 days after publication of this document in the **Federal Register**.

Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

### C. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA.<sup>172</sup> Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the CEA section 15(a) considerations.

The Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving U.S. firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with some leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of this NPRM on all activity subject to the proposed regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under CEA section 2(i).<sup>173</sup> In particular, the Commission notes that some CPOs and CTAs are located outside of the United States.

#### 1. Consideration of the Costs and Benefits of the Commission's Action

The baseline for the Commission's consideration of the costs and benefits of the Proposal is the regulatory status quo, as determined by the CEA and the Commission's existing regulations in 17 CFR part 4. The Commission recognizes, however, that to the extent that market

participants have relied on relevant Commission staff action, the actual costs and benefits of the proposed rulemaking, as realized in the market, may not be as significant. Because each proposed amendment addresses a discrete issue, which may impact a unique subgroup within the universe of entities captured by the CPO and CTA statutory definitions, the Commission has determined to analyze the costs and benefits associated with each proposed change separately, as presented below. The Commission has endeavored to assess the expected costs and benefits of the proposed amendments in quantitative terms wherever possible. Where estimation or quantification is not feasible, however, the Commission has provided its assessment in qualitative terms.

#### a. Summary of the Proposal

As discussed in greater detail below, and in the foregoing preamble, the Commission preliminarily believes that the amendments proposed herein enable the Commission to discharge its regulatory oversight function with respect to the commodity interest markets, while reducing the potential burden on persons whose commodity interest activities are subject to the Commission's regulations applicable to CPOs and CTAs. Specifically, the CFTC is proposing to amend §§ 4.13 and 4.23 by adopting new exemptions that would permit a CPO that solicits and/or accepts funds from solely non-U.S. persons to participate in offshore commodity pools it operates to claim a registration exemption with respect to such pools, and to permit an onshore, registered CPO of an offshore commodity pool to keep the pool's original books and records at the pool's offshore location, rather than with the onshore CPO.

Importantly, a CPO claiming the 18–96 Exemption, as proposed in new § 4.13(a)(4), would still be subject to the anti-manipulation and anti-fraud provisions of the CEA (just like Advisory 18–96 claimants currently), and by virtue of § 4.13(c), would be required to make and keep books and records for an exempt pool, and to submit to such special calls as the Commission may make to demonstrate eligibility for and compliance with the criteria of the 18–96 Exemption. In conjunction with the proposed 18–96 Exemption, the Commission is also proposing to adopt a prohibition on statutory disqualifications applicable to any exemption claimed under § 4.13, and to amend the *de minimis* exemption in § 4.13(a)(3) to explicitly permit non-

<sup>172</sup> 7 U.S.C. 19(a).

<sup>173</sup> 7 U.S.C. 2(i).

U.S. persons as exempt commodity pool participants.

The Commission is also proposing to amend existing 17 CFR part 4 regulations in a manner consistent with DSIO's CPO Family Office Letter and CTA Family Office Letter by adopting new CPO and CTA registration exemptions under §§ 4.13 and 4.14. The Commission further proposes regulatory amendments consistent with current letter relief available to BDCs, through certain revisions to the exclusion from the definition of CPO for IAs of RICs in § 4.5. Additionally, the Commission is proposing to amend 17 CFR part 4 to incorporate the relief in CFTC Staff Letter 14–115<sup>174</sup> from § 4.27 filings provided to CPOs that only operate commodity pools in accordance with §§ 4.5 and 4.13, as well as the relief provided under CFTC Staff Letter 15–47<sup>175</sup> to CTAs that do not direct trading of any commodity interest accounts. The Commission further proposes to extend this relief to registered CTAs that only advise commodity pools for which the CTA is also the commodity pool's CPO.

#### b. Benefits

##### i. Benefits Related to the Adoption of the 18–96 Exemption

The Commission intends that the 18–96 Exemption, as proposed, will ultimately provide more comprehensive relief from CPO and pool regulation. As stated above, the Commission preliminarily believes that providing CPO registration relief beyond that currently provided by § 3.10(c)(3)(i) or available in Advisory 18–96 would be beneficial and consistent with the Commission's past prioritization of agency resources for the regulation of intermediary activities affecting U.S. participants in commodity interest markets. Consequently, the Commission also preliminarily believes that eligible persons will receive several benefits from the adoption of the proposed 18–96 Exemption. Because the relief available under the proposed 18–96 Exemption would primarily be an exemption from CPO registration with respect to the operated offshore pools, a claiming CPO would no longer be required to include such offshore pools on Form CPO–PQR filings, relief which is currently not provided by the terms of Advisory 18–96. This will result in a

meaningful, significant reduction in the burdens imposed by the Commission's regulations on CPOs of commodity pools, whose only connections with the U.S. are the location of the CPO and participation in the U.S. commodity interest markets.

Moreover, by enabling the 18–96 exemption to be claimed on a pool-by-pool basis, the Commission is providing additional flexibility to CPOs that operate and offer to participants a mix of onshore and offshore pools. Under § 3.10(c)(3)(i), an offshore CPO that wished to operate pools offered to U.S. persons would be required to choose between the potentially more costly options of having such pools operated by an affiliate registered with the Commission or otherwise eligible for other relief, operating all pools (regardless of location) consistent with another registration exemption, or registering as a CPO and listing all operated pools with the Commission. In contrast, the proposed 18–96 Exemption would enable the CPO to register, or claim an alternative registration exemption such as § 4.13(a)(3), with respect to its commodity pools offered to U.S. persons, but remain exempt from CPO registration, pursuant to proposed § 4.13(a)(4), with respect to its qualifying offshore pools. This would permit the CPO to utilize the operational efficiencies inherent in being able to deploy the same institutional resources across all pools it operates, rather than bifurcating staff and assets across affiliates for purposes of minimizing regulatory costs.

The Commission is aware of some offshore CPOs that are currently limiting their CPO activities solely to offshore pools with offshore participants precisely to remain eligible for the exemption provided by § 3.10(c)(3)(i). By making proposed § 4.13(a)(4) available on a pool-by-pool basis, the Commission preliminarily believes it likely that more offshore CPOs may choose to create pools available to U.S. participants because such CPOs would no longer be required to bear the costs of compliance for offshore pools qualifying for the proposed 18–96 Exemption. Therefore, such CPOs may provide additional investment choices to domestic participants and additional competition for CPOs already operating onshore.

Furthermore, by proposing new exemptions with respect to both the CPO registration of an offshore pool's operator, and the recordkeeping location of an offshore pool's books and records, the Commission intends to confirm the continued availability of Advisory 18–96 relief in the form of amendments to

17 CFR part 4. The Commission is hopeful that the adoption of these new regulatory exemptions will eliminate the need for persons to search for a Commission staff advisory that is over 20 years old, and which, even in 2018, may only be claimed by eligible persons through a paper filing with the Commission. Rather, under the Proposal, a person would now be able to utilize NFA's Online Registration System (ORS) to submit claims of relief electronically, consistent with the mechanism used to claim all other regulatory registration and compliance exemptions available to CPOs and CTAs. This amendment would modernize the effort needed to effectuate such claims and eliminate the costs and expenses to claimants associated with paper filings, e.g., drafting, faxing and/or mailing the requisite notice to both the Commission and NFA.

The proposed amendments also would require persons claiming new § 4.13(a)(4) to annually affirm their claims of exemption for qualifying exempt pools. The Commission preliminarily believes that this requirement promotes transparency regarding the number of entities that would be exempt from CPO registration pursuant to the 18–96 Exemption as proposed, and would also enable the Commission to reassess the exemption's efficacy over time by collecting data on its usage by industry. Consistent with the annual notice requirement for the other exemptions in § 4.13, the Commission proposes to mandate the filing of these notices within 60 days of the calendar year end; the Commission preliminarily believes this to be the most operationally efficient time for filing such an annual notice.

Additionally, the Commission preliminarily believes that there are significant benefits to adopting the prohibition on statutory disqualifications from the terms of Advisory 18–96, as a criteria for all exemptions under § 4.13(a)(1) through (a)(5). The Commission also preliminarily believes that currently, pool participants may be exposed to risk posed by regulations permitting the operation of an offered pool by a person who, generally, would not otherwise be permitted to register with the Commission. Even if the activities of a CPO do not rise to a level warranting Commission oversight through registration, a prospective participant should be able to be confident that a collective investment vehicle using commodity interests is not operated by a person who, for example, is enjoined from engaging in fraud or

<sup>174</sup> CFTC Staff Letter 14–115, available at <https://www.cftc.gov/ids/groups/public/%40rlettergeneral/documents/letter/14-115.pdf> (last retrieved July 31, 2018).

<sup>175</sup> CFTC Staff Letter 15–47, available at <https://www.cftc.gov/sites/default/files/ids/groups/public/%40rlettergeneral/documents/letter/15-47.pdf> (last retrieved July 31, 2018).

embezzlement.<sup>176</sup> As noted above,<sup>177</sup> prior to the rescission of § 4.13(a)(4), Commission staff became aware that a number of persons who were statutorily disqualified from CPO registration were operating commodity pools pursuant to that exemption, and thereby, were continuing to participate in the commodity interest markets with funds solicited and accepted from members of the American public, notwithstanding those disqualifications. The proposed adoption of this prohibition should eliminate the unintended loophole that currently exists, and would permit participants in commodity pools exempt under § 4.13(a)(1)–(a)(5) to be assured that the CPO managing their assets is, at least not statutorily disqualified.

Finally, consistent with prioritizing the application of 17 CFR part 4 requirements to CPOs with respect to pools offered and operated on behalf of U.S. person participants, the 18–96 Exemption, as proposed, would permit a claiming CPO thereunder to remain registered with respect to its operation of commodity pools onshore and/or on behalf of U.S. persons. The Commission would retain all of its authority associated with oversight of its registrants and could still take corrective action, should the CPO engage in wrongdoing in the U.S. commodity interest markets.

#### ii. Benefits Related to the Proposed Family Office Exemptions From CPO and CTA Registration

The Commission expects that the addition of CPO and CTA registration exemptions for qualifying Family Offices will result in two main benefits. First, qualifying Family Offices will not be subject to the costs associated with registration, NFA membership, or compliance with part 4 of the Commission's regulations. The elimination of these costs should result in a reduction of the costs associated with the establishment and operation of a Family Office, which should ultimately benefit the Family Clients.

Second, because the proposed exemptions harmonize the Commission's treatment of Family Offices with that of the SEC, Family Offices will generally only be required to comply with one standard to determine their registration and compliance obligations with respect to both their securities and commodity interest transactions. Although DSIO had previously issued no-action relief letters for both CPO and CTA registration, Family Offices wishing to

avail themselves of this relief were required to prepare a notice making specific representations and to submit the document electronically to a specific email inbox. It is anticipated that, upon finalization of the Proposal, Family Offices would be able to claim the proposed exemption under new § 4.13(a)(8) through NFA's ORS without having to create and submit their own document to claim the exemption. Moreover, for Family Offices claiming relief from CTA registration, the Commission is proposing to make that exemption available without a notice filing, consistent with the majority of the existing exemptions available to CTAs under § 4.14.

Like the other exemptions available under § 4.13, the Commission is proposing to require Family Offices claiming relief from CPO registration to file an annual notice affirming their eligibility. The Commission preliminarily believes that this annual assessment of eligibility would promote transparency regarding the number of entities exempt from registration pursuant to the proposed Family Office exemption and would enable the Commission to assess its efficacy over time. Consistent with the notices required to annually affirm compliance with other exemptions in § 4.13, the notices would be required to be filed within 60 days of the end of the calendar year. The Commission preliminarily believes proposing a timeframe consistent with that already required for annual notices of other existing CPO registration exemptions would reduce complexity in the regulation, and would employ a requirement to which claiming CPOs have already grown accustomed.

#### iii. Benefits Related to the Proposed JOBS Act Relief

The Commission preliminarily believes that the proposed alignment of §§ 4.7(b) and 4.13(a)(3) with the SEC's JOBS Act amendments to Regulation D and Rule 144A would result in several benefits. By harmonizing Commission regulations that specifically reference the statutory and regulatory provisions governing unregistered, exempt securities offerings, the proposed amendments would facilitate full implementation of the JOBS Act by making the relief from the prohibition on general solicitation more widely available. Moreover, the Proposal would eliminate the distinction between private offerings of commodity pools and other privately offered collective investment vehicles that do not transact in commodity interests, thereby treating

similarly situated offerors in a consistent manner.

The Commission notes that persons complying with the terms of Rule 506(c) or Rule 144A and claiming relief under either § 4.7 or § 4.13(a)(3), as proposed to be amended, would still generally be required to limit participants in the offered pool to QEPs. As such, the Commission preliminarily believes that adopting these proposed amendments would neither result in an erosion of the customer protections provided to non-sophisticated pool participants under 17 CFR part 4, nor would it cause an expansion of the relief available under §§ 4.7 and 4.13(a)(3), beyond the discrete issue of solicitation with respect to an exempt securities offering. Thus, the Commission preliminarily believes that there would be a substantial benefit in aligning its regulations with those of its sister regulator, in the interest of fostering cooperation and comity, especially where there is limited customer protection risk for the retail public.

#### iv. Benefits Related to the Exclusion of IAs of BDCs From the CPO Definition

The Commission preliminarily believes that there would be several benefits arising from the proposed exclusion of IAs of BDCs<sup>178</sup> from the definition of CPO in § 4.5. First, the proposed exclusion would enable IAs of BDCs to continue to use commodity interests, consistent with the no-action relief currently in place, as an economical option for reducing the risks related to BDCs' investments in eligible portfolio companies. The proposed exclusion would permit this without subjecting BDCs to the costs associated with having its IA registered as a CPO, and without requiring BDCs and their IAs to comply with the applicable provisions of part 4 of the Commission's regulations. This should enable BDCs and their IAs to deploy more of their resources in furtherance of their statutory purpose, investing in and providing managerial assistance to small- and mid-sized U.S. companies, which would thereby also further one of the statutory goals of the Investment

<sup>178</sup> The Commission has previously determined that a RIC's IA is the appropriate person to serve as the CPO of a RIC for regulatory purposes, and consequently, the Commission is proposing herein to amend § 4.5(a)(1) to designate the IA as the person excluded from the CPO definition. See CPO CTA Final Rule, 77 FR at 11259. Due to the similarities between BDCs and RICs, the amendments proposed by the Commission today are based on the conclusion that the registered IA is also an appropriate selection as the excluded entity in the BDC context.

<sup>176</sup> 7 U.S.C. 12a(2)(C)(ii).

<sup>177</sup> See, *supra*, section 1.B.3.

Company Act of 1940 (as defined above, ICA).

As described more fully above, BDCs are subject to oversight by the SEC that is comparable to that agency's regulation of RICs, and BDCs use commodity interests primarily for bona fide hedging purposes. Because of this similarity to a type of investment vehicle that is already included within the universe of "qualifying entities" under § 4.5, the proposed amendments would treat substantively comparable entities in a consistent manner, thereby enabling members of the public and industry to better predict their regulatory obligations when establishing new investment vehicles. Absent these amendments, IAs of BDCs wishing to avail themselves of the no-action relief from CPO registration are required to prepare a notice filing containing specific representations and to submit the document electronically to a specific email inbox. The Commission anticipates that, upon finalization of this NPRM, registered IAs operating and advising BDCs would be able to claim the proposed exclusion under § 4.5 through NFA's ORS without having to create their own document to claim the proposed exclusion.

#### v. Benefits Related to Relief Under Section 4.27 for CPOs and CTAs

The Commission preliminarily believes that there would be several benefits associated with providing relief from the filings required by § 4.27 to registered CPOs only operating pools pursuant to claimed exclusions under § 4.5 or exemptions under § 4.13, and to registered CTAs that, during the Reporting Period, either only advised pools of which they were also the registered or exempt CPO, or did not direct the trading of any commodity interest accounts whatsoever. Removing the § 4.27 reporting requirement for these persons would eliminate the costs associated with the preparation and filing of Forms CPO-PQR or CTA-PR. The Commission preliminarily believes that this could provide a significant cost savings for these persons, and ultimately, for their participants or clients.

#### c. Costs

##### i. Costs Related to the Proposed 18–96 Exemption

The Commission preliminarily believes there would be some costs associated with the 18–96 Exemption, as proposed. For instance, persons claiming the proposed exemption under new § 4.13(a)(4) would be required to file an annual notice affirming their

eligibility for the exemption, consistent with the requirement applicable to persons claiming all other exemptions available under § 4.13. For purposes of calculating costs of this proposed amendment, the Commission has estimated that a CPO may require 0.5 hours per pool to complete and electronically file the notice with NFA, at an average salary cost of \$57 per hour.<sup>179</sup> The Commission further estimates that 50 CPOs may be affected,<sup>180</sup> each with an average of 3 pools subject to the notice requirement. On this basis, the Commission anticipates an annual cost per entity of approximately \$86.<sup>181</sup> Across all affected entities, the Commission estimates a total annual cost of approximately \$4,300.<sup>182</sup>

With respect to the expansion of the statutory disqualification prohibition to exemption claimants under § 4.13(a)(1) through (a)(5), the Commission lacks data sufficient to determine how many CPOs might be required to cease operating commodity pools pursuant to the exemptions available thereunder, due to the presence of statutorily disqualified principals. There are certainly costs associated with either divesting from commodity interests held within a collective investment vehicle, or in completely winding up a commodity pool's operations, some of which may be experienced by pool participants as opportunity costs and possibly realized losses. The Commission preliminarily believes, however, that these costs would be limited to the first year following adoption of the Proposal, and that, in

<sup>179</sup> The Commission notes that the salary estimates are based upon the May 2017 Findings of National Occupational Employment and Wage Estimates from the Bureau of Labor Statistics. See Occupational Employment Statistics, Bureau of Labor Statistics, available at <https://www.bls.gov/oes/> (last visited July 23, 2018). The Commission's estimate incorporates the mean hourly wage of persons employed in the "Securities, Commodity Contracts and Other Financial Investments and Related Activities" Industry, under the following occupation codes: Compliance Officers (13–1041) at \$43.27, Lawyers (23–1011) at \$94.20, and Paralegals and Legal Assistants (23–2011) at \$33.53. The Commission chose these occupational categories in recognition of the types of staff the Commission preliminarily believes would most commonly be responsible for evaluating eligibility and filing claims for the registration exemptions and exclusion proposed herein. The \$57 per hour wage estimate is derived from a weighted average, rounded to the nearest dollar, with the salaries attributable to each of the three occupation codes given equal weight.

<sup>180</sup> This number is based on the number of claims filed under Advisory 18–96 for the relief for offshore pools as of June 4, 2018.

<sup>181</sup> The Commission calculates this amount as follows: (3 pools per CPO) × (0.5 hours per pool) × (\$57 per hour) = \$86.

<sup>182</sup> The Commission calculates this amount as follows: (\$86 per CPO) × (50 CPOs) = \$4,300.

subsequent years, participants would benefit from the assurance that any CPO that is soliciting them or accepting their funds for investment in an exempt pool operated pursuant to § 4.13(a)(1)–(a)(5) is, at a minimum, registerable.

With respect to the new exemption under § 4.23, which proposes relief consistent with Advisory 18–96 permitting a domestic, registered CPO to keep its pool's original books and records at the office of the operated offshore pool, the Commission has estimated, for purposes of calculating the costs of this proposed amendment, that a CPO may require 0.5 hours per pool to complete and file the notice with NFA at an average salary cost of \$57 per hour. The Commission further estimates that 50 CPOs may be affected,<sup>183</sup> each with an average of 3 pools subject to the notice requirement. On this basis, the Commission anticipates a one-time cost per entity of approximately \$86.<sup>184</sup> Across all affected entities, the Commission estimates a total annual cost of approximately \$4,300.<sup>185</sup> The Commission preliminarily believes that this would be the extent of the costs associated with the proposed incorporation in 17 CFR part 4 of the recordkeeping relief in Advisory 18–96.

##### ii. Costs Related to the Proposed Family Office Exemptions From CPO and CTA Registration

The Commission preliminarily believes there would be some costs associated with the proposed exemptions from CPO and CTA registration for Family Offices. As proposed herein, persons claiming relief under proposed § 4.13(a)(8) would be required to file an annual notice affirming their eligibility, consistent with the requirement applicable to persons claiming most other exemptions available under § 4.13. For purposes of calculating costs of the Proposal, the Commission has estimated that a CPO may require 0.5 hours per pool to complete and electronically file the notice with NFA at an average salary cost of \$57 per hour. The Commission further estimates that 200 CPOs may be affected,<sup>186</sup> each with an average of 3 pools subject to the notice requirement. On this basis, the Commission

<sup>183</sup> This number is based on the number of claims filed under Advisory 18–96 for the relief for offshore pools as of June 4, 2018.

<sup>184</sup> The Commission calculates this amount as follows: (3 pools per sponsor) × (0.5 hours per pool) × (\$57 per hour) = \$86.

<sup>185</sup> The Commission calculates this amount as follows: (\$86 per CPO) × (50 CPOs) = \$4,300.

<sup>186</sup> This number is based on the number of claims received pursuant to the CPO Family Office No-Action Letter, as of July 17, 2018.

anticipates an annual cost per entity of approximately \$86.<sup>187</sup> Across all affected entities, the Commission estimates a total annual cost of approximately \$17,200.<sup>188</sup> Family Offices would also be required to incur expenses associated with the initial determination as to their eligibility for the proposed exemptions. The Commission currently does not have the necessary data to estimate the amount of this expense. The Commission seeks comment as to the amount of such expenses and how this expenditure compares to the costs associated with registration as a CPO and compliance with 17 CFR part 4.

With respect to persons claiming relief under proposed § 4.14(a)(11), because the Commission is not proposing to require a notice filing to claim the relief, the Commission expects that the costs associated with the exemption would be limited to the expenses associated with making the determination as to the person's initial and ongoing eligibility for the proposed exemption. The Commission currently does not have the necessary data to estimate the magnitude of that expense, but would encourage commenters to submit information as to the costs and benefits associated with the exemption from CTA registration, and how such expenses would compare to those required to register as a CTA and to generally comply with 17 CFR part 4.

#### iii. Costs Related to the Proposed Adoption of JOBS Act Relief

The Commission does not anticipate any costs associated with this proposed rulemaking beyond those already identified and analyzed by the SEC when it finalized its amendments to Regulation D and Rule 144A pursuant to the JOBS Act.

#### iv. Costs Related to the Proposed Exclusion of IAs of BDCs From the CPO Definition

The Commission preliminarily believes there would be some costs associated with the exclusion from the definition of CPO for registered IAs of BDCs proposed today. As proposed herein, persons claiming the new exclusion from the definition of CPO with respect to the operation of BDCs under § 4.5 would be required to file an annual notice affirming eligibility, consistent with that required of the registered IAs of RICs. For purposes of calculating costs of the proposed

amendment, the Commission has estimated that a person may require 0.5 hours per pool to complete and electronically file the notice with NFA at an average salary cost of \$57 per hour. The Commission further estimates that 50 persons may be affected,<sup>189</sup> each with an average of 1 BDC subject to the notice requirement. On this basis, the Commission anticipates an annual cost per entity of approximately \$29.<sup>190</sup> Across all affected entities, the Commission estimates a total annual cost of approximately \$1,450.<sup>191</sup>

Registered IAs of BDCs that claim the proposed exclusion under § 4.5 would also have to expend resources to monitor compliance with the applicable trading thresholds in proposed § 4.5(c)(2)(iii). The Commission preliminarily believes that the initial year of compliance with those thresholds would likely be the most costly, as the IAs would possibly need to increase compliance staff and/or provide training for existing compliance staff to ensure effective monitoring of ongoing compliance with the exclusion's terms. The Commission anticipates that certain aspects of this compliance program might be automated to lower substantially the annual costs in subsequent years.

#### v. Costs Related to Relief Under Section 4.27 for CPOs and CTAs

The Commission does not anticipate any costs associated with this proposed amendment, as it is not requiring any action to be taken by CPOs and CTAs that qualify for the proposed exemptions from the Reporting Person definition in § 4.27 to claim that relief.

#### 2. Section 15(a) Considerations

Section 15(a) of the CEA requires the Commission to consider the effects of its actions in light of the following five factors:

##### a. Protection of Market Participants and the Public

The Commission preliminarily believes that the amendments proposed in this release maintain the efficacy of the customer protections of the Commission's regulatory regime while reducing costs. Specifically, with respect to the 18–96 Exemption, as proposed, the Commission would maintain its oversight with respect to

commodity pools with U.S. person participants, while providing relief with respect to the operation of offshore pools, the potential and actual participants of which are generally located outside of the U.S. Moreover, by extending the prohibition on statutory disqualifications to CPOs claiming exemptive relief under § 4.13(a)(1) through (a)(5), the Commission preliminarily believes that it would be providing additional protection to members of the public by reducing the possibility of fraud and other illegal conduct in exempt pools offered by such persons.

The Commission preliminarily believes that the proposed exemptions for Family Offices would also have a limited impact on the protections provided to market participants and the public—because Family Offices, by definition, are not offered to persons other than Family Clients, the general public would not be negatively affected by their failure to register as CPOs and CTAs with the Commission. Moreover, as discussed above, the Commission preliminarily believes that the familial relationships inherent in Family Offices would provide a reasonable alternative mechanism to protect the interests of Family Clients. The Commission preliminarily believes that its regulatory interest in Family Offices is distinct from and much lower than in the case of arms-length transactions between CPOs and pool participants, or CTAs and advisory clients.

With respect to the proposed alignment with the SEC's revisions to Regulation D and Rule 144A pursuant to the JOBS Act, the Commission does not believe that its proposed amendments to §§ 4.7 and 4.13(a)(3) would alter the protections currently available to market participants and the public. Pools offered pursuant to claims of relief under either § 4.7 or § 4.13(a)(3) would still be limited in their permitted participants to QEPs, and the relief provided by those regulations would otherwise remain unchanged. As such, less sophisticated members of the American public would not be able to purchase interests in pools that would not be subject to the full panoply of the compliance obligations under 17 CFR part 4. Therefore, there would be no reduction in the protections in place now by virtue of the proposed JOBS Act amendments.

The Commission preliminarily believes that the proposed exclusion for registered IAs of BDCs would not negatively impact the protection of market participants or the public. BDCs, as well as their registered IAs, continue to be regulated by the SEC under the

<sup>187</sup> The Commission calculates this amount as follows: (3 pools per CPO) × (0.5 hours per pool) × (\$57 per hour) = \$86.

<sup>188</sup> The Commission calculates this amount as follows: (\$86 per CPO) × (200 CPOs) = \$17,200.

<sup>189</sup> This number is based on the number of claims received pursuant to CFTC Staff Letter 12–40, as of July 17, 2018.

<sup>190</sup> The Commission calculates this amount as follows: (1 pool per CPO) × (0.5 hours per pool) × (\$57 per hour) = \$29.

<sup>191</sup> The Commission calculates this amount as follows: (\$29 per CPO) × (50 CPOs) = \$1,450.

ICA, and pursuant to the terms of the proposed exclusion, BDCs operated thereunder will be limited in the extent to which they can use commodity interests by the trading thresholds discussed above.

With respect to the relief provided to certain CPOs and CTAs from the reporting requirements of § 4.27, the Commission does not believe, preliminarily, that eliminating reporting from those persons described herein would have a deleterious impact on the Commission's protection of market participants and the public because of such persons' extremely limited activity in the commodity interest markets.

**b. Efficiency, Competitiveness, and Financial Integrity of Markets**

Section 15(a)(2)(B) of the CEA requires the Commission to evaluate the costs and benefits of a proposed regulation in light of efficiency, competitiveness, and financial integrity considerations. The Commission has not identified a specific effect on the efficiency, competitiveness, and financial integrity of markets as a result of the proposed regulations.

**c. Price Discovery**

Section 15(a)(2)(C) of the CEA requires the Commission to evaluate the costs and benefits of a proposed regulation in light of price discovery considerations. The Commission preliminarily believes that the proposed amendments will not have a significant impact on price discovery.

**d. Sound Risk Management**

Section 15(a)(2)(D) of the CEA requires the Commission to evaluate the costs and benefits of a proposed regulation in light of sound risk management practices. The proposed amendments to the regulations reflect the Commission's preliminary determination that such amendments should harmonize Commission regulations with other federal laws to exempt and reduce the regulatory burden on certain entities.

**e. Other Public Interest Considerations**

Section 15(a)(2)(E) of the CEA requires the Commission to evaluate the costs and benefits of a proposed regulation in light of other public interest considerations. The Commission has not identified other public interest considerations relevant to the costs and benefits of the proposed regulations.

**f. Request for Comment**

The Commission invites comment on its preliminary consideration of the

costs and benefits associated with the various changes to 17 CFR part 4 proposed herein, especially with respect to the five factors that the Commission is required to consider under section 15(a) of the CEA. In addressing these areas and any other aspect of the Commission's preliminary cost-benefit considerations, the Commission encourages commenters to submit any data or other information they may have quantifying and/or qualifying the costs and benefits of the Proposal. The Commission specifically requests comment on the following questions, in addition to those posed above:

13. Has the Commission accurately identified the benefits of the Proposal? Are there other benefits to market participants or the public that may result from the adoption of this NPRM that the Commission should consider? Please provide specific examples and explanations of any such benefits.

14. Has the Commission accurately identified the costs of the Proposal? Are there additional costs to market participants or the public that may result from the adoption of this NPRM that the Commission should consider? Please provide specific examples and explanations of any such costs.

15. Does the Proposal impact the section 15(a) factors in any way that is not described above? Please provide specific examples and explanations of any such impact.

**D. Antitrust Laws**

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under CEA section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.<sup>192</sup>

The Commission preliminarily believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether the Proposal implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered the Proposal to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. The Commission requests comment on whether the Proposal is anticompetitive

and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that the Proposal is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the Act. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the Act that would otherwise be served by adopting the Proposal.

**List of Subjects in 17 CFR Part 4**

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR chapter I as follows:

**PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS**

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

**Authority:** 7 U.S.C. 1a, 2, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

■ 2. In § 4.5, revise paragraphs (a)(1), (b)(1), introductory text of paragraph (c)(2), (c)(2)(i), (c)(2)(ii), and introductory text of paragraph (c)(2)(iii) to read as follows:

**§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term "commodity pool operator."**

(a) \* \* \*

(1) An investment adviser registered as such under the Investment Advisers Act of 1940, as amended;

\* \* \* \* \*

(b) \* \* \*

(1) With respect to any person specified in paragraph (a)(1) of this section, an investment company registered as such, under the Investment Company Act of 1940, as amended, or a business development company that elected an exemption from registration as an investment company under the Investment Company Act of 1940;

\* \* \* \* \*

(c) \* \* \*

(2) The notice of eligibility must contain representations that such person will operate the qualifying entity specified therein in the following ways, as applicable:

(i) The person will disclose in writing to each participant, whether existing or prospective, that the qualifying entity is

<sup>192</sup> 7 U.S.C. 19(b).

operated by a person who has claimed an exclusion from the definition of the term “commodity pool operator” under the Act and, therefore, who is not subject to registration or regulation as a pool operator under the Act; *Provided*, that such disclosure is made in accordance with the requirements of any other federal or state regulatory authority to which the qualifying entity is subject. The qualifying entity may make such disclosure by including the information in any document that its other Federal or State regulator requires to be furnished routinely to participants or, if no such document is furnished routinely, the information may be disclosed in any instrument establishing the entity’s investment policies and objectives that the other regulator requires to be made available to the entity’s participants; and

(ii) The person will submit to such special calls as the Commission may make to require the qualifying entity to demonstrate compliance with the provisions of this paragraph (c); *Provided, however*, that the making of such representations shall not be deemed a substitute for compliance with any criteria applicable to commodity futures or commodity options trading established by any regulator to which such person or qualifying entity is subject; and

(iii) If the person is an investment adviser claiming an exclusion with respect to the operation of a qualifying entity under paragraph (b)(1) of this section, then the notice of eligibility must also contain representations that such person will operate that qualifying entity in a manner such that the qualifying entity:

\* \* \* \* \*

■ 3. Amend § 4.7 paragraph (b) by:

- a. Revising introductory text of paragraph (b);
- b. Renumbering paragraphs (b)(1) through (b)(5) as paragraphs (b)(2) through (b)(6);
- c. Adding a new paragraph (b)(1); and
- d. Revising renumbered paragraph (b)(3).

The addition and revisions read as follows:

**§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.**

\* \* \* \* \*

(b) *Relief available to commodity pool operators—(1) Eligibility.* Relief from specific compliance obligations is available to certain registered commodity pool operators with respect

to the pool(s) they operate, *provided that* the registered commodity pool operator files the required notice under paragraph (d) of this section and otherwise complies with the conditions of paragraph (d) of this section in operating the exempt pool(s).

(i) Regarding an offering that is exempt from registration under section 4(a)(2) of the Securities Act of 1933 and/or offered and sold pursuant to Regulation D, §§ 230.500–230.508 of this title, or resold pursuant to Rule 144A, § 230.144A of this title, or an offering that is offered and sold pursuant to Regulation S, §§ 230.901–230.905 of this title, any registered commodity pool operator who sells participations in such a pool solely to qualified eligible persons may claim any or all of the relief described in this paragraph (b) with respect to such pool.

(ii) Regarding the operation of a pool that is a collective trust fund, the securities of which are exempt from registration pursuant to section 3(a)(2) of the Securities Act of 1933 and sold solely to qualified eligible persons, any bank registered as a commodity pool operator may claim any or all of the relief described in this paragraph (b) with respect to such pool.

\* \* \* \* \*

(3) *Periodic reporting relief.* (i) Exemption from the specific requirements of § 4.22(a) and (b); *Provided*, That a statement signed and affirmed in accordance with § 4.22(h) is prepared and distributed to pool participants no less frequently than quarterly within 30 calendar days after the end of the reporting period. This statement must be presented and computed in accordance with generally accepted accounting principles and indicate:

(A) The net asset value of the exempt pool as of the end of the reporting period;

(B) The change in net asset value from the end of the previous reporting period; and

(C) Either the net asset value per outstanding participation unit in the exempt pool as of the end of the reporting period, or the total value of the participant’s interest or share in the exempt pool as of the end of the reporting period.

(ii) Where the pool is comprised of more than one ownership class or series, the net asset value of the series or class on which the account statement is reporting, and the net asset value per unit or value of the participant’s share, also must be included in the statement required by this paragraph (b)(3); except that, for a pool that is a series fund

structured with limitation on liability among the different series, the account statement required by this paragraph (b)(3) is not required to include the consolidated net asset value of all series of the pool.

(iii) A commodity pool operator that meets the conditions specified in § 4.22(d)(2)(i) to present and compute the commodity pool’s financial statements contained in the Annual Report other than in accordance with generally accepted accounting principles and has filed notice pursuant to § 4.22(d)(2)(iii) may also use the alternative accounting principles, standards or practices identified in the notice with respect to the computation and presentation of the account statement.

\* \* \* \* \*

■ 4. Amend § 4.13 by:

- a. Revising paragraphs (a)(3)(i) and (a)(3)(iii)(E);
- b. Adding paragraph (a)(4);
- c. Renumbering paragraph (a)(6) as paragraph (a)(7);
- d. Adding a new paragraph (a)(6) and paragraph (a)(8);
- e. Revising paragraphs (b)(1)(ii), (b)(2), and (e)(1); and
- f. Adding paragraph (e)(3).

The revisions and additions read as follows:

**§ 4.13 Exemption from registration as a commodity pool operator.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(i) Interests in the pool are exempt from registration under the Securities Act of 1933, and the interests are marketed and advertised to the public in the United States solely, if at all, in compliance with Regulation D, §§ 230.500 through 230.508 of this title, or with Rule 144A, § 230.144A of this title;

\* \* \* \* \*

(iii) \* \* \*

(E) A non-U.S. person; and

\* \* \* \* \*

(4) For each pool for which the person claims exemption from registration under this paragraph (a)(4):

(i) The pool is, and will remain, organized and operated outside of the United States;

(ii) The pool will not hold meetings or conduct administrative activities within the United States;

(iii) No shareholder of or other participant in the pool is or will be a U.S. person;

(iv) The pool will not receive, hold or invest any capital directly or indirectly contributed from sources within the United States; and



(v) The person, the pool, and any person affiliated therewith will not undertake any marketing activity for the purpose, or that could reasonably be expected to have the effect, of soliciting participation in the pool from U.S. persons.

\* \* \* \* \*

(6) Any person who desires to claim an exemption under paragraphs (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) of this section must represent that neither the person nor any of its principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act, unless such disqualification arises from a matter which was previously disclosed in connection with a previous application, if such registration was granted, or which was disclosed more than thirty days prior to the claim of this exemption.

\* \* \* \* \*

(8) For each pool for which the person claims exemption from registration under this paragraph (a)(8):

(i) Interests in the pool are exempt from registration under the Securities Act of 1933, and such interests are offered and sold only to “family clients,” as defined in § 275.202(a)(11)(G)–1 of this title;

(ii) The pool qualifies as a “family office,” as defined in

§ 275.202(a)(11)(G)–1 of this title; and

(iii) The person reasonably believes, at the time of investment, or in the case of an existing pool, at the time of conversion to a pool meeting the criteria of paragraph (a)(8) of this section, that each person who participates in the pool is a “family client” of a “family office,” as defined in

§ 275.202(a)(11)(G)–1 of this title.

(b)(1) \* \* \*

(ii) Contain the section number pursuant to which the operator is filing the notice (*i.e.*, § 4.13(a)(1), (2), (3), (4), (5) or (8)) and represent that the pool will be operated in accordance with the criteria of that paragraph; and

\* \* \* \* \*

(2)(i) The person must file the notice by no later than the time that the pool operator delivers a subscription agreement for the pool to a prospective participant in the pool; *Provided, however that:*

(A) In the case of a claim for relief under § 4.13(a)(4), the person must file the notice within 30 days of registering as a commodity pool operator, or claiming an exemption pursuant to this section with respect to pools marketed to U.S. persons, containing funds belonging to U.S. persons, or otherwise operated in the U.S., its territories, or possessions.

(B) In the case of a claim for relief under § 4.13(a)(5), the person must file the notice by the later of the effective date of the pool’s registration statement under the Securities Act of 1933 or the date on which the person first becomes a director or trustee; and

(C) Where a person registered with the Commission as a commodity pool operator intends to withdraw from registration in order to claim exemption hereunder, the person must notify its pool’s participants in written communication physically delivered or delivered through electronic transmission that it intends to withdraw from registration and claim the exemption, and it must provide each such participant with a right to redeem its interest in the pool prior to the person filing a notice of exemption from registration.

\* \* \* \* \*

(e)(1) Subject to the provisions of paragraphs (e)(2) and (e)(3) of this section, if a person who is eligible for exemption from registration as a commodity pool operator under this section nonetheless registers as a commodity pool operator, the person must comply with the provisions of this part with respect to each commodity pool identified on its registration application or supplement thereto.

\* \* \* \* \*

(3) If a person operates one or more commodity pools described in paragraph (a)(4) of this section, and one or more commodity pools for which it must be, and is, registered as a commodity pool operator, the person is exempt from the requirements applicable to a registered commodity pool operator with respect to the pool or pools described in paragraph (a)(4) of this section.

\* \* \* \* \*

■ 5. In § 4.14, add paragraph (a)(11) to read as follows:

**§ 4.14 Exemption from registration as a commodity trading advisor.**

\* \* \* \* \*

(a) \* \* \*

(11) The person’s commodity trading advice is solely directed to, and is for the sole use of, “family clients,” as defined in § 275.202(a)(11)(G)–1 of this title.

\* \* \* \* \*

■ 6. Revise § 4.23 to read as follows:

**§ 4.23 Recordkeeping.**

(a) Each commodity pool operator registered or required to be registered under the Act must make and keep the following books and records concerning any commodity pool it operates, as well

as the pool operator itself, in an accurate, current and orderly manner, and maintain such books and records in accordance with § 1.31 of this chapter.

Unless otherwise noted, all books and records required to be kept under this section shall be kept and maintained at the pool operator’s main business office. Books and records that are not maintained at the pool operator’s main business office shall be maintained by one or more of the pool’s administrator, distributor, or custodian, or a bank or registered broker or dealer acting in a similar capacity with respect to the pool, pursuant to the relief provided in paragraphs (b) or (c) of this section.

(1) *Concerning the commodity pool.*

(i) An itemized daily record of each commodity interest transaction of the pool, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying commodity, swap type and counterparty, the futures commission merchant and/or retail foreign exchange dealer carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold (including, in the case of a retail forex transaction, offset), exercised, expired (including, in the case of a retail forex transaction, whether it was rolled forward), and the gain or loss realized.

(ii) A journal of original entry or other equivalent record showing all receipts and disbursements of money, securities and other property.

(iii) The acknowledgment specified by § 4.21(b) for each participant in the pool.

(iv) A subsidiary ledger or other equivalent record for each participant in the pool showing the participant’s name and address and all funds, securities and other property that the pool received from or distributed to the participant. This requirement may be satisfied through a transfer agent’s maintenance of records or through a list of relevant intermediaries where shares are held in an omnibus account or through intermediaries.

(v) Adjusting entries and any other records of original entry or their equivalent forming the basis of entries in any ledger.

(vi) A general ledger or other equivalent record containing details of all asset, liability, capital, income and expense accounts.

(vii) Copies of each confirmation or acknowledgment of a commodity interest transaction of the pool, and each purchase and sale statement and each monthly statement for the pool

received from a futures commission merchant, retail foreign exchange dealer or swap dealer.

(viii) Cancelled checks, bank statements, journals, ledgers, invoices, computer generated records, and all other records, data and memoranda prepared or received in connection with the operation of the pool.

(ix) The original or a copy of each report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice (including the texts of standardized oral presentations and of radio, television, seminar or similar mass media presentations) distributed or caused to be distributed by the commodity pool operator to any existing or prospective pool participant or received by the pool operator from any commodity trading advisor of the pool, showing the first date of distribution or receipt if not otherwise shown on the document.

(x) A Statement of Financial Condition as of the close of:

(A) Each regular monthly period if the pool had net assets of \$500,000 or more at the beginning of the pool's fiscal year, or

(B) Each regular quarterly period for all other pools. The Statement must be completed within 30 days after the end of that period.

(xi) A Statement of Income (Loss) for the period between:

(A) The later of: The date of the most recent Statement of Financial Condition furnished to the Commission pursuant to § 4.22(c), April 1, 1979 or the formation of the pool, and

(B) The date of the Statement of Financial Condition required by paragraph (a)(1)(x) of this section. The Statement must be completed within 30 days after the end of that period.

(xii) A manually signed copy of each Account Statement and Annual Report provided pursuant to § 4.22, 4.7(b) or 4.12(b), and records of the key financial balances submitted to the National Futures Association for each commodity pool Annual Report, which records must clearly demonstrate how the key financial balances were compiled from the Annual Report.

(2) *Concerning the commodity pool operator.* (i) An itemized daily record of each commodity interest transaction of the commodity pool operator and each principal thereof, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying commodity, swap type and counterparty, the futures commission merchant or retail foreign

exchange dealer carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold, exercised, or expired, and the gain or loss realized; *Provided, however,* that if the pool operator is a counterparty to a swap, it must comply with the swap data recordkeeping and reporting requirements of part 45 of this chapter, as applicable.

(ii) Each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement furnished by a futures commission merchant or retail foreign exchange dealer to:

(A) The commodity pool operator relating to a personal account of the pool operator; and

(B) Each principal of the pool operator relating to a personal account of such principal.

(iii) Books and records of all other transactions in all other activities in which the pool operator engages. Those books and records must include cancelled checks, bank statements, journals, ledgers, invoices, computer generated records and all other records, data and memoranda which have been prepared in the course of engaging in those activities.

(3) All books and records required to be kept by this section, except those required by paragraphs (a)(1)(iii), (a)(1)(iv), (a)(2)(i), (a)(2)(ii), and (a)(2)(iii), must be made available to participants for inspection and copying during normal business hours. Upon request, copies must be sent by mail to any participant within five business days if reasonable reproduction and distribution costs are paid by the pool participant.

(4) If the books and records are maintained at the commodity pool operator's main business address that is outside the United States, its territories or possessions, then upon the request of a Commission representative, the pool operator must provide such books and records as requested at the place in the United States, its territories or possessions designated by the representative within 72 hours after the pool operator receives the request.

(b) If the pool operator does not maintain its books and records at its main business office, the pool operator shall:

(1) At the time it registers with the Commission or delegates its recordkeeping obligations, whichever is later, file a statement that:

(i) Identifies the name, main business address, and main business telephone number of the person(s) who will be keeping required books and records in lieu of the pool operator;

(ii) Sets forth the name and telephone number of a contact for each person who will be keeping required books and records in lieu of the pool operator;

(iii) Specifies, by reference to the respective paragraph of this section, the books and records that such person will be keeping; and

(iv) Contains representations from the pool operator that:

(A) It will promptly amend the statement if the contact information or location of any of the books and records required to be kept by this section changes, by identifying in such amendment the new location and any other information that has changed;

(B) It remains responsible for ensuring that all books and records required by this section are kept in accordance with § 1.31;

(C) Within 48 hours after a request by a representative of the Commission, it will obtain the original books and records from the location at which they are maintained, and provide them for inspection at the pool operator's main business office; *Provided, however,* that if the original books and records are permitted to be, and are maintained, at a location outside the United States, its territories or possessions, the pool operator will obtain and provide such original books and records for inspection at the pool operator's main business office within 72 hours of such a request; and

(D) It will disclose in the pool's Disclosure Document the location of its books and records that are required under this section.

(2) The pool operator shall also file electronically with the National Futures Association a statement from each person who will be keeping required books and records in lieu of the pool operator wherein such person:

(i) Acknowledges that the pool operator intends that the person keep and maintain required pool books and records;

(ii) Agrees to keep and maintain such records required in accordance with § 1.31 of this chapter; and

(iii) Agrees to keep such required books and records open to inspection by any representative of the Commission or the United States Department of Justice in accordance with § 1.31 of this chapter and to make such required books and records available to pool participants in accordance with this section.

(c) Each registered commodity pool operator whose main business office is located in the United States, its territories or possessions, and who operates a commodity pool that has its main business office outside of the United States, its territories or

possessions, may claim relief from the requirement in paragraph (a) of this section that such books and records be kept at the pool operator's main business office, *provided however*, that the registered pool operator files a claim for exemptive relief with the National Futures Association representing that:

(1) The pool operator will maintain the original books and records of the commodity pool at the main office of the commodity pool located outside the United States, its territories or possessions, and states the name, title, full mailing address, telephone number, and relationship to the commodity pool of the person who will have custody of the pool's original books and records and the location outside the United States where those books and records will be kept;

(2) The pool operator desires to maintain such books and records outside the United States in furtherance of compliance with Internal Revenue Service requirements for relief from U.S. federal income taxation;

(3) The pool operator will maintain duplicate books and records of the commodity pool at a designated office in the United States, its territories or possessions listed in the notice;

(4) The claim is electronically signed by an individual duly authorized to bind the pool operator; and

(5) Within 72 hours after the request from the Commission, the United States Department of Justice, or the National Futures Association, the original books and records will be provided to such representative at a place located in the United States that is specified by the representative.

■ 7. Amend § 4.27 by revising the section heading and paragraph (b) to read as follows:

**§ 4.27 Additional reporting by commodity pool operators and commodity trading advisors.**

\* \* \* \* \*

(b) *Persons required to report.* (1) Except as provided in paragraph (b)(2) of this section, a reporting person is:

(i) Any commodity pool operator that is registered or required to be registered under the Commodity Exchange Act and the Commission's regulations thereunder; or

(ii) Any commodity trading advisor that is registered or required to be registered under the Commodity Exchange Act and the Commission's regulations thereunder.

(2) The following categories of persons shall not be considered reporting persons, as that term is defined in paragraph (b)(1) of this section:

(i) A commodity pool operator that is registered, but operates only pools for which it maintains an exclusion from the definition of the term "commodity pool operator" in § 4.5 and/or an exemption from registration as a commodity pool operator in § 4.13;

(ii) A commodity trading advisor that is registered, but does not direct, as that term is defined in § 4.10(f), the trading of any commodity interest accounts;

(iii) A commodity trading advisor that is registered, but directs only the accounts of commodity pools for which it is registered as a commodity pool operator and, though registered, complies with § 4.14(a)(4); and

(iv) A commodity trading advisor that is registered, but directs only the accounts of commodity pools for which it is exempt from registration as a commodity pool operator, and though registered, complies with § 4.14(a)(5).

\* \* \* \* \*

Issued in Washington, DC, on October 9, 2018, by the Commission.

**Christopher Kirkpatrick,**  
*Secretary of the Commission.*

**Note:** The following appendices will not appear in the Code of Federal Regulations.

**Appendices to Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors—Commission Voting Summary and Chairman's Statement**

**Appendix 1—Commission Voting Summary**

On this matter, Chairman Giancarlo and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

**Appendix 2—Statement of Chairman J. Christopher Giancarlo**

In response to the Request for Information issued as part of Project KISS, the Commission received a number of letters

from members of the asset management industry suggesting areas of potential rulemaking that, in their view, would make the Commission's regulations more efficient and less burdensome. I believe that today's notice of proposed rulemaking furthers both of those interests.

This proposal would incorporate relief from registration and compliance obligations for commodity pool operators (CPOs) and commodity trading advisors (CTAs) consistent with relief currently provided by staff letters and advisories. By integrating this relief now into the Commission's regulations, the Commission is eliminating the need to search for a staff advisory that is over 20 years old and is providing legal certainty to entities currently relying upon the staff relief. This will make regulatory obligations clearer and thereby facilitate compliance.

Specifically, today's notice of proposed rulemaking would reduce burdens for CPOs that operate pools in multiple jurisdictions by permitting them to register with respect to the pools that solicit or accept U.S. domiciled participants. It would maintain an exemption with respect to those offshore activities whose only nexus to the U.S. is that the CPO also manages some U.S. derived assets. It would also shore up our consumer protection provisions by prohibiting statutorily disqualified persons from operating exempt pools and soliciting and accepting funds, thereby giving such pool participants more confidence in their pool's operator. It would ensure that the Commission's regulations treat similarly situated entities in a commensurate manner by excluding the investment advisers of business development companies under terms identical to those under which the investment advisers of registered investment companies are already excluded. It would also eliminate the burden of filing data collection forms for persons with no meaningful, reportable information. Finally, it would provide appropriate relief to the operators and advisors of asset management vehicles whose clients are limited to a single family, consistent with the terms of a comparable regulation adopted by the SEC, furthering our efforts at harmonizing with our fellow regulators in how we treat market participants in this space.

In short, this proposal appropriately tailors regulation and codifies decades-old no action relief in line with the goals of the CFTC's Project KISS. I expect this proposal to be the first in a series of staff recommendations to streamline and simplify regulation of commodity pool operators and commodity trading advisors.

[FR Doc. 2018–22324 Filed 10–17–18; 8:45 am]

**BILLING CODE 6351–01–P**



# FEDERAL REGISTER

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Vol. 83  
No. 202

Thursday,  
October 18, 2018

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## Part IV

### The President

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Proclamation 9805—Minority Enterprise Development Week, 2018  
Proclamation 9806—National School Lunch Week, 2018  
Proclamation 9807—Blind Americans Equality Day, 2018



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# Presidential Documents

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Title 3—

Proclamation 9805 of October 12, 2018

The President

Minority Enterprise Development Week, 2018

**By the President of the United States of America****A Proclamation**

During Minority Enterprise Development Week, we celebrate the success of minority-owned businesses and recognize their contributions to our Nation's prosperity. These businesses are part of the bedrock of our economy, employing eight million people and contributing more than \$1 trillion in economic output each year.

My Administration is committed to empowering minority business owners by creating an environment in which all businesses can expand and thrive. We have eliminated unnecessary and burdensome regulations and effected commonsense, pro-growth policies. The Tax Cuts and Jobs Act enacted the biggest tax cuts and reforms in American history. Importantly, it created the Opportunity Zones Program, through which we are rewarding businesses that invest in distressed communities and that create jobs for those who, all too often, are left behind. We are also leveling the playing field for American businesses by renegotiating and modernizing our trade agreements, including by replacing the North American Free Trade Agreement with the new United States-Mexico-Canada Agreement.

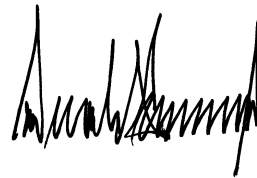
Taken together, these new policies are delivering real results for the American people. Our Nation's unemployment rate has reached its lowest level in 50 years. Minority unemployment rates have fallen to record lows, with the unemployment rate for African Americans falling below 6 percent for the first time in history. The unemployment rate for Hispanic Americans and Asian Americans has also reached historic lows.

As minority-owned businesses continue to benefit from our resurgent economy, my Administration is looking to take additional steps to support these key drivers of economic growth. The Department of Commerce's Minority Business Development Agency is expanding its focus to include policy analysis that will identify opportunities for minority business enterprises across our country. Additionally, the new National Council for the American Worker is developing a National Workforce Strategy. Given the historically tight labor market and recent technological change, our Nation needs a workforce strategy that champions effective, results-driven education and training to meet the needs of students, workers, and businesses.

In the United States of America, each person has the opportunity to achieve their dreams and to build a better future for themselves and their families. Minority business owners exemplify this fundamental truth about our great Nation. This week in particular, we are grateful for the minority business owners who dedicate their time, energy, and entrepreneurial skills each day to improving the economy and restoring the American spirit in every community across the Nation.

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 14 through October 20, 2018, as National Minority Enterprise Development Week. I call upon all Americans to celebrate this week with programs, ceremonies, and activities to recognize the many contributions of American minority business enterprises.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth 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. 2018-22936

Filed 10-17-18; 11:15 am]

Billing code 3295-F9-P



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## Presidential Documents

**Proclamation 9806 of October 12, 2018**

### **National School Lunch Week, 2018**

**By the President of the United States of America**

#### **A Proclamation**

School meals help ensure that our children receive the nourishment they need to grow, develop, and learn. During National School Lunch Week, we acknowledge the benefits of school lunch programs, which provide millions of children the opportunity to enjoy nutritious meals, providing them with the fuel they need to achieve their full physical and mental potential.

The National School Lunch Program provides nearly 4.9 billion low-cost or free meals to approximately 30 million students each year. These meals are a dependable and consistent source of nutrition for many children in schools and childcare centers throughout our country.

My Administration understands that we have a responsibility to children and taxpayers alike to ensure that school meals are nutritious and enjoyable. The best way to do that is to return control back to the people on the ground who make these programs work. That is why we have lowered regulatory hurdles and restored flexibility to schools and communities with respect to the menus in their cafeterias. School nutrition specialists and food service professionals work tirelessly each day to provide students with the nourishment they need to succeed in the classroom and beyond. We are committed to supporting them, listening to their feedback, and equipping them with the tools and flexibility they need to serve our children well.

This week, we recognize the hard work of all the food service professionals, school administrators, community members, and parents across our Nation who help plan, prepare, and serve the meals that sustain millions of children. To emphasize the importance of the National School Lunch Program to our youth's nutrition, the Congress, by joint resolution of October 9, 1962 (Public Law 87-780), has designated the week beginning on the second Sunday in October each year as "National School Lunch Week," and has requested the President to issue a proclamation in observance of this week.

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 14 through October 20, 2018, as National School Lunch Week. I call upon all Americans to join the countless individuals who administer the National School Lunch Program in activities that support and promote awareness of the health and well-being of our Nation's children.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth 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. 2018-22937

Filed 10-17-18; 11:15 am]

Billing code 3295-F9-P

## Presidential Documents

**Proclamation 9807 of October 12, 2018**

### **Blind Americans Equality Day, 2018**

**By the President of the United States of America**

#### **A Proclamation**

On Blind Americans Equality Day, we recognize the contributions that Americans who are blind and visually impaired make to our country, and the value of creating greater opportunities for all people to live full and independent lives. Despite facing challenges, Americans who are blind and visually impaired continue to achieve their dreams and strengthen our communities and our Nation. We remain committed to helping these individuals to be successful and achieve their goals in school, business, and civic life.

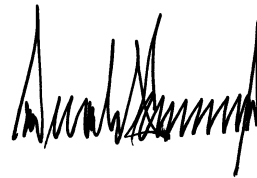
As a Nation, we want all our citizens to have the opportunity to achieve their goals. In keeping with this fundamental tenet of American society, I signed an Executive Order establishing the National Council for the American Worker, which will develop recommendations for a national strategy that empowers American workers to learn the skills needed to secure sustained employment. This national strategy will outline policies that provide all Americans, including those who are blind or visually impaired, with more opportunities to work, earn a living, and connect with others worldwide.

My Administration also supports Federal programs that help Americans who are blind and visually impaired obtain and maintain employment. The Randolph-Sheppard Vending Facilities Program, for example, has provided thousands of individuals who are blind with entrepreneurial opportunities to run their own businesses, generating millions of dollars in sales and substantial earnings. Under the Independent Living Services for Older Individuals Who Are Blind Program, the Department of Education has issued grants to States to support services for individuals 55 and older for whom independent living goals are feasible, but whose severe visual impairment makes competitive employment difficult to obtain. These grants fund independent living services for older individuals who are blind and visually impaired, activities that improve or expand services for these individuals, and raise public awareness of the challenges these individuals overcome.

By joint resolution approved on October 6, 1964 (Public Law 88–628), the Congress authorized the President to designate October 15 of each year as “White Cane Safety Day” to recognize the contributions of Americans who are blind or have impaired vision. As we celebrate the achievements of all those who are blind or visually impaired, I reaffirm my Administration’s commitment to providing more opportunities for these Americans to enjoy freedom and independence. Today, we rededicate our efforts and continue working to ensure that all Americans, including those who are blind or visually impaired, have opportunities to achieve success.

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 15, 2018, as a day to celebrate and recognize the accomplishments and contributions of Americans who are blind and visually impaired. I call upon all Americans to observe this day with appropriate ceremonies and activities to reaffirm our commitment to achieving equality for all Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth 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. 2018-22938

Filed 10-17-18; 11:15 am]

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# FEDERAL REGISTER

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Vol. 83

Thursday,

No. 202

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## Part V

### The President

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Notice of October 17, 2018—Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia



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# Presidential Documents

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Title 3—

Notice of October 17, 2018

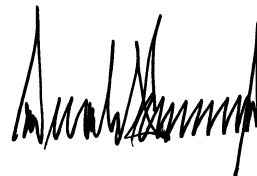
The President

## Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

On October 21, 1995, by Executive Order 12978, the President declared a national emergency with respect to significant narcotics traffickers centered in Colombia, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant narcotics traffickers centered in Colombia and the extreme level of violence, corruption, and harm such actions cause in the United States and abroad.

The actions of significant narcotics traffickers centered in Colombia continue to threaten the national security, foreign policy, and economy of the United States and cause an extreme level of violence, corruption, and harm in the United States and abroad. For this reason, the national emergency declared in Executive Order 12978 of October 21, 1995, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond October 21, 2018. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to significant narcotics traffickers centered in Colombia declared in Executive Order 12978.

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



THE WHITE HOUSE,  
October 17, 2018.

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