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FEDERAL REGISTER

Vol. 84 Tuesday,

No. 33 February 19, 2019

Pages 4677–4948

OFFICE OF THE FEDERAL REGISTER

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

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[FNS 2011–0008]

RIN 0584–AE54

Supplemental Nutrition Assistance Program (SNAP): Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation and Energy Act of 2008

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the SNAP regulations to update procedures for accessing SNAP benefits in drug addiction or alcoholic treatment centers (DAA treatment centers) and group living arrangements (GLAs) through electronic benefit transfer (EBT). The final rule implements the changes indicated in the proposed rule, but never finalized, regarding accessing SNAP benefits in these centers, but does not incorporate any of the substantive changes in the interim final rule regarding how benefits are returned to clients departing these centers due to adverse comments received on the interim final rule. This final rule also implements provisions of the Food, Conservation and Energy Act of 2008 regarding nomenclature changes to reflect the electronic issuance of benefits through EBT at these centers. RIN 0584–AE54 is a continuation of the prior rulemakings published under RIN 0584–AD87.

DATES: This final rule is effective April 22, 2019.

FOR FURTHER INFORMATION CONTACT: Mary Rose Conroy, Chief, Program Design Branch, Program Development Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2803; *MaryRose.Conroy@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 4, 2011, the Department published a proposed rule (76 FR 25414) that would revise 7 CFR part 273 to change the program name from the Food Stamp Program to SNAP and make other nomenclature changes in conformance with Section 4001 of the Food, Conservation and Energy Act of 2008 (Pub. L. 110–246). As part of these nomenclature changes, the Department also proposed to revise § 273.11(e) and (f) to remove references to paper coupons and to update the procedures for providing benefits via EBT cards to residents of drug addiction or alcoholic treatment and rehabilitation programs (DAA treatment centers) and residents of group living arrangements (GLAs). Prior to the implementation of EBT, such centers were required to redeem residents' paper coupons through authorized food stores. Under EBT systems, both DAA treatment centers and GLAs may be authorized as retailers in order to redeem benefits directly through a financial institution. The institutions may also use an aggregate EBT card, or may use individual EBT cards at authorized stores if the center is the household's authorized representative. The Department proposed to update the regulatory description to conform with current EBT processes.

Commenters responding to the nomenclature changes in the proposed rule recommended additional substantive revisions to § 273.11(e) and (f) to better protect the rights of SNAP clients who are residents of DAA treatment centers and GLAs when these clients leave these establishments. Accordingly, in addition to finalizing the nomenclature updates for those particular provisions, the final rule Supplemental Nutrition Assistance Program (SNAP): Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation and Energy Act of 2008, published January 6, 2017 (82 FR 2010), included an interim final rule with amendments to 7 CFR 273.11(e) and (f) to revise the procedures for when SNAP clients leave DAA treatment centers or GLAs. Specifically, the interim final rule mandated that DAA treatment centers and GLAs return EBT cards to residents with benefits pro-rated based on the date of their departure, submit complete change report forms to the State agency when a resident leaves, and notify the State agency within 5 days if unable to provide the resident with their EBT card at departure.

The initial comment period for this interim final rule was 60 days. Consistent with the memorandum of January 20, 2017, to the heads of executive departments and agencies from the Assistant to the President and Chief of Staff, entitled ''Regulatory Freeze Pending Review'', the comment period for the interim final rule was extended from ending on March 7, 2017, to April 6, 2017. The effective date for the interim final rule was delayed to June 5, 2017.

Comments on the Interim Final Rule

FNS received five comments in response to the interim final rule. Four of the comments were from State agencies and one comment was outside the scope of the interim final rule. All four germane comments were adverse.

Commenters indicated significant logistical and operational difficulties to comply with the provisions as written and, as a result, the Department has concluded that more research and stakeholder outreach must be done in this area before requirements for these centers are finalized.

The interim final rule required that when a household leaves a GLA or DAA treatment center, the GLA or DAA treatment center must return a prorated amount of the departing household's monthly allotment back to the household's EBT account based on the number of days in the month that the household resided at the center. Three commenters noted that GLAs and DAA treatment centers are not required by regulations to be authorized as SNAP retailers or to have EBT point-of-sale (POS) devices that would facilitate such action. As such, they expressed concern as to how centers without EBT POS devices would be able to return benefits once SNAP clients were no longer residents. One of these commenters, a State agency, indicated that while it supported the return of pro-rated benefits to households, the State had no DAA treatment centers or GLAs authorized as retailers in the State and thus there would be no functional way to implement the rule as written. Another commenter noted that proration is not an automatic function

for EBT systems and, therefore, proration would have to be manually completed by even those GLAs or DAA treatment centers with POS devices, which could potentially be error-prone.

The Department acknowledges that the interim final rule does not accurately reflect the operationalization of benefit redemptions in GLAs and DAA treatment centers that are not authorized retailers, and would cause undue hardship in requiring every GLA and DAA treatment center to become an authorized retailer. The Department acknowledges it was not its intent to require all GLAs and DAA treatment centers to become authorized SNAP retailers, but that the interim final rule as written would have required this of the centers in order for them to meet the requirements outlined in the rule in a practical manner. Due to the negative response, the Department is not finalizing the substantive amendments contained in the interim final rule.

Changes to § 273.11 in the Final Rule

This rule only finalizes the statutorily mandated nomenclature changes and procedures for § 273.11(e) and (f), as well as the paragraph removals, redesignations and technical revisions as outlined in the department's proposed rule issued on May 4, 2011. The Department received no comments that addressed these changes alone. The changes to procedures in § 273.11(e) and (f) are codifying existing policy. The Department is also making changes throughout § 273.11(e) to ensure consistent nomenclature in referring to DAA treatment centers, removing references to ''DAA centers'' or ''DAAs'' and replacing these with ''DAA treatment centers'', and clarifying that ''DAA treatment centers'' refers to publicly operated or private non-profit drug addict or alcoholic treatment and rehabilitation programs. The proposed rule's paragraph removals, redesignations and revisions that were substantially unchanged and codified by the interim final rule are not amended further here.

Future Steps and Guidance on This Provision

The Department still intends to further assess the operations of GLAs and DAA treatment centers and remains interested in enhancing protections when clients leave a GLA or DAA treatment center. However, the Department intends to consult with State agencies and other stakeholders in order to determine the most appropriate changes for future rulemaking on this topic. The Department will conduct a holistic review of GLAs and DAA treatment centers that are authorized retailers as well as those that are not authorized retailers to better understand current operational procedures, and work with all stakeholders to determine what appropriate changes should be made in rulemaking based on existing processes and technology. The Department appreciates the concerns for client access and GLA and DAA treatment center responsibility raised by commenters in both the proposed and interim final rules, and will take them into consideration while conducting its review of GLA and DAA treatment center procedures. During this time, GLA and DAA treatment centers will continue to follow the procedures as outlined in this final rule and residents who depart these facilities will continue to receive some benefits depending on the time of month of their departure.

Procedural Matters

Executive Orders 12866 and 13563

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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This final rule has been determined to be significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Executive Orders 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process. FNS considers this rule to be an Executive Order 13771 deregulatory action.

Regulatory Impact Analysis

A Regulatory Impact Analysis must be prepared for rules with economically significant effects ($100 million or more in any one year). USDA does not anticipate that this final rule is likely to have an economic impact of $100 million or more in any one year, and therefore, does not meet the definition of ''economically significant'' under Executive Order 12866. Provisions of this rule do not affect the level of benefits paid to SNAP participants who reside in these facilities. The Department estimates that removing the substantive provisions of the interim final rule will result in a savings of $2.6 million annually and $13 million over five years in administrative costs to federal and State governments and DAA treatment centers and GLAs operating as authorized SNAP retailers.

The interim final rule provisions would have inadvertently required additional DAA treatment centers and GLAs to become SNAP-authorized retailers. Under provisions of the Food and Nutrition Act, operators of GLAs and DAAs that would have become newly-authorized SNAP retailers under the interim final rule provisions would be eligible for free EBT-only point-of-sale (POS) devices. Estimated cost of providing equipment to newly authorized DAA treatment centers and GLAs is $540 per year per retailer; this cost would be split evenly between federal and State governments. The Department estimates that an additional 1,900 DAA treatment centers or GLAs would have become newly-authorized under the interim final rule provisions, so the total cost of providing this equipment to newly-authorized GLAs and DAAs would have been approximately $1 million per year.

In addition, DAA treatment centers and GLAs will no longer incur costs related to prorating benefits and submitting reports to State agencies when residents leave facilities. The Department estimates that removing this requirement will save GLAs and DAAs approximately $1.6 million annually. There currently are approximately 1,500 DAA treatment centers and GLAs that are authorized SNAP retailers. As noted above, the Department estimates that an additional 1,900 DAA treatment centers and GLAs would have become authorized retailers under the interim final rule provisions, for a total of about 3,400 (2,100 DAAs and 1,300 GLAs).

Based on annual redemptions of approximately $120 million, the Department estimates the average currently-authorized DAA serves about 38 SNAP participants per month and the average authorized GLA serves about 99 SNAP participants per month.[1] Assuming the average length of stay for residential treatment facilities is 90 days and the average length of stay for GLAs is one year, each facility would have

[1] In 2016, there were 945 authorized DAAs (who redeemed an average of $4,185 monthly) and 577 authorized GLAs (who redeemed an average of $10,828 monthly). To estimate the number of residents per facility, the monthly redemptions were divided by the fiscal year 2016 average per-person benefit for a household receiving Supplemental Security Income ($109.49).

been required to prorate benefits and report to the State agency approximately 148 times per year (DAAs) or 99 times per year (GLAs) under the interim final rule provisions. The Department assumes each proration/report would take .25 hours at a mean wage of $14.65 for a health care support worker, or $3.66 per occurrence.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, the Administrator of the Food and Nutrition Service certifies that this final rule does not have a significant impact on a substantial number of small entities including DAA treatment centers and GLAs. State and local human service agencies will be the most affected to the extent that they administer SNAP. The provisions of this final rule are implemented through State agencies which are not small entities as defined by the Regulatory Flexibility Act.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.561. For the reasons set forth in the final rule, Department of Agriculture Programs and Activities Covered Under Executive Order 12372 (48 FR 29114), the Program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section 6(b)(2)(B) of Executive Order 13132. The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not expected to affect the participation of protected individuals in SNAP.

Further, FNS specifically prohibits the State and local government agencies that administer the program from engaging in discriminatory actions. Discrimination in any aspect of program administration is prohibited by SNAP regulations, the Food and Nutrition Act of 2008, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and Title VI of the Civil Rights Act of 1964. State agencies must comply with these requirements and the regulations at 7 CFR 272.6.

Executive Order 13175

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

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

Currently, FNS provides regularly scheduled quarterly information sessions as a venue for collaborative conversations with Tribal officials or their designees. Reports from these information sessions are put on the USDA annual reporting on Tribal consultation and collaboration. FNS received no comments with Indian Tribes on either the proposed rule or the interim final rule that related to these provisions.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) to approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

This rule does not contain information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1994.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act

of 2002, Public Law 107–347, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 273

Administrative practice and procedure, Food stamps, Fraud, Grant programs-social programs, Income taxes, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 273 is amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 1. The authority citation for 7 CFR part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 2. In § 273.11:
■ a. Revise paragraph (e)(1);
■ b. Amend paragraph (e)(2)(i) by removing the words ''DAA center'' and adding in their place the words ''DAA treatment center'';
■ c. Amend paragraph (e)(2)(ii) by removing the words ''DAA centers'' and adding in their place the words ''DAA treatment centers'';
■ d. Amend paragraph (e)(2)(iii) by removing the words ''treatment center'' and adding in their place the words ''DAA treatment center'';
■ e. Amend paragraph (e)(3) by removing the words ''DAA center'' and adding in their place the words ''DAA treatment center'';
■ f. Amend paragraph (e)(4) by removing the words ''DAA centers'' and adding in their place the words ''DAA treatment centers'';
■ g. Revise paragraphs (e)(5) and (6);
■ h. Remove the last sentence of paragraph (f)(4);
■ i. Revise paragraph (f)(5);
■ j. Redesignate paragraphs (f)(6) and (7) as paragraphs (f)(7) and (8);
■ k. Add a new paragraph (f)(6);
■ l. Amend newly redesignated paragraph (f)(7) by removing the words ''drug and alcoholic treatment centers in paragraphs (e)(7) and (e)(8)'' and adding in their place the words ''DAA treatment centers in paragraphs (e)(7) and (8)''; and
■ m. Revise the first sentence of newly redesignated paragraph (f)(8).

The revisions and additions read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(e) * * * (1) Narcotic addicts or alcoholics who regularly participate in publicly operated or private non-profit drug addict or alcoholic treatment and rehabilitation programs (DAA treatment centers) on a resident basis may voluntarily apply for SNAP. Applications must be made through an authorized representative who is employed by the DAA treatment center and designated by the center for that purpose. The State agency may require the household to designate the DAA treatment center as its authorized representative for the purpose of receiving and using an allotment on behalf of the household. Residents must be certified as one-person households unless their children are living with them, in which case their children must be included in the household with the parent.

* * * * *

(5) DAA treatment centers may redeem benefits in various ways depending on the State's EBT system design. The designs may include DAA treatment center use of individual household EBT cards at authorized stores, authorization of DAA treatment centers as retailers with EBT access via POS at the center, DAA treatment center use of a center EBT card that is an aggregate of individual household benefits, and other designs. Regardless of the process elected, the State must ensure that the EBT design or DAA treatment center procedures prohibit the DAA treatment center from obtaining more than one-half of the household's allotment prior to the 16th of the month or permit the return of benefits to the household's EBT account through a refund, transfer, or other means. Guidelines for approval of EBT systems are contained in part 274 of this chapter.

(6) When a household leaves the DAA treatment center, the center must perform the following:

(i) Notify the State agency. If possible, the center must provide the household with a change report form to report to the State agency the household's new address and other circumstances after leaving the center and must advise the household to return the form to the appropriate office of the State agency within 10 days. After the household leaves the DAA treatment center, the center can no longer act as the household's authorized representative for certification purposes or for obtaining or using benefits.

(ii) Provide the household with its EBT card if it was in the possession of the DAA treatment center. The DAA treatment center must return to the State agency any EBT card not provided to departing residents by the end of each month.

(iii) If no benefits have been spent on behalf of the individual household, the center must return the full value of any benefits already debited from the household's current monthly allotment back into the household's EBT account at the time the household leaves the center.

(iv) If the benefits have already been debited from the EBT account and any portion spent on behalf of the household, the following procedures must be followed.

(A) If the household leaves prior to the 16th day of the month, the center must ensure that the household has one-half of its monthly benefit allotment remaining in its EBT account unless the State agency issues semi-monthly allotments and the second half has not been posted yet.

(B) If the household leaves on or after the 16th day of the month, the State agency, at its option, may require the center to give the household a portion of its allotment. If the center is authorized as a retailer, the State agency may require the center to provide a refund for that amount back to the household's EBT account at the time that the household leaves the center. Under an EBT system where the center has an aggregate EBT card, the State agency may, but is not required to, transfer a portion of the household's monthly allotment from a center's EBT account back to the household's EBT account. In either case, the household, not the center, must be allowed to have sole access to any benefits remaining in the household's EBT account at the time the household leaves the center.

(v) If the household has already left the DAA treatment center, and as a result, the DAA treatment center is unable to return the benefits in accordance with this paragraph (e)(6), the DAA treatment center must advise the State agency, and the State agency must effect the return instead. These procedures are applicable at any time during the month.

* * * * *

(f) * * *

(5) When the household leaves the facility, the GLA, either acting as an authorized representative or retaining use of the EBT card and benefits on behalf of the residents (regardless of the method of application), shall return the EBT card (if applicable) to the household. The household, not the GLA, shall have sole access to any benefits remaining in the household's EBT account at the time the household leaves the facility. The State agency must ensure that the EBT design or procedures for GLAs permit the GLA to

return unused benefits to the household through a refund, transfer, or other means.

(6) If, at the time the household leaves, no benefits have been spent on behalf of that individual household, the facility must return the full value of any benefits already debited from the household's current monthly allotment back into the household's EBT account. These procedures are applicable at any time during the month. However, if the facility has already debited benefits and spent any portion of them on behalf of the individual, the facility shall do the following:

(i) If the household leaves the GLA prior to the 16th day of the month, the facility shall provide the household with its EBT card (if applicable) and one-half of its monthly benefit allotment. Where a group of residents has been certified as one household and a member of the household leaves the center:

(A) The facility shall return a pro rata share of one-half of the household's benefit allotment to the EBT account and advise the State agency that the individual is entitled to that pro rata share; and

(B) The State agency shall create a new EBT account for the individual, issue a new EBT card and transfer the pro rata share from the original household's EBT account to the departing individual's EBT account. The facility will instruct the individual on how to obtain the new EBT card based on the State agency's card issuance procedures.

(ii) If the household or an individual member of the group household leaves on or after the 16th day of the month and the benefits have already been debited and used, the household or individual does not receive any benefits.

(iii) The GLA shall return to the State agency any EBT cards not provided to departing residents at the end of each month. Also, if the household has already left the facility and as a result, the facility is unable to perform the refund or transfer in accordance with this paragraph (f)(5), the facility must advise the State agency, and the State agency must effect the return or transfer instead.

(iv) Once the resident leaves, the GLA no longer acts as his/her authorized representative. The GLA, if possible, shall provide the household with a change report form to report to the State agency the individual's new address and other circumstances after leaving the GLA and shall advise the household to return the form to the appropriate office of the State agency within 10 days.

* * * * *

(8) If the residents are certified on their own behalf, the benefits may either be debited by the GLA to be used to purchase meals served either communally or individually to eligible residents or retained by the residents and used to purchase and prepare food for their own consumption. * * *

* * * * *

Dated: February 12, 2019.

Brandon Lipps,

Acting Deputy Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 2019–02551 Filed 2–15–19; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 953

[Doc. No. AMS–SC–18–0037; SC18–953–1 FR]

Irish Potatoes Grown in Southeastern States; Termination of Marketing Order 953

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; termination of order.

SUMMARY: This final rule terminates the Federal marketing order regulating the handling of Irish potatoes grown in Southeastern states (Order). The Order has been suspended, at the industry's recommendation, since 2011. Because the industry has not petitioned to have the Order reactivated in accordance with the terms of the suspension, the Agricultural Marketing Service (AMS) is terminating the Order.

DATES: Effective March 21, 2019.

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

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

SUPPLEMENTARY INFORMATION: This action is governed by section 608c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' and Marketing Agreement 104 and Marketing Order 953 (7 CFR part 953), referred to as the ''Order,'' effective under the Act.

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule terminates the Order that authorizes regulation of the handling of Irish potatoes grown in designated counties of Virginia and North Carolina. The Order has been suspended for approximately seven years, at the industry's recommendation, and the industry has not expressed interest in reactivating the Order.

Section 953.66 provides, in pertinent part, that USDA terminate or suspend any or all provisions of the Order when

a finding is made that the Order or any provision thereof does not tend to effectuate the declared policy of the Act. In addition, section 608c(16)(A) of the Act provides that USDA terminate or suspend the operation of any order or any provision thereof whenever they obstruct or do not tend to effectuate the declared policy of the Act. USDA is required to notify Congress not later than 60 days before the date an order would be terminated.

The Order has been in effect since 1948 and provides for the establishment of grade, size, quality, maturity, and inspection requirements for Irish potatoes grown in Southeastern states. The Order also authorizes reporting and recordkeeping functions required for the operation of the Order. The Order, when in effect, is locally administered by the Southeastern Potato Committee (Committee) and is funded by assessments imposed on handlers.

Based on the Committee's unanimous recommendation in 2011, USDA suspended the Order for a three-year period ending March 1, 2014. The Committee recommended the suspension to eliminate the expense of administering the Order while determining the effects of not having the Order in place. When the Committee made the recommendation to suspend the Order, it wanted the industry to have the option of reactivating the Order, if deemed appropriate. The final rule adopting an interim rule that implemented that action was published in the **Federal Register** on October 21, 2011 (76 FR 65360). Upon suspension of the Order in 2011, the Committee ceased to function.

In anticipation of the expiration of the suspension on March 1, 2014, USDA sent a letter to members of the industry, most of whom were former Committee members, in late 2013. The letter stated that suspension of the Order would soon be ending and that members of the industry would need to recommend an action to USDA. On December 18, 2013, representatives of the Virginia and North Carolina Irish potato industry met and requested that the suspension of all provisions of the Order be continued through March 1, 2017. The extension of the suspension would allow the industry further opportunity to study changes and evaluate new developments in the industry that could affect the need for the Order. The final rule adopting the interim rule that implemented that action was published in the **Federal Register** on August 19, 2015 (80 FR 50191).

Under the terms of the suspension, if the industry did not petition USDA to have the Order reactivated by March 1, 2017, AMS would propose termination of the Order. To date, the industry has not filed a petition to have the Order reactivated.

Final Regulatory Flexibility Analysis

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

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

There are approximately ten handlers of Irish potatoes grown in Southeastern states who are subject to regulation under the Order and approximately 20 potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,500,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000 (13 CFR 121.201).

Using prices reported by AMS' Market News Service, the average free on board (f.o.b.) price for Southeastern potatoes for the 2017 marketing season was about $50 per hundredweight. Based on information from the National Agricultural Statistics Service (NASS), estimated total production in Virginia and North Carolina for the 2017 season was 4,666,000 hundredweight of potatoes. Multiplying the f.o.b. price by the estimated production results in an estimated handler value of $233,300,000. Dividing this figure by the number of handlers (ten) yields an estimated average annual handler receipt of $23,330,000. Using the average price and shipment information, the number of handlers, and assuming a normal distribution, the majority of handlers have average annual receipts of more than $7,500,000.

Based on information from NASS, during the 2017 season, there were 19,600 total acres harvested in Virginia and North Carolina with a total value of production at $59,038,000 for the season. The average producer prices for Virginia and North Carolina Irish potatoes in 2017 were $16.30 and $11.40 per hundredweight, respectively, for an average price of $13.85. Dividing the 2017 total production value by the average of the two states' producer prices and using a normal distribution, the average gross annual revenue for each of the 20 producers would be about $213,134, which is below the SBA threshold of $750,000.

Therefore, based on the above handler and producer revenue estimates, the majority of Southeastern potato handlers may be classified as large entities, while a majority of producers may be classified as small entities.

This final rule terminates the Order for Irish potatoes grown in Southeastern states and the rules and regulations issued thereunder. The Order authorizes regulation of the handling of Irish potatoes grown in designated counties of Virginia and North Carolina. The Order was initially suspended in 2011, at the recommendation of the Committee, to eliminate the expense of administering the Order while the industry determined the effects of not having regulations in place. At the request of the industry in 2013, the suspension was extended through March 1, 2017, to provide the industry with more time to consider changes and evaluate new developments that could affect the future need for the Order. The final rule that extended the suspension through March 1, 2017, stated that AMS would proceed with a notice to propose termination absent an industry recommendation to reactivate the Order. The results of the suspension and the industry's failure to petition USDA to have the Order reactivated by the end of the suspension period support termination of the Order.

Section 953.66 provides that USDA terminate or suspend any or all provisions of the Order when a finding is made that the Order does not tend to effectuate the declared policy of the Act. Furthermore, section 608c(16)(A) of the Act provides that USDA terminate or suspend the operation of any order whenever the order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act. An additional provision requires that Congress be notified not later than 60 days before the date an order would be terminated.

Termination of the Order will reduce costs to both handlers and producers (while marketing order requirements are applied to handlers, the costs of such requirements are often passed on to producers). Furthermore, following a period of over seven years of regulatory suspension, AMS has determined that termination of the Order will not adversely impact the Virginia and North Carolina Irish potato industry.

As an alternative to this action, AMS considered not terminating the Order. In that case, the industry could have

recommended further refinements to the Order and the handling regulations to better meet current marketing needs. However, the industry did not petition to have the Order reactivated by the end of the suspension period. Therefore, this alternative was rejected, and AMS is terminating the Order.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements being terminated were previously approved by OMB and assigned OMB No. 0581–0178, Fruit, Vegetable and Specialty Crops. Termination of the reporting requirements under the Order will reduce the reporting and recordkeeping burden on Irish potato handlers in Southeastern states and should further reduce industry expenses.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

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

A proposed rule inviting comments regarding the termination of the Order was published in the **Federal Register** on July 25, 2018 (83 FR 35151). USDA distributed the rule to Virginia and North Carolina potato associations and other Southeastern potato industry members. In addition, the rule was made available on the internet by USDA and the Office of the Federal Register. The rule provided a 60-day comment period, which ended on September 24, 2018. One comment was received in support of the termination.

Based on the foregoing, and pursuant to § 608c(16)(A) of the Act and § 953.66 of the Order, it is hereby found that Federal Marketing Order 953 regulating the handling of Irish potatoes grown in Southeastern states does not tend to effectuate the declared policy of the Act and is therefore terminated.

Section 608c(16)(A) of the Act requires USDA to notify Congress at least 60 days before terminating a Federal marketing order. Congress was so notified on October 24, 2018.

List of Subjects in 7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 953—[REMOVED]

■ For the reasons set forth in the preamble, under the authority of 7 U.S.C. 601–674, 7 CFR part 953 is removed.

Dated: February 12, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–02581 Filed 2–15–19; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2018–0220]

RIN 3150–AK17

List of Approved Spent Fuel Storage Casks: NAC International Multi-Purpose Canister Storage System, Certificate of Compliance No. 1025, Amendment Nos. 7 and 8

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of March 4, 2019, for the direct final rule that was published in the **Federal Register** on December 18, 2018. This direct final rule amended the NRC's spent fuel storage regulations by revising the ''List of approved spent fuel storage casks'' to include Amendment Nos. 7 and 8 to Certificate of Compliance No. 1025 for the NAC International Multi-Purpose Canister (NAC–MPC) Storage System.

DATES: *Effective Date:* The effective date of March 4, 2019, for the direct final rule published December 18, 2018 (83 FR 64729), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2018–0220 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0220. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The proposed amendment to the certificate, the proposed changes to the technical specifications, and the preliminary safety evaluation report are available in ADAMS under Accession No. ML18255A021. The final amendments to the certificate, final changes to the technical specifications, and final safety evaluation reports can be viewed in ADAMS under Accession Nos. ML19038A249 for Amendment No. 7 and ML19039A088 for Amendment No. 8.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Bernard H. White, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6577; email: *Bernard.White@nrc.gov* or Gregory Trussell, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6244; email: *Gregory.Trussell@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: On December 18, 2018 (83 FR 64729), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* by revising the ''List of approved spent fuel storage casks'' to include Amendment Nos. 7 and 8 to Certificate of Compliance No. 1025 for the NAC–MPC Storage System. Amendment No. 7 revises the technical specifications to eliminate the requirements for the heat removal system to be operable for La Crosse Boiling Water Reactor spent fuel stored in the NAC–MPC because convective cooling is not required, and to eliminate duplicative requirements. In addition, Amendment No. 8 removes duplicative surveillance requirements in the technical specifications because these requirements are already required by the revised Technical Specification A 3.1.6,

''CONCRETE CASK Heat Removal System.''

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on March 4, 2019. As described more fully in the direct final rule, a significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. Because no significant adverse comments were received, the direct final rule will become effective as scheduled.

Dated at Rockville, Maryland, this 12th day of February 2019.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–02599 Filed 2–15–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2018–0221]

RIN 3150–AK18

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Multipurpose Canister Cask System, Certificate of Compliance No. 1014, Amendment Nos. 11 and 12

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of February 25, 2019, for the direct final rule that was published in the **Federal Register** on December 12, 2018. This direct final rule amended the NRC's spent fuel storage regulations by revising the Holtec International HI–STORM 100 Multipurpose Canister Cask System (HI–STORM 100 System) listing within the ''List of approved spent fuel storage casks'' to include Amendment Nos. 11 and 12 to Certificate of Compliance No. 1014. Amendment Nos. 11 and 12 revise multiple items in the technical specifications for multi-purpose canister models listed under Certificate of Compliance No. 1014; most of these revisions involve changes to the authorized contents. In addition, Amendment No. 11 makes several other editorial changes.

DATES: The effective date of February 25, 2019, for the direct final rule published December 12, 2018 (83 FR 63794), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2018–0221 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0221. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The proposed amendments to the certificate, the proposed changes to the technical specifications, and the preliminary safety evaluation reports are available in ADAMS for Amendment No. 11 under Accession No. ML18141A560 and Amendment No. 12 under Accession No. ML18087A055. The final amendments to the certificate, final changes to the technical specifications, and final safety evaluation reports can also be viewed in ADAMS under Accession No. ML18355A369.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Yen-Ju Chen, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–1018; email: *Yen-Ju.Chen@nrc.gov* or Vanessa Cox, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–8342; email: *Vanessa.Cox@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: On December 12, 2018 (83 FR 63794), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) to the HI–STORM 100 System listing within the ''List of approved spent fuel storage casks'' to include Amendment Nos. 11 and 12 to Certificate of Compliance No. 1014. Amendment Nos. 11 and 12 revise multiple items in the technical specifications for multi-purpose canister models listed under Certificate of Compliance No. 1014; most of these revisions involve changes to the authorized contents. In addition, Amendment No. 11 makes several other editorial changes.

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on February 25, 2019. As described more fully in the direct final rule, a significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

The NRC received two comments and has determined that they are not significant adverse comments. One comment questioned the short-term economic gains. As this rulemaking only addressed changes to the technical specifications for dry shielded canisters used to store nuclear waste on-site, the NRC determined this comment to be out of scope of this direct final rule. The second comment concerned specific casks used at a reactor site, a direct final rule for another storage cask, and another cask that is the subject of an NRC enforcement action. These issues are also outside the scope of this direct final rule.

The second commenter also stated that the environmental assessment for this direct final rule did not consider the effects of certain natural phenomena. Pursuant to 10 CFR part 72, the NRC requires that an applicant for a spent fuel storage system provide the design bases, design criteria, and the margins of safety for the system in its safety analysis. The design bases, design criteria, and safety margins include consideration of applicable natural phenomena. In its review, the NRC determined that the cask system is designed to mitigate the effects of design basis accidents, including human-induced and the most severe natural phenomena. Specifically, in considering design requirements for each accident condition, the NRC evaluates whether the design would prevent loss of confinement, shielding, and criticality control in the event of an accident. The NRC identified a broad range of natural

hazards and accidents that were considered in the environmental assessment for this direct final rule. Further, the safety evaluation report for the Holtec International HI–STORM 100 Cask System (ADAMS Accession No. ML003711865; May 4, 2000) identified all accident-level events and conditions, which are Design Events III and IV as defined in American National Standard Institute/American Nuclear Society 57.9–1984. These include natural phenomena and human-induced low-probability events such as those listed in Comment 2. The NRC determined in the May 4, 2000, safety evaluation report that all potential safety consequences were considered.

This direct final rule makes changes to the technical specifications of Certificate of Compliance No. 1014 for the HI–STORM 100 Cask System. However, this direct final rule makes limited and routine changes; it does not involve significant changes to the design or the fabrication of the cask system. The second comment does not raise specific safety concerns regarding the changes made in this direct final rule. The second comment did not propose a specific change or an addition that could be incorporated into this direct final rule and did not raise a relevant issue not previously addressed by the NRC. Accordingly, the second comment does not meet the criteria of a significant adverse comment. Because no significant adverse comments were received, this direct final rule will become effective as scheduled.

Dated at Rockville, Maryland, this 12th day of February 2019.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–02593 Filed 2–15–19; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0647; Product Identifier 2017–SW–083–AD; Amendment 39–19557; AD 2019–03–05]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Bell Helicopter Textron Canada Limited (Bell) Model 429 helicopters. This AD revises the life limit for the nose landing gear (NLG) assembly. This AD was prompted by revised airworthiness limitations determined by Bell. The actions of this AD are intended to prevent an unsafe condition on these products.

DATES: This AD is effective March 26, 2019.

ADDRESSES: For service information identified in this final rule, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

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–2018–0647; 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 AD, the Transport Canada AD, the economic evaluation, any comments received, and other information. The street 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: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *matthew.fuller@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On July 19, 2018, at 83 FR 34074, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Bell Model 429 helicopters with a NLG assembly part number (P/N) 429–336–100–101 installed. The NPRM proposed to revise the life limit for the NLG assembly. The proposed requirements were intended to prevent fatigue failure of an NLG assembly, which could result in subsequent damage to and loss of control of the helicopter.

The NPRM was prompted by Canadian AD No. CF–2016–07, dated March 4, 2016, to correct an unsafe condition for Bell Model 429 helicopters with wheeled landing gear. Transport Canada, which is the aviation authority for Canada, issued its AD after Bell replaced the airworthiness limitations for the NLG main fitting to bell crank bolt P/N M084–20H125–101 and NLG main fitting P/N M084–20H011–107 with an airworthiness limitation for the next higher assembly, NLG assembly P/N 429–336–100–101. According to Transport Canada, the NLG assembly's life limit is reduced to 50,000 retirement index number (RIN) or 4,500 hours time-in-service. Transport Canada advises that failure to replace components prior to established airworthiness limitations could result in an unsafe condition.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to our bilateral agreement with Canada, Transport Canada, its technical representative, has notified us of the unsafe condition described in the Transport Canada AD. We are issuing this AD because we evaluated all information provided by Transport Canada and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the Transport Canada AD

The Transport Canada AD applies to certain serial-numbered helicopters, whereas this AD applies to all Bell Model 429 helicopters with the affected NLG assembly installed.

Related Service Information

We reviewed Bell Alert Service Bulletin No. 429–15–24, Revision A, dated September 23, 2015, which specifies updating the Bell 429 maintenance manual with Revision 24 to incorporate the revised airworthiness limitations for the NLG assembly, NLG main fitting to bellcrank bolt, and the NLG main fitting.

Costs of Compliance

We estimate that this AD affects less than 75 helicopters of U.S. Registry (as this AD does not apply to Bell Model 429 helicopters with skid landing gear). At an average labor rate of $85 per hour, replacing a NLG assembly requires 10 work-hours, and required parts cost $104,648, for a cost of $105,498 per helicopter and up to $7,912,350 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; 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.

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

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):

2019–03–05 Bell Helicopter Textron Canada Limited: Amendment 39–19557; Docket No. FAA–2018–0647; Product Identifier 2017–SW–083–AD.

(a) Applicability

This AD applies to Bell Helicopter Textron Canada Limited Model 429 helicopters with a nose landing gear (NLG) assembly part number (P/N) 429–336–100–101 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as fatigue failure of an NLG assembly, which could result in subsequent damage to and loss of control of the helicopter.

(c) Effective Date

This AD becomes effective March 26, 2019.

(d) Compliance

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

(e) Required Actions

Before further flight, remove from service any NLG assembly P/N 429–336–100–101 that has reached or exceeded 4,500 hours time-in-service (TIS) or 50,000 retirement index number (RIN). Thereafter, remove from service each NLG assembly P/N 429–336–100–101 before accumulating 4,500 hours TIS or 50,000 RIN, whichever occurs first. For purposes of this AD, for every normal retraction or extension of the wheeled landing gear system, add one RIN.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) Bell Helicopter Alert Service Bulletin No. 429–15–24, Revision A, dated September 23, 2015, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/*. You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in Transport Canada AD No. CF–2016–07, dated March 4, 2016. You may view the Transport Canada AD on the internet at *http://www.regulations.gov* in Docket No. FAA–2018–0647.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 3200, Landing Gear System.

Issued in Fort Worth, Texas, on February 8, 2019.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2019–02626 Filed 2–15–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0556; Product Identifier 2018–NM–015–AD; Amendment 39- 19555; AD 2019–03–03]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus SAS Model A318 series; Model A319 series; Model A320 series; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This AD was prompted by reports of multiple angle of attack (AoA) probe blockages. This AD requires all elevator

aileron computer (ELAC) units to be upgraded with new software, or replaced with upgraded units. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 26, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 26, 2019.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this 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–2018–0556.

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–2018–0556; 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: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A318 series; Model A319 series; Model A320 series; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The NPRM published in the **Federal Register** on June 20, 2018 (83 FR 28555). The NPRM was prompted by reports of multiple AoA probe blockages. The NPRM proposed to require all ELAC units to be upgraded with new software, or replaced with upgraded units.

We are issuing this AD to address the blockage of AoA probes. This condition, if not corrected, could lead to undue activation of the AoA protection, reverting to manual control of the airplane, which, under specific circumstances, could result in reduced control of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0007R1, dated January 19, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318 series; Model A319 series; Model A320 series; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The MCAI states:

> Occurrences were reported on multiple Angle of Attack (AoA) probes blockages. Investigation results indicated the need for improved AoA monitoring in order to detect cases of AoA probe blockage.
>
> This condition, if not corrected, could lead to undue activation of the AoA protection, reverting to manual control of the aeroplane, which, under specific circumstances, could result in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Airbus developed several Elevator Aileron Computer (ELAC) standards, *i.e.* ELAC units loaded with a specific software Part Number (P/N), and EASA issued AD 2017–0008, retaining part of the requirements of EASA AD 2015–0088R1 [which corresponds to FAA AD 2016–17–03, Amendment 39–18616 (81 FR 55358, August 19, 2016) (''AD 2016–17–03'')], which was superseded, and requiring an upgrade of all ELAC units with ELAC L99 standard, which introduces improvements in the AoA probe monitoring for Current Engine Option (CEO) aeroplanes, and also incorporates flight control aspects for New Engine Option (NEO) aeroplanes.
>
> Since that [EASA] AD was issued, it was determined that clarification is necessary for the Parts Installation requirements, and some typographical (P/N) errors were detected. This [EASA] AD is revised accordingly.

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–2018–0556.

Comments

We gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment. United Airlines had no objection to the NPRM.

Request To Reduce the Compliance Time for Model A320 Airplanes

Air Line Pilots Association, International (ALPA), requested that the compliance time for the Model A320 series airplanes be reduced from 36 to 24 months, the same as for the other models. ALPA contended that 36 months is not an appropriate compliance time for the A320 because the severity of risk for the A320 is not less than for the other models.

We disagree with the request to reduce the compliance time for Model A320 series airplanes. We concur with the compliance time established by EASA, the state of design authority, which is based on the overall risk to the fleet, including the severity of the failure and the likelihood of the failure's occurrence. In conjunction with the manufacturer, we have determined that the compliance time for each airplane model will accommodate the time necessary to ensure the availability of required parts and maintain an adequate level of safety. However, if additional data are presented that would justify a shorter compliance time, we may consider further rulemaking on this issue. We have not changed this AD regarding this request.

Request To Modify Paragraphs (h)(3) and (j)(2)(iii) of the Proposed AD

Airbus SAS requested that we modify paragraphs (h)(3) and (j)(2)(iii) of the proposed AD to read: ''The data-loadable ELAC unit is checked by two different means: by the line replaceable unit (LRU) identification and either the label call up or the Alpha Call Up ELA 1 and ELA 2 (if available).'' We infer that this change was requested to clarify the meaning of those paragraphs.

We agree to clarify the specified paragraphs. We have changed paragraphs (h)(3) and (j)(2)(iii) of this AD accordingly.

Request To Clarify Paragraph (h)(3) of the Proposed AD

Delta Air Lines (DAL) asked whether paragraph (h)(3) of the proposed AD, as written, actually requires two separate methods of identification for the same unit. DAL explained that not all ELAC units are labeled with the software load, that the labels were added later by Thales, and that there is no guarantee they will be present on the LRU.

We agree to clarify that there are two methods of checking the data-loadable ELAC unit. As stated previously, we have revised paragraph (h)(3) of this AD and paragraph (j)(2)(iii) of this AD to make this more clear.

Request To Clarify Paragraphs (h) and (j)(2) of the Proposed AD

Alaska Airlines asked whether the four conditions given in paragraphs (h)(1) through (h)(4) and (j)(2)(i) through (j)(2)(iv) of the proposed AD apply only to the ''modification instructions approved by an EASA Design Organization Approval (DOA) (other than Airbus SAS's EASA DOA),'' or also to the modification instructions approved by other authorities, as mentioned earlier in the paragraph.

We agree to clarify this aspect of the specified paragraphs. We have revised the language regarding the applicability of the four conditions given in paragraphs (h)(1) through (h)(4) and (j)(2)(i) through (j)(2)(iv) of this AD to clarify that these paragraphs are applicable only to the modification instructions that are part of an FAA-accepted maintenance or inspection program, as applicable. We have revised the language in paragraphs (h) and (j)(2) of this AD accordingly.

Request To Address Onboard Data Loading of ELAC Units

Alaska Airlines requested that we modify paragraph (j) of the proposed AD to address onboard loading of ELAC units with later software. Alaska Airlines also requested that we revise paragraphs (j)(2) and (j)(4) of the proposed AD to specify that those paragraphs are not applicable to onboard data loading, since they refer to removing and re-installing the data-loadable ELAC units. We infer that Alaska Airlines wants us to revise paragraphs (j)(2)(ii) and (j)(2)(iv) of the proposed AD because those paragraphs refer to the removal and re-installation of the data-loadable ELAC units.

We agree. We have modified paragraph (j) of this AD to include onboard loading of ELAC software and revised paragraphs (j)(2)(ii) and (j)(2)(iv) of this AD as requested.

Request To Remove DOA Signature Requirement

DAL requested that the DOA signature requirement be removed from the proposed AD and that the previously established statement ''The technical content of this document is approved under the authority of Design Organization Approval No. EASA 21J.031'' used by the DOA in Airbus SAS service bulletins be deemed sufficient. DAL observed that if this document requires a signature, it is deviating from the previously established standard and will generate unnecessary alternative method of compliance (AMOC) requests from the administrator and/or unnecessary revisions of service bulletins by the manufacturer. DAL also stated that requiring a signature does not enhance or affect the safety of the aircraft.

We disagree with DAL's request to remove the DOA signature requirement. The FAA specifies the DOA signature requirement in the ''contacting the manufacturer'' paragraph (such as paragraph (m)(2) of this AD) because in the past some U.S. operators misinterpreted that any document, including an email message, received from a manufacturer or the manufacturer's customer support organization was considered DOA approved. Under the EASA DOA system, the only documents officially recognized as EASA-approved are those accompanied by the DOA-authorized signature. For the purpose of compliance with the ''contacting the manufacturer'' paragraph in FAA ADs, the FAA can only recognize the documents approved by the FAA, or EASA, or those authorized to make an EASA approval under the DOA system.

We also disagree with the request to use the statement ''The technical content of this document is approved under the authority of Design Organization Approval No. EASA 21J.031.'' This statement only recognizes that the service bulletin was originally approved under the authority of the DOA system as approved by EASA, and does not provide any process for an operator to receive other approved instructions from either EASA or the authorized DOA as a means of compliance to the FAA AD. The current ''contacting the manufacturer'' paragraph and the requirement for the DOA-authorized signature actually results in fewer AMOCs because of the FAA's recognition of both EASA and specific EASA DOA approvals under the ''contacting the manufacturer'' paragraph in this and other FAA ADs. We have not changed this AD in this regard.

Request To Clarify Paragraph (h)(1) of the Proposed AD

DAL questioned the purpose of the condition stated in paragraph (h)(1) of the proposed AD, *i.e.,* that there should be no warning or maintenance message before the ELAC unit is removed. DAL stated that if an electronic centralized aircraft monitor (ECAM) has a maintenance message or ECAM warning that is not airworthy, as a standard procedure the aircraft will be repaired and put back in an airworthy condition prior to return to service.

We agree that clarification is necessary. The intent of the condition stated in paragraph (h)(1) of this AD is to ensure that all pre-existing conditions have been fixed before uploading new software to an ELAC unit or installing a unit with updated software. We have not changed this AD regarding this question.

Request To Clarify Whether Certain Steps Are Required for Compliance

DAL questioned whether all of the steps in Airbus SAS Aircraft Maintenance Manual (AMM) Tasks 27–93–34–000–001–A and 27–93–34–400–001–A, such as accessing the access doors using an adjustable platform, are required for compliance.

We agree to clarify. The conditions in paragraphs (h)(2), (h)(4), (j)(2)(ii), and (j)(2)(iv) of this AD specified that actions must be done as specified in the AMM tasks. We did not intend the accessing and closing instructions of the AMM tasks to be required for compliance. We have revised paragraphs (h)(2), (h)(4), (j)(2)(ii), and (j)(2)(iv) of this AD accordingly.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for 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 these changes 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

Airbus has issued Service Bulletin A320–27–1263, dated April 28, 2017; and Service Bulletin A320–27–1264, dated April 28, 2017. The service information describes the software upgrade or replacement of ELAC units. These documents are distinct because they apply to different airplane configurations.

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 1,250 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
Modification	Up to 3 work-hours × $85 per hour = $255	Up to $7,970	Up to $8,225	Up to $10,281,250.

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):

2019–03–03 Airbus SAS: Amendment 39–19555; Docket No. FAA–2018–0556; Product Identifier 2018–NM–015–AD.

(a) Effective Date

This AD is effective March 26, 2019.

(b) Affected ADs

This AD affects AD 2016–17–03, Amendment 39–18616 (81 FR 55358, August 19, 2016) (''AD 2016–17–03'').

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, and –271N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by reports of multiple angle of attack (AoA) probe blockages. We are issuing this AD to address the blockage of AoA probes. This condition, if not corrected, could lead to undue activation of the AoA protection, reverting to manual control of the airplane, which, under specific circumstances, could result in reduced control of the airplane.

(f) Compliance

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

(g) Definition of Affected Elevator Aileron Computer (ELAC) Units

For the purposes of this AD, ELAC units having a part number (P/N) listed in table 1 to paragraphs (g), (h), and (i) of this AD are hereafter referred to as ''affected ELAC units'' in this AD.

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Table 1 to paragraphs (g), (h), and (i) of this AD – *Affected ELAC Unit Part Numbers*

ELAC Unit P/N	Designation	FIN
3945122202	ELAC A320-111 Type Def.	2 CE 1 / 2
3945122203	ELAC L50C	2 CE 1 / 2
3945122303	ELAC L50C	2 CE 1 / 2
3945122304	ELAC L60	2 CE 1 / 2
3945122305	ELAC L61B	2 CE 1 / 2
3945122306	ELAC L61F	2 CE 1 / 2
3945122307	ELAC L62C	2 CE 1 / 2
C12370AA01	ELAC L68C	2 CE 1 / 2
3945122501	ELAC L69	2 CE 1 / 2
3945122502	ELAC L69J	2 CE 1 / 2
3945122503	ELAC L77	2 CE 1 / 2
3945122504	ELAC L78	2 CE 1 / 2
3945122505	ELAC A L80	2 CE 1 / 2
3945123505	ELAC A' L80	2 CE 1 / 2
3945128101	ELAC B L80	2 CE 1 / 2
3945122506	ELAC A L81	2 CE 1 / 2
3945123506	ELAC A' L81	2 CE 1 / 2
3945128102	ELAC B L81	2 CE 1 / 2
3945122507	ELAC A L82	2 CE 1 / 2
3945123507	ELAC A' L82	2 CE 1 / 2
3945128103	ELAC B L82	2 CE 1 / 2
3945122608	ELAC A L83	2 CE 1 / 2
3945123608	ELAC A' L83	2 CE 1 / 2
3945122609	ELAC A L84	2 CE 1 / 2
3945123609	ELAC A' L84	2 CE 1 / 2
3945128204	ELAC B L90L	2 CE 1 / 2
3945128205	ELAC B L90N	2 CE 1 / 2
3945128206	ELAC B L91	2 CE 1 / 2
3945129101	ELAC B L91 data loadable	2 CE 1 / 2 SW1
3945128207	ELAC B L92	2 CE 1 / 2
3945128208	ELAC B L92L	2 CE 1 / 2
3945128209	ELAC B L93	2 CE 1 / 2
3945129103	ELAC B L93 data loadable	2 CE 1 / 2 SW1
3945128210	ELAC B L94	2 CE 1 / 2
3945129104	ELAC B L94 data loadable	2 CE 1 / 2 SW1

ELAC Unit P/N	Designation	FIN
3945128212	ELAC B L96	2 CE 1 / 2
3945129106	ELAC B L96 data loadable	2 CE 1 / 2 SW1
3945129107	ELAC B L96 H-A data loadable	2 CE 1 / 2 SW1
3945128214	ELAC B L97	2 CE 1 / 2
3945129108	ELAC B L97 data loadable	2 CE 1 / 2 SW1
3945128215	ELAC B L97+	2 CE 1 / 2
3945129109	ELAC B L97+ data loadable	2 CE 1 / 2 SW1
3945128216	ELAC B L98	2 CE 1 / 2
3945129110	ELAC B L98 data loadable	2 CE 1 / 2 SW1

(h) Required Actions

For airplanes with ELAC unit part numbers listed in table 1 to paragraphs (g), (h), and (i) of this AD: Within the applicable compliance times defined in figure 1 to paragraph (h) of this AD, upgrade each ELAC unit by uploading L99 software part number (P/N) 3945129111 or by replacing the existing ELAC unit with an ELAC L99 P/N 3945128217 unit in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1263, dated April 28, 2017, or Airbus Service Bulletin A320–27–1264, dated April 28, 2017, as applicable; or in accordance with modification instructions approved by the Manager, International Section, Transport Standards Branch, FAA, or by the European Aviation Safety Agency (EASA), or by Airbus SAS's EASA Design Organization Approval (DOA); or in accordance with modification instructions that are part of an FAA-accepted maintenance or inspection program, as applicable, provided the conditions specified in paragraphs (h)(1) through (h)(4) of this AD are met. If approved by the DOA, the approval must include the DOA-authorized signature.

(1) Absence of electronic centralized aircraft monitor (ECAM) warning or maintenance message related to ELAC, before the data-loadable ELAC unit is removed and software is loaded.

(2) The data-loadable ELAC unit is removed as specified in Airbus SAS Aircraft Maintenance Manual (AMM) Task 27–93–34–000–001–A. The access and closing instructions identified in AMM Task 27–93–34–000–001–A are not required by this AD. Operators may perform those actions in accordance with instructions that are part of an FAA-accepted maintenance or inspection program, as applicable.

(3) The data-loadable ELAC unit is checked by two different means: by the line replaceable unit (LRU) identification and either the label call-up or the Alpha Call-up ELA 1 and ELA 2 (if available).

(4) After the software is loaded, the data-loadable ELAC unit is re-installed as specified in Airbus SAS AMM Task 27–93–34–400–001–A. The access and closing instructions identified in AMM Task 27–93–34–400–001–A are not required by this AD. Operators may perform those actions in accordance with instructions that are part of an FAA-accepted maintenance or inspection program, as applicable.

Note 1 to paragraph (h) of this AD: Non-data-loadable ELAC L99 P/N 3945128217 units are fully interchangeable and mixable with data-loadable ELAC L99 P/N 3945129100 units with L99 software P/N 3945129111 loaded.

Figure 1 to paragraph (h) of this AD – *Compliance Times*

Airplanes (models)	Compliance Time (after the effective date of this AD)
A318, A319, and A321 series airplanes	Within 24 months
A320 series airplanes	Within 36 months

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(i) Parts Installation Prohibition

(1) For airplanes with ELAC units listed in table 1 to paragraphs (g), (h), and (i) of this AD: After modification of an airplane as required by paragraph (h) of this AD, do not install any affected ELAC unit on that airplane.

(2) For airplanes with ELAC units not listed in table 1 to paragraphs (g), (h), and (i) of this AD: From the effective date of this AD, do not install any affected ELAC unit on that airplane.

(j) Installation or Onboard Loading of Later Software Versions

Installation or onboard loading of an ELAC unit with a software standard above L99 is equal to compliance with the requirements of paragraph (h) of this AD, provided the conditions specified in paragraphs (j)(1) and (j)(2) of this AD are met.

(1) The ELAC unit part number is approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA DOA.

(2) The installation is accomplished in accordance with modification instructions approved by the Manager, International Section, Transport Standards Branch, FAA, or by EASA, or by Airbus SAS's EASA DOA; or in accordance with modification instructions that are part of an FAA-accepted maintenance or inspection program, as applicable, provided the conditions in paragraphs (j)(2)(i) through (j)(2)(iv) of this AD are met.

(i) Absence of ECAM warning or maintenance message related to ELAC, before the data-loadable ELAC unit is removed and software is loaded.

(ii) The data-loadable ELAC unit is removed as specified in Airbus SAS AMM Task 27–93–34–000–001–A. This does not apply to the onboard loading of ELAC units. The access and closing instructions identified in AMM Task 27–93–34–000–001–A are not required by this AD. Operators may perform those actions in accordance with instructions that are part of an FAA-accepted maintenance or inspection program, as applicable.

(iii) The data-loadable ELAC unit is checked by two different means: by the LRU identification and either the label call-up or the Alpha Call-up ELA 1 and ELA 2 (if available).

(iv) After the software is loaded, the data-loadable ELAC unit is re-installed as

specified in Airbus SAS AMM Task 27–93–34–400–001–A. This does not apply to the onboard loading of ELAC units. The access and closing instructions identified in AMM Task 27–93–34–400–001–A are not required by this AD. Operators may perform those actions in accordance with instructions that are part of an FAA-accepted maintenance or inspection program, as applicable.

(k) Airplanes Not Affected by the Requirements of Paragraph (h) of This AD

(1) An airplane on which any modification (mod) specified in paragraphs (k)(1)(i) and (k)(1)(ii) of this AD was embodied in production is not affected by the requirements of paragraph (h) of this AD, provided it is determined that no affected ELAC unit is installed as of the effective date of this AD.

(i) Airbus SAS mod 161843 (installation of data-loadable ELAC P/N 3945129100 unit with L99 software P/N 3945129111) or mod 159979 (installation of non-data-loadable ELAC L99 P/N 3945128217 unit).

(ii) Airbus SAS mod 160577 (installation of data-loadable ELAC P/N 3945129100 unit with L101 software P/N 3945129112) or mod 162042 (installation of non-data-loadable ELAC L101 P/N 3945128218 unit).

(2) An airplane that has been modified as specified in the service information identified in paragraph (k)(2)(i), (k)(2)(ii), or (k)(2)(iii) of this AD is not affected by the requirements of paragraph (h) of this AD, provided it is determined that no affected ELAC unit is installed as of the effective date of this AD.

(i) Airbus Service Bulletin A320–27–1267, dated September 27, 2017 (installation of non-data-loadable ELAC L101 P/N 3945128218 unit).

(ii) Airbus Service Bulletin A320–27–1268, dated September 27, 2017 (installation of data-loadable ELAC P/N 3945129100 unit with L101 software P/N 3945129112 for A320 NEO).

(iii) Airbus Service Bulletin A320–27–1269, dated September 27, 2017 (installation of data-loadable ELAC P/N 3945129100 unit with L101 software P/N 3945129112).

(l) Terminating Action for AD 2016–17–03

Accomplishing the actions required by paragraph (h) of this AD or complying with the provisions specified in paragraph (k) of this AD terminates all requirements of AD 2016–17–03.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0007R1, dated January 19, 2018, 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–2018–0556.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

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

(o) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A320–27–1263, dated April 28, 2017.

(ii) Airbus Service Bulletin A320–27–1264, dated April 28, 2017.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 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 February 1, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–02558 Filed 2–15–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0555; Product Identifier 2010–SW–047–AD; Amendment 39–19537; 2014–05–06 R2]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH (Type Certificate Previously Held by Eurocopter Deutschland GmbH) Helicopters

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

ACTION: Final rule; request for comments; removal.

SUMMARY: We are removing Airworthiness Directive (AD) 2014–05–06 R1, which applied to Airbus Helicopters Deutschland GmbH (type certificate previously held by Eurocopter Deutschland GmbH) Model EC135 and MBB–BK 117 C–2 helicopters. AD 2014–05–06 R1 required installing bushings and washers on the flight controls. This action is prompted by an error in the issuance of 2014–05–06 R1. Accordingly, AD 2014–05–06 R1 is removed.

DATES: This AD becomes effective February 19, 2019.

We must receive comments on this AD by April 22, 2019.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

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–2013–0555; 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 AD, the economic evaluation, any comments received, and other information. The street address for Docket Operations (telephone 800- 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

We issued AD 2014–05–06 R1, Amendment 39–19529 (83 FR 64734, December 18, 2018) (AD 2014–05–06 R1), for certain Model EC135 P1, P2, P2+, T1, T2, and T2+ helicopters and Model MBB–BK 117C–2 helicopters. AD 2014–05–06 R1 required installing bushings and washers on the flight controls to prevent shifting of the flight control bearings in the axial direction. AD 2014–05–06 R1 removed AD 2014–05–06, Amendment 39–17779 (79 FR 13196, March 10, 2014) (AD 2014–05–06), which had the same requirements but had the additional requirement of repetitively inspecting the flight control bearings. The actions of AD 2014–05–06 and AD 2014–05–06 R1 were intended to detect and correct incorrectly installed flight control bearings.

Actions Since AD 2014–05–06 R1 Was Issued

After we published AD 2014–05–06 R1, we realized that the amendatory language is in error. Although, as published, AD 2014–05–06 R1 stated it replaced AD 2014–05–06, we previously removed AD 2014–05–06 when we issued AD 2017–03–01, Amendment 39–18792 (82 FR 11502, February 24, 2017) (AD 2017–03–01). AD 2017–03–01 contains the same requirements as AD 2014–05–06, including the repetitive inspections, but corrected an error in the compliance time. Instead of issuing AD 2014–05–06 R1, we should have issued a new AD to change the repetitive inspections by replacing AD 2017–03–01.

AD 2017–03–01 is still an effective AD that requires repetitively inspecting the flight control bearings and installing bushings and washers. Accordingly, we are removing AD 2014–05–06 R1.

FAA's Justification and Determination of the Effective Date

AD 2014–05–06 R1 removed an AD that is no longer effective and required actions that are already required by an AD that is effective. As a result, AD 2014–05–06 R1 was causing confusion for operators and would have required unnecessary maintenance actions. We believe it is therefore unlikely that we will receive any adverse comments or useful information about this AD from U.S. operators. Therefore, we find good cause that notice and opportunity for prior public comment are unnecessary. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Authority for This Rulemaking

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

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

Regulatory Findings

We 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, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2014–05–06 R1, Amendment 39–19529 (83 FR 64734, December 18, 2018), and adding a new AD:

2014–05–06 R2 Airbus Helicopters Deutschland GmbH (Type Certificate Previously Held by Eurocopter Deutschland GmbH): Amendment 39–19537; Docket No. FAA–2013–0555; Product Identifier 2010–SW–047–AD.

(a) Effective Date

This AD becomes effective February 19, 2019.

(b) Affected ADs

This AD removes AD 2014–05–06 R1, Amendment 39–19529 (83 FR 64734, December 18, 2018).

(c) Applicability

This AD applies to the following Airbus Helicopters Deutschland GmbH (type certificate previously held by Eurocopter Deutschland GmbH) helicopters, certificated in any category:

(1) Model EC135 P1, P2, P2+, T1, T2, and T2+ helicopters, serial number (S/N) 0005 through 00829, with a tail rotor control lever, part number (P/N) L672M2802205 or L672M1012212; cyclic control lever, P/N L671M1005250; collective control lever assembly, P/N L671M2020108; or collective control plate, P/N L671M5040207; installed, and

(2) Model MBB–BK 117 C–2 helicopters, S/N 9004 through 9310, with a tail rotor control lever assembly, P/N B672M1007101 or B672M1807101; tail rotor control lever, P/N B672M1002202 or L672M2802205; or lateral control lever assembly, P/N B670M1008101, installed.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6710, Main Rotor Control.

(e) Related Information

For more information about this AD, contact Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *matthew.fuller@faa.gov*.

Issued in Fort Worth, Texas, on December 20, 2018.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2019–02631 Filed 2–15–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0048; Product Identifier 2018–NE–19–AD; Amendment 39–19556; AD 2019–03–04]

RIN 2120–AA64

Airworthiness Directives; Engine Alliance Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2018–11–16 for all Engine Alliance (EA) GP7270 and GP7277 turbofan engines with a certain engine fan hub assembly. AD 2018–11–16 required a one-time eddy current inspection (ECI) of the engine fan hub blade slot bottom and blade slot front edge for cracks, a visual inspection of the engine fan hub assembly for damage, and removal of parts if damage or defects are found that are outside serviceable limits. This AD retains these requirements, but expands the population of affected engine fan hub assemblies and revises the compliance time for the inspections. This AD was prompted by the FAA's determination that inspections need to be expanded to all EA GP7270 and GP7277 turbofan engines. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 6, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 6, 2019.

We must receive comments on this AD by April 5, 2019.

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

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

For service information identified in this final rule, contact Engine Alliance, 411 Silver Lane, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com*; website: *www.engineallianceportal.com*. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0048.

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–2019–0048; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Matthew Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7735; fax: 781–238–7199; email: *matthew.c.smith@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued AD 2018–11–16, Amendment 39–19304 (83 FR 27891, June 15, 2018), (''AD 2018–11–16''), for certain EA GP7270 and GP7277 turbofan engines. AD 2018–11–16 required a one-time ECI of the engine fan hub blade slot bottom and blade slot front edge for cracks, a visual inspection of the engine fan hub assembly for damage, and removal of parts if damage or defects are found that are outside serviceable limits. AD 2018–11–16 resulted from an uncontained failure of the engine fan hub assembly. We issued AD 2018–11–16 to detect defects, damage, and cracks that could result in an uncontained failure of the engine fan hub assembly.

Actions Since AD 2018–11–16 was Issued

Since we issued AD 2018–11–16, we determined that inspections need to be expanded to all EA GP7270 and GP7277 turbofan engines with a certain engine fan hub assembly because all engines are subject to the unsafe condition. As a result, EA published EA Alert Service Bulletin (ASB) EAGP7–A72–389, Revision No. 3, dated October 18, 2018, to expand the population of engine fan hub assemblies that require inspection. We also determined that we could remove the EA GP7272 turbofan engine from the Applicability paragraph of this AD because the engine was not manufactured. The Applicability paragraph of this AD aligns with the EA service information. We are issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

We reviewed EA ASB EAGP7–A72–389, Revision No. 3, dated October 18, 2018. The ASB describes procedures for ECI and visual inspection of the GP7270

and GP7277 engine fan hub assembly. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

AD Requirements

This AD requires a one-time ECI of the GP7270 and GP7277 engine fan hub blade slot bottom and blade slot front edge for cracks, a visual inspection of the engine fan hub assembly for damage, and removal of the engine fan hub assembly if damage or defects are found that are outside of serviceable limits.

FAA's Justification and Determination of the Effective Date

No domestic operators use this product. Therefore, we find good cause that notice and opportunity for prior public comment are unnecessary. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0048 and product identifier 2018–NE–19–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Costs of Compliance

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

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
ECI and visual inspection	14 work-hours × $85 per hour = $1,190	$0	$1,190	$0

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (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) 2018–11–16, Amendment 39–19304 (83 FR 27891, June 15, 2018) and adding the following new AD:

2019–03–04 Engine Alliance: Amendment 39–19556; Docket No. FAA–2019–0048; Product Identifier 2018–NE–19–AD.

(a) Effective Date

This AD is effective March 6, 2019.

(b) Affected ADs

This AD replaces AD 2018–11–16, Amendment 39–19304 (83 FR 27891, June 15, 2018).

(c) Applicability

This AD applies to Engine Alliance (EA) GP7270 and GP7277 model turbofan engines with engine fan hub assembly, part number (P/N) 5760221 or P/N 5760321, installed.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by the FAA's determination that inspections need to be expanded to all EA GP7270 and GP7277 turbofan engines. We are issuing this AD to detect defects, damage, and cracks that could result in an uncontained failure of the engine fan hub assembly. The unsafe condition, if not addressed, could result in uncontained failure of the engine fan hub assembly, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Within 3,000 cycles since new after the effective date of this AD, or by August 15, 2019, whichever is later:

(1) For engine fan hubs at the low-pressure compressor (LPC) module assembly level:

(i) Perform a visual inspection of the engine fan hub assembly, in accordance with the Accomplishment Instructions, For Fan Hubs at LPC Module Assembly Level, paragraphs 1.A.(1), 1.A.(4), and 1.A.(6)(a), of EA ASB EAGP7–A72–389, Revision No. 3, dated October 18, 2018.

(ii) Perform an eddy current inspection (ECI) of the engine fan hub blade slot bottoms and front edges, in accordance with the Accomplishment Instructions, For Fan Hubs at LPC Module Assembly Level, paragraphs 2.A and 2.B, of EA ASB EAGP7–A72–389, Revision No. 3, dated October 18, 2018.

(2) For engine fan hub assemblies at the piece part level:

(i) Perform a visual inspection of the engine fan hub assembly, in accordance with the Accomplishment Instructions, For Fan Hubs at Piece Part Level, paragraphs 1.A.(1) and 1.A.(3), of EA ASB EAGP7–A72–389, Revision No. 3, dated October 18, 2018.

(ii) Perform an ECI of the engine fan hub blade slot bottoms and front edges, in accordance with the Accomplishment Instructions, For Fan Hubs at Piece Part Level, paragraphs 2.A and 2.B, of EA ASB EAGP7–A72–389, Revision No. 3, dated October 18, 2018.

(3) For engine fan hub assemblies installed in an engine (on-wing or off-wing):

(i) Perform a visual inspection of the engine fan hub assembly, in accordance with the Accomplishment Instructions, For Fan Hubs Installed in an Engine, paragraphs 1.C.(1), 1.C.(5), and 1.C.(7)(a), of EA ASB EAGP7–A72–389, Revision No. 3, dated October 18, 2018.

(ii) Perform an ECI of the engine fan hub blade slot bottoms and front edges, in accordance with the Accomplishment Instructions, For Fan Hubs Installed in an Engine, paragraphs 1.D.(1) and 1.D.(2), of EA ASB EAGP7–A72–389, Revision No. 3, dated October 18, 2018.

(4) If the engine fan hub assembly visual inspection reveals defects or damage to the engine fan hub assembly that are found outside the serviceable limits specified in Table 6 in the Accomplishment Instructions of EA ASB EAGP7–A72–389, Revision No. 3, dated October 18, 2018, remove the engine fan hub assembly from service and replace with a part that is eligible for installation, before further flight.

(5) If the engine fan hub assembly ECI results in a rejectable indication, per the Appendix, Added Data, of EA ASB EAGP7–A72–389, Revision No. 3, dated October 18, 2018, remove the engine fan hub assembly from service and replace with a part that is eligible for installation, before further flight.

(h) Credit for Previous Actions

You may take credit for the inspection required by paragraph (g) of this AD if you performed the inspection before the effective date of this AD, using EA ASB EAGP7–A72–389, Original Issue, dated December 19, 2017; EA ASB EAGP7–A72–389, Revision No. 1, dated January 19, 2018; or EA ASB EAGP7–A72–389, Revision No. 2, dated April 17, 2018.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved for AD 2018–11–16 (83 FR 27891, June 15, 2018) are approved as AMOCs for the corresponding provisions of this AD.

(j) Related Information

For more information about this AD, contact Matthew Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7735; fax: 781–238–7199; email: *matthew.c.smith@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Engine Alliance (EA) Alert Service Bulletin EAGP7–A72–389, Revision No. 3, dated October 18, 2018.

(ii) [Reserved]

(3) For EA service information identified in this AD, contact Engine Alliance, 411 Silver Lane, East Hartford, CT, 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* website: *www.engineallianceportal.com.*

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

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

Issued in Burlington, Massachusetts, on February 12, 2019.

Robert J. Ganley,

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

[FR Doc. 2019–02654 Filed 2–15–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 216

[Docket No. FDA–2016–N–3464]

RIN 0910–AH29

List of Bulk Drug Substances That Can Be Used To Compound Drug Products in Accordance With Section 503A of the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing a final rule to establish criteria for and identify an initial list of bulk drug substances that can be used to compound drug products in accordance with certain compounding provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act), although they are neither the subject of an applicable United States Pharmacopeia (USP) or National Formulary (NF) monograph nor components of FDA-approved drugs. Specifically, the Agency is placing six bulk drug substances on the list. This final rule also identifies four bulk drug substances that FDA has considered and is not including on the list. Additional bulk drug substances nominated by the public for inclusion on this list are currently under consideration and will be the subject of a future rulemaking.

DATES: This rule is effective March 21, 2019.

ADDRESSES: For access to the docket to read background documents or

comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule 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: Rosilend Lawson, Center for Drug Evaluation and Research, Office of Unapproved Drugs and Labeling Compliance, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5197, Silver Spring, MD 20993, 240–402–6223, *Rosilend.Lawson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of the Final Rule

FDA is amending title 21 of the Code of Federal Regulations to add a list of bulk drug substances that can be used in compounding under section 503A of the FD&C Act (21 U.S.C. 353a) (referred to as ''the 503A Bulks List'' or ''the list''). Bulk drug substances that appear on the 503A Bulks List can be used to compound drug products subject to the conditions of section 503A, although those substances are not the subject of an applicable USP or NF monograph or components of approved drug products.

B. Summary of the Major Provisions of the Final Rule

In this final rule, FDA is establishing the criteria for evaluation of bulk drug substances for inclusion on the 503A Bulks List: (1) The physical and chemical characterization of the substance; (2) any safety issues raised by the use of the substance in compounded drug products; (3) the available evidence of effectiveness or lack of effectiveness of a drug product compounded with the substance, if any such evidence exists; and (4) historical use of the substance in compounded drug products, including information about the medical condition(s) the substance has been used to treat and any references in peer-reviewed medical literature.

Based on the results of its evaluation of nominated bulk drug substances to date, as well as consultation with the Pharmacy Compounding Advisory Committee (PCAC) and USP, FDA is including six bulk drug substances on the list: Brilliant Blue G, also known as Coomassie Brilliant Blue G–250; cantharidin (for topical use only); diphenylcyclopropenone (for topical use only); N-acetyl-D-glucosamine (NAG) (for topical use only); squaric acid dibutyl ester (for topical use only); and thymol iodide (for topical use only). FDA is also identifying four other bulk drug substances that will not be included on the list: Oxitriptan, piracetam, silver protein mild, and tranilast. Drugs compounded with these substances will not qualify for the 503A exemptions and cannot be used in compounding under section 503A of the FD&C Act.

C. Legal Authority

Section 503A, in conjunction with our general rulemaking authority in section 701(a) of the FD&C Act (21 U.S.C. 371(a)), serves as our principal legal authority for this final rule.

D. Costs and Benefits

FDA is establishing criteria for evaluating inclusion of bulk drug substances on the 503A Bulks List, placing six bulk drug substances on the 503A Bulks List, and not including four bulk drug substances on the 503A Bulks List. The present value of the costs of the final rule equals $3.33 million at a 7 percent discount rate and $3 million at a 3 percent discount rate. The final rule will result in annualized costs of $0.42 million at a 7 percent discount rate, or $0.31 million at a 3 percent discount rate. Because we lack sufficient information to quantify many of the costs and the benefits of this final rule, we also include a qualitative description of potential benefits and potential costs. We expect that the rule would affect compounding pharmacies and certain other entities that market the affected substances or drug products made from the affected substances, consumers of drug products containing the affected drug substances, and payers that cover these drug products or alternative drug products.

II. Table of Abbreviations/Commonly Used Acronyms in This Document

Abbreviation/ acronym	What it means
APA	Administrative Procedure Act.
5-HTP	5-hydroxytryptophan.
CFR	Code of Federal Regulations.
DQSA	Drug Quality and Security Act.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
FDA	Food and Drug Administration.
GRAS	Generally recognized as safe.
HPUS	Homeopathic Pharmacopeia of the United States.
IND	Investigational new drug.
NAG	N-acetyl-D-glucosamine.
NDA	New drug application.
NF	National Formulary.
NPRM	Notice of proposed rulemaking.
OTC	Over-the-counter.
PCAC	Pharmacy Compounding Advisory Committee.
PDUFA	Prescription Drug User Fee Act.
USP	United States Pharmacopeia.

III. Background

A. Need for and History of This Rulemaking

Section 503A describes the conditions under which a compounded drug product qualifies for exemptions from certain sections of the FD&C Act. Those conditions include that a licensed pharmacist in a State-licensed pharmacy or Federal facility or a licensed physician compounds the drug product using bulk drug substances that: (1) Comply with the standards of an applicable USP or NF monograph, if a monograph exists, and the USP chapter on pharmacy compounding; (2) if such a monograph does not exist, are drug substances that are components of drugs approved by the Secretary of Health and Human Services (the Secretary); or (3) if such a monograph does not exist and the drug substance is not a component of a drug approved by the Secretary, that appear on the 503A Bulks List. (See section 503A(b)(1)(A)(i) of the FD&C Act.) This final rule establishes criteria for evaluating bulk drug substances for inclusion on the 503A Bulks List and identifies six bulk drug substances the Secretary is placing on the list. The Agency considered four other bulk drug substances and is not including those substances on the 503A Bulks List. Additional bulk drug substances are under evaluation, and new substances may be added to the list through subsequent rulemaking.

The definitions that are relevant to this final rule are set forth in the notice of proposed rulemaking (NPRM) published in the **Federal Register** of

December 16, 2016 (81 FR 91071). The 2016 proposed rule also includes a complete history of this rulemaking. In that proposed rule, FDA discussed the 10 bulk drug substances nominated for inclusion on the 503A Bulks List that are the subject of this final rule, along with the criteria FDA proposed to use when determining whether to place bulk drug substances on the 503A Bulks List.

Under this final rule, drug products compounded with the six substances that are being placed on the 503A Bulks List qualify for the 503A exemptions if the conditions of section 503A of the FD&C Act are met. In contrast, drugs compounded with the other four substances evaluated in this rulemaking—which are not being placed on the 503A Bulks List— do not qualify for the 503A exemptions and cannot be used in compounding under section 503A of the FD&C Act. As discussed in the 2016 proposed rule and in the guidance for industry entitled ''Interim Policy on Compounding Using Bulk Drug Substances Under Section 503A of the Federal Food, Drug, and Cosmetic Act'' (Interim Policy Guidance) (Ref. 1), FDA generally has not intended to take regulatory action for the use of certain substances, including the 10 substances that are the subject of this final rule, while those substances were being considered for inclusion on the 503A Bulks List (interim policy). Since the rulemaking is now complete for these 10 nominated substances, the interim policy no longer applies to those substances.

B. Summary of Comments to the Proposed Rule

We received eight substantively relevant, unique comments to the 2016 proposed rule. The comments addressed FDA's proposals on the criteria for evaluating bulk drug substances for inclusion on the 503A Bulks List, including some comments on how FDA has been using the criteria in practice. The comments also addressed FDA's proposals on particular bulk drug substances. In addition to these topics, which addressed the language proposed to be included in the Code of Federal Regulations (CFR), commenters addressed a variety of topics related to FDA's evaluation of bulk drug substances, including procedural issues related to meetings of the PCAC, and compounding policies generally.

IV. Legal Authority

As described in the Background section, section 503A describes the conditions that must be satisfied for human drug products compounded by a licensed pharmacist or licensed physician to be exempt from three sections of the FD&C Act (sections 501(a)(2)(B), 502(f)(1), and 505 (21 U.S.C. 351(a)(2)(B), 352(f)(1), and 355)). One of the conditions that must be satisfied for a compounded drug to qualify for the exemptions under section 503A of the FD&C Act is that a licensed pharmacist in a State-licensed pharmacy or Federal facility or a licensed physician compounding drug products using bulk drug substances, must use bulk drug substances that: (1) Comply with the standards of an applicable USP or NF monograph, if a monograph exists, and the USP chapter on pharmacy compounding; (2) if such a monograph does not exist, are drug substances that are components of drugs approved by the Secretary; or (3) if such a monograph does not exist and the drug substance is not a component of a drug approved by the Secretary, appear on the 503A Bulks List. (See section 503A(b)(1)(A)(i) of the FD&C Act.) Section 503A(c)(1) of the FD&C Act also states that the Secretary shall issue regulations to implement certain parts of section 503A, and that before issuing regulations to implement section 503A(b)(1)(A)(i)(III) pertaining to the 503A Bulks List, among other sections, the Secretary shall convene and consult an advisory committee on compounding unless the Secretary determines that the issuance of such regulations before consultation is necessary to protect the public health. Section 503A(c)(2) of the FD&C Act requires the Secretary to issue the regulations in consultation with the USP, and to include in the regulation the criteria for such substances that shall include historical use, reports in peer-reviewed journals, and any other criteria the Secretary identifies. Thus, section 503A of the FD&C Act, in conjunction with our general rulemaking authority in section 701(a) of the FD&C Act, serves as our principal legal authority for this final rule.

V. Comments on the Proposed Rule and FDA Response

A. Introduction

We received 12 total comments posted to the docket for the proposed rule by the close of the comment period. Of the 12 comments received, 3 addressed subjects other than the proposed rule, and 9 were related to the proposed rule. Of the nine comments substantively related to the proposed rule, one was a duplicate. Of the eight unique, substantively relevant comments received, each discussed one or more issues. We received comments from consumers; trade organizations, including those representing compounders and clinicians with particular specialties; a company that sells bulk drug substances and other materials for compounding; and other organizations.

We describe and respond to the issues raised in the comments in sections V.B. and V.C. of this document. We have consolidated and grouped the issues raised in the comments, and assigned each issue a ''comment number'' to help distinguish among different issues raised in the comments. We have grouped similar issues raised in the comments together under the same comment number, and, in some cases, we have separated different issues discussed in the same comment and designated them with distinct comment numbers for purposes of our responses. The comment number assigned to each issue or topic is purely for organizational purposes and does not signify the value or importance of the issue or the order in which comments were received.

We received some comments that raised issues that are outside the scope of this rulemaking (*e.g.,* animal testing, access to compounded drug products as ''office stock,'' FDA's interpretation of the phrase ''clinical need'' as used in section 503B of the FD&C Act, competition and drug pricing). To the extent issues raised in comments are unrelated to this rulemaking, we do not respond to those comments.

B. Description of General Comments and FDA Response

(Comment 1) Some comments made general remarks supporting the proposed rule. These comments supported the proposed criteria, the proposed placement of the six substances listed above on the 503A Bulks List, the proposal not to include the four substances listed above on the 503A Bulks List, and FDA's Interim Policy Guidance.

(Response 1) We appreciate the support expressed in the comments received.

C. Specific Comments and FDA Response

1. Proposed Criteria

(Comment 2) Some comments objected to the proposed criteria as too broad and vague to provide standards by which ingredients will be judged. For example, one comment stated that FDA fails to define what constitutes ''significant'' toxicity or ''other safety concerns,'' which are vague and give FDA too much discretion. The comments stated that the proposed

criteria will lead to highly subjective decisions.

(Response 2) We disagree and find no basis to change the criteria proposed in the 2016 proposed rule based on this comment. We acknowledge that the criteria have been and will be applied on a substance-by-substance basis, given the risks and benefits that may be presented by a particular substance. The Agency believes some measure of flexibility is necessary for FDA to evaluate the nominated bulk drug substances. We have applied and will continue to apply the criteria consistently, weighing them as appropriate based on the nature of the substance and proposed use, among other things. FDA also notes that its application of the criteria to particular bulk drug substances is subject to discussion with the PCAC and USP, and also is the subject of notice and comment rulemaking. If, through the rulemaking process, FDA receives feedback that any party believes it is not applying the criteria correctly in any particular case, FDA will consider that feedback before finalizing its proposal to include, or not include, a substance on the 503A Bulks List.

(Comment 3) One commenter objected to the fourth criterion FDA proposed in the 2016 proposed rule: ''Historical use of the substance in compounded drug products, including information about the medical condition(s) the substance has been used to treat and any references in peer-reviewed medical literature.'' The commenter explained that current use is more relevant than historical use.

(Response 3) We disagree that FDA should not consider historical use. Further, we note that consideration of current use is encompassed in the historical use criterion. Regarding the criteria used to determine whether a bulk drug substance should be placed on the 503A Bulks List, section 503A(c)(2) of the FD&C Act specifies that the criteria shall include historical use, reports in peer reviewed medical literature, or other criteria the Secretary may identify. We are, therefore, required by statute to consider the historical use of a bulk drug substance. As we explained in the 2016 proposed rule, the Agency is considering how widespread the use of a bulk drug substance has been, as well as references in peer-reviewed medical literature, as part of the evaluation of the historical use.

(Comment 4) One commenter objected to FDA's consideration of the historical use criterion, noting that FDA has not been giving this factor adequate weight. This commenter suggested that, instead of applying the criterion as proposed, FDA should recommend a bulk drug substance for the 503A Bulks List if it has historically been in significant use by a particular specialty or community of physicians unless there is reliable evidence that the ingredient presents unacceptable sterility concerns or potential for adverse reactions.

(Response 4) As noted above, FDA is statutorily required to consider historical use when evaluating the nominated bulk drug substances, and the Agency has been doing so. To the extent information pertaining to historical use has been available, it has been discussed at length in each of the reviews underlying FDA's recommendations to the PCAC and its proposals in the 2016 proposed rule. As noted above, each criterion may weigh differently in the context of the risks and benefits presented by a particular bulk drug substance, and historical use may weigh more heavily in some cases than others. As also stated above, FDA's application of the criteria to particular bulk drug substances is subject to discussion with the PCAC and USP, and is the subject of notice and comment rulemaking. If, through the rulemaking process, FDA receives feedback that any party believes it is not giving the historical use criterion adequate weight in any particular case, FDA will consider that feedback before finalizing its proposal to include, or not include, a substance from the 503A Bulks List. We decline to adopt the commenter's suggestion to consider historical use as dispositive in certain cases, as we believe doing so would give disproportionate weight to the historical use criterion and would not give adequate consideration to a substance's physical and chemical characterization, safety, or effectiveness.

(Comment 5) Some commenters objected to FDA's consideration of the availability of approved drug products or drug products that conform to an over-the-counter (OTC) monograph to treat the same condition as the proposed bulk drug substance, and proposed that these alternatives not weigh against inclusion of the substance on the 503A Bulks List. The commenters noted that drug products are compounded because the drugs already available are not appropriate or effective for individual patients. Further, the commenters opposed the consideration of alternative therapies because they assert FDA has failed to consider the side effects of FDA-approved products, and any concern that use of compounded drugs could delay use of approved products is baseless. One of the commenters suggested that the approved alternatives should only be considered where the approved medication leads to a complete cure or remission of illness or otherwise fully addresses the purpose intended for the compounded drug product, and there is no other reason a compounded drug product containing the nominated bulk drug substance should be available.

(Response 5) We disagree with this comment and believe that the existence of FDA-approved drug products or drug products that conform to an OTC monograph may be relevant in the evaluation of particular bulk drug substances. However, the existence of alternative therapies is not one of the four criteria FDA is using to evaluate nominated bulk drug substances, nor is the availability of approved alternatives dispositive when considering whether to add a substance to the list. Rather, as explained in the 2016 proposed rule, we consider the existence of FDA-approved or OTC-monograph drug products relevant to FDA's consideration of the safety criterion, to the extent there may be therapies that have been demonstrated to be safe under the conditions of use set forth in the approved labeling, and the effectiveness criterion, to the extent there may be alternative therapies that have been demonstrated to be effective for certain conditions. Therefore, we find no reason to exclude consideration of the existence of FDA-approved or OTC monograph drug products where relevant.

Regarding the comment that FDA has not adequately considered the side effects of alternative therapies, we disagree and have considered the side effects of alternative therapies as part of the safety criterion where information is available and relevant. We note, however, that data comparing the safety profiles of compounded drug products with approved drug products are generally not available. In fact, in many cases, there are minimal data available concerning the safety, including side effects, of compounded drugs. The absence of information does not mean that safety risks do not exist. In contrast, approved drug products have been demonstrated to be safe under the conditions of use set forth in the approved labeling, and the benefits of the drug product for the approved conditions of use have been found to outweigh the risks. Similarly, regarding effectiveness, often there are minimal data supporting the effectiveness of a compounded drug product, and it may be preferable for a patient to use a drug product with side effects when that drug product has been proven to be effective. Even if a compounded drug product has fewer side effects than an FDA-

approved or OTC monograph drug product, if it does not treat the condition at issue, it may be of no or limited benefit to the patient.

Regarding the comment that approved alternatives should only be considered when there is evidence that the FDA-approved drug product or OTC monograph product fully addresses patients' needs, we disagree. While not one of the four criteria, as described in the 2016 proposed rule and reflected in reviews completed and presented to the PCAC, under certain circumstances, the existence of an approved drug product or OTC monograph product to treat the condition, even where the product may not fully address patients' needs, is relevant to FDA's evaluation of one or more of the four criteria. For example, in considering the effectiveness criterion, the existence of an approved drug product or OTC monograph product may weigh against placing a substance on the 503A Bulks List when the condition to be treated is very serious or life threatening because of the serious consequences that could result from use of an ineffective or less effective treatment alternative (2016 proposed rule, 81 FR 91071 at 91075.) Likewise, in considering the safety criterion, the existence of an approved drug product or OTC monograph product likely would weigh against placing a substance on the 503A Bulks List when the toxicity of the substance appears to be significant, or other safety concerns are associated with the use of the substance (id.).

Further, we note that, as stated above, FDA's application of the criteria to particular bulk drug substances is subject to discussion with the PCAC and USP, and is also the subject of notice and comment rulemaking. If, through the rulemaking process, FDA receives feedback that any party believes it is not adequately considering the side effects of FDA-approved products in any particular case, the Agency will consider that feedback before finalizing its proposal to include, or not include, a substance on the 503A Bulks List.

(Comment 6) One commenter proposes that a substance should be added to the 503A Bulks List if the Center for Food Safety and Applied Nutrition (CFSAN) has determined the substance is generally recognized as safe (GRAS).[1]

(Response 6) We disagree. GRAS determinations for food are made under food safety standards and thus are not dispositive when considering the use of a substance as an active ingredient in a compounded drug product. A substance that is safe when used as a food might not be safe as an active ingredient in a drug product, for example, when used for a route of administration other than oral. Moreover, such a GRAS determination does not indicate that a substance would have any effectiveness for a particular proposed use when used in a compounded drug product. We note, however, that FDA has considered CFSAN's GRAS notices and their implications in reviews completed to date where relevant, for example, in our review of safety or physical and chemical properties.

As stated above, FDA's application of the criteria to particular substances is subject to discussion with the PCAC and USP, and is also the subject of notice and comment rulemaking. If, through the rulemaking process, FDA receives feedback that any party believes it is not adequately considering the GRAS determination of a substance in any particular case, FDA will consider that feedback before finalizing its proposal to include, or not include, a substance on the 503A Bulks List.

(Comment 7) One comment objected to FDA's consideration of the seriousness of the condition the drug product compounded with the nominated bulk drug substance is proposed to treat. In the 2016 proposed rule, FDA proposed to weigh the effectiveness criterion more heavily when the bulk drug substance was proposed to treat a serious or life-threatening disease, and to give the safety criterion more weight when the substance was proposed for treatment of a less serious disease. The commenter asserted that there is no rational basis for such a standard.

(Response 7) We disagree with the comment. As we explain in the 2016 proposed rule, when a bulk drug substance is proposed to treat a more serious or life-threatening disease, there may be more serious consequences associated with ineffective therapy. When evaluating a bulk drug substance that is proposed for the treatment of a less serious illness, FDA will generally be more concerned about the safety of the substance than about its effectiveness. For these reasons, we find no reason to discontinue consideration of the seriousness of the condition the bulk drug substance is nominated to treat.

(Comment 8) One comment objected to the process FDA used to implement the criteria, noting that FDA was required to consult with the PCAC and obtain stakeholder input through notice and comment rulemaking before going forward with substance evaluations using the proposed criteria. The commenter asserts that there was no formal debate or discussion of the criteria with the PCAC.

(Response 8) We acknowledge that FDA began considering the proposed criteria and presenting recommendations to the PCAC before the criteria were finalized in this rulemaking. We believe that the criteria could not have been fully vetted and considered, by both the PCAC and USP, as well as commenters to the 2016 proposed rule, without illustration of how those criteria would apply in practice to evaluation of nominated bulk drug substances. As discussed in this rulemaking, FDA has considered the comments received on the proposed criteria and has found no basis to change those criteria based on the comments received.

We disagree, however, with the comment asserting that there was no formal debate or discussion of the criteria with the PCAC. As discussed in the 2016 proposed rule, FDA presented the criteria to the PCAC and discussed the criteria with the PCAC at its February 23, 2015, meeting (Ref. 2). The public had the opportunity to attend and speak at the PCAC meeting at which these criteria were discussed. The public also had the opportunity to review the transcript of the discussion that took place at the PCAC meeting, both prior to the publication of the proposed rule via publication of the transcript on the FDA website and through the docket for the proposed rule, where the transcript was included as a reference. FDA also consulted with USP regarding the criteria, and USP agreed with the proposed criteria (Refs. 3 and 4).

2. Application of the Proposed Criteria to Date

(Comment 9) Some commenters objected to the proposed criteria as being underinclusive of the factors FDA has been applying in practice in its evaluations of the nominated bulk drug substances. Specifically, several comments stated that FDA's application of the proposed criteria has been skewed by inappropriate consideration of the availability of an investigational new drug (IND) application pathway,

[1] Under sections 201(s) and 409 of the FD&C Act (21 U.S.C. 321(s) and 348), any substance that is intentionally added to food is a food additive that is subject to premarket review and approval by FDA, unless the substance is generally recognized, among qualified experts, as having been adequately shown to be safe under the conditions of its intended use, or unless the use of the substance is otherwise excepted from the definition of a food additive. For more information, see *https://www.fda.gov/Food/IngredientsPackagingLabeling/GRAS/*.

which should not be relevant to FDA's recommendation of whether to include a particular bulk drug substance on the 503A Bulks List.

(Response 9) We disagree with the comment that the proposed criteria are underinclusive of the factors FDA has been applying in practice. While the PCAC presentations and discussions have encompassed some information of interest that is not directly related to the four criteria, such as the differences in regulatory standards between dietary supplements and drug products, or general information about compounding facilities, that information was not the basis of FDA's recommendations or decisions with respect to the bulk drug substances. Rather, in each of FDA's reviews (included in the record for the 2016 proposed rule), our recommendations have been derived directly from consideration and balancing of the four criteria: (1) Physical and chemical characterization of the substance; (2) any safety issues raised by the use of the substance in compounded drug products; (3) available evidence of effectiveness or lack of effectiveness of a drug product compounded with the substance, if any such evidence exists; and (4) historical use of the substance in compounded drug products, including information about the medical condition(s) the substance has been used to treat and any references in peer-reviewed medical literature.

The option of making a substance available through an IND application has been discussed by the PCAC and addressed in some reviews to help inform the public of ways in which the drug can be further studied and used to treat patients. In no review to date, however, has the option of pursuing an IND been a basis in FDA's proposals to include, or not to include, a nominated bulk drug substance on the 503A Bulks List. For each substance evaluated to date, FDA has made its proposals based on the four criteria described above, without regard to the existence of, or option to pursue, an IND. We note that FDA can make recommendations to the PCAC, but the Agency cannot control the content of the PCAC's discussions or its advice. FDA takes the PCAC's discussions and advice, including the basis for any advice, into account when considering whether to propose a substance be placed on the 503A Bulks List.

As stated above, FDA's application of the criteria to particular bulk drug substances is subject to discussion with the PCAC and USP, and is also the subject of notice and comment rulemaking. If, through the rulemaking process, FDA receives feedback that any party believes it has inappropriately considered the availability of an IND in any particular case, FDA will consider that feedback before finalizing its proposal to include, or not include, a substance on the 503A Bulks List.

(Comment 10) One comment asserted that FDA's application of criteria to evaluate bulk drug substances to date has been inconsistent. For example, according to the commenter, in some cases FDA and the PCAC recommended to include a bulk drug substance on the 503A Bulks List so there is an alternative to approved products, but in other cases, FDA and the PCAC recommended to not include a substance on the list because there is already an approved product available.

(Response 10) We disagree with this comment. As we noted above, the criteria are applied on a substance-by-substance basis, and a criterion that may be weighed heavily for one bulk drug substance might be weighed differently for another, given the risks and benefits that may be presented by a particular substance. We have applied, and will continue to apply, the criteria consistently, weighing them as appropriate based on the nature of the substance and proposed use, among other things. Also as stated above, FDA's application of the criteria to particular bulk drug substances is subject to discussion with the PCAC and USP and is the subject of notice and comment rulemaking. If, through the rulemaking process, FDA receives feedback that any party believes it has not applied the criteria correctly in any particular case, FDA will consider that feedback before finalizing its proposal to include, or not include, a substance on the 503A Bulks List.

(Comment 11) One comment objected to the level of evidence of clinical effectiveness and toxicology FDA has been considering in its application of the proposed criteria. According to the comment, these high standards of evidence are unreasonable and change fundamental standards of practice. The comment asserts that FDA appears to be requiring studies that can survive any criticism and is ignoring the role of physician decisions based on clinical experience.

(Response 11) We disagree with the comment. As stated in the 2016 proposed rule, FDA recognizes that it is unlikely that candidates for the 503A Bulks List will have been thoroughly investigated in in vitro or in animal toxicology studies, or that there will be well-controlled clinical trials to substantiate their safe use in humans. We note that the evidence that has supported FDA's recommendations to place particular substances on the 503A Bulks List to date has not been of the type or quality that is ordinarily required and evaluated as part of the drug approval process. We further note that we considered the input of physicians and their clinical experience to the extent that information is provided to the Agency, including that provided during PCAC meetings. We find no reason to reduce the amount of evidence FDA has considered necessary to support a recommendation to include a bulk drug substance on the 503A Bulks List and believe that doing so would not be in the interest of public health.

(Comment 12) One comment asserted that application of the criteria to date has been too narrow in its application to a particular proposed use.

(Response 12) We disagree and believe that it is necessary to evaluate a nominated bulk drug substance in the context of the uses proposed for compounded drug products that include the substance. We acknowledge that inclusion of a substance on the 503A Bulks List is not limited to a specific use. However, for evaluation purposes, FDA finds it necessary to consider the criteria, particularly the effectiveness criterion, in the context of a specific proposed use or uses. Given the number of substances nominated for inclusion on the list, it would not be possible for FDA to consider all possible uses for a compounded drug product that includes the nominated substance. Therefore, we find it reasonable to rely on information from the interested parties who nominated the bulk drug substances to identify the proposed uses, and for FDA to evaluate the substance in the context of those uses.

Nevertheless, as indicated in the 2016 proposed rule, when FDA is aware of another use that may be relevant to its evaluation of a substance for the 503A Bulks List, such as when a use other than that for which it was nominated is widespread, FDA may consider that use in its discretion.

As discussed in the 2016 proposed rule, FDA has opened a docket through which interested individuals may nominate additional bulk drug substances or provide additional information about substances already nominated with sufficient information for the 503A Bulks List (see Docket No. FDA–2015–N–3534). If an interested party believes that the nominations for a particular substance did not include a proposed use that it would like to be reviewed, and that substance has not yet been addressed in an NPRM, additional

information or nominations may be provided through that docket.

(Comment 13) One comment asserted that application of the criteria to date has given undue weight to possible side effects or safety concerns related to use of compounded drug products, which are often speculative.

(Response 13) We disagree with the comment. FDA's reviews of nominated substances to date have appropriately balanced the safety criterion with the other three criteria, and FDA has applied its scientific judgment to identify side effects or safety concerns based on available data and information. As stated above, FDA's application of the criteria to particular bulk drug substances is subject to discussion with the PCAC and USP, and is also the subject of notice and comment rulemaking. If, through the rulemaking process, FDA receives feedback that any party believes it has inappropriately considered safety information related to compounded drug products in any particular case, FDA will consider that feedback before finalizing its proposal to include, or not include, a substance on the 503A Bulks List.

(Comment 14) One comment objected to statements made during PCAC meetings indicating concern that, if a bulk drug substance is placed on the list, drug products compounded with that substance could be marketed with any claims. The comment notes that marketing a drug product for unsubstantiated claims is illegal, and if FDA and PCAC are concerned that this is happening, appropriate action and education should be undertaken. The commenter asserts that the possibility of misleading marketing should not be considered when determining whether to include a bulk drug substance on the 503A Bulks List.

(Response 14) We did not consider the possibility of misleading marketing when determining whether to include a bulk drug substance on the 503A Bulks List. Under section 502(bb) of the FD&C Act, a compounded drug will be deemed misbranded if the advertising or promotion of such compounded drug is ''false or misleading in any particular.'' In addition, under section 502(a) of the FD&C Act, a drug will be deemed misbranded if its labeling is ''false or misleading in any particular.'' However, the existence of false or misleading advertising is not one of the four criteria considered when evaluating a nominated substance for inclusion on the 503A Bulks List.

3. FDA's Proposals on Specific Substances

(Comment 15) One comment requests that the listing of NAG codified at § 216.23(a) (21 CFR 216.23(a)) not be limited to topical use only, and instead, to allow use of that substance by any route of administration. The comment notes that one of the nominations for that bulk drug substance was not limited to topical use.

(Response 15) We disagree that the listing for NAG in the codified should be expanded beyond topical use. As we explained in the **Federal Register** of July 2, 2014 (79 FR 37747 at 37748 (July 2014 Request for Nominations)), which detailed the type of information to be provided with nominations, FDA only intended to review nominations that were supported with adequate data and information. Doing so has allowed FDA to focus its limited resources on the nominated uses and routes of administration for which nominators have provided the most support. Also, as indicated in the July 2014 Request for Nominations, the Agency reviewed information for multiple nominations of the same substance collectively (79 FR 37747 at 37749).

None of the nominations for NAG proposed or provided information that would support administration of NAG by any route of administration other than topical. The nomination from the International Academy of Compounding Pharmacists mentioned in the comment did not specify a proposed use or route of administration. Rather, the nomination stated only that ''[t]he very nature of a compounded preparation for an individual patient prescription as provided for within FDCA 503A means that the purpose for which it is prescribed is determined by the health professional authorized to issue that prescription.'' (Ref. 5.) Taken alone, this nomination did not provide adequate support to allow FDA to evaluate the nominated substance (for topical or other routes of administration), and it was only considered collectively with the other nominations for NAG for topical use. As noted in the 2016 proposed rule, individuals and organizations may petition FDA under 21 CFR 10.30 to amend the list, including to request that the Agency evaluate NAG for routes of administration other than topical. See Response 31 for further discussion of the petition process.

(Comment 16) Some comments object to the exclusion of oxitriptan from the 503A Bulks List and request that oxitriptan be included on the list codified at § 216.23(a). The comments state that oxitriptan is widely sold as a dietary supplement and that it has an extensive safety record through its long history of use as a dietary supplement, which they believe should be given more weight. The comments assert that patients benefit from a relationship with their prescriber and pharmacist that is not available in the dietary supplement context because dietary supplements are purchased over the counter. According to one of the commenters, there is no evidence of any risk that oxitriptan would have the same side effects as other medications used to treat depression, and the mechanism of action of oxitriptan is demonstrably different from that of approved therapies. The comment asserts that oxitriptan's safety profile is significantly better than that of approved products. One comment also asserts that oxitriptan has been shown to be effective in the treatment of a variety of conditions, including depression and insomnia.

(Response 16) We have considered the comments and the references cited therein (Refs. 6 to 9), and find no reasoning or data that cause FDA to change its evaluation not to include this substance on the 503A Bulks List. As noted above, the availability of a substance as a dietary supplement is not a criterion considered when evaluating a substance for inclusion on the 503A Bulks List. Dietary supplements are intended for oral ingestion only, are not intended to be used to treat diseases, and therefore, are subject to a different legal and regulatory scheme than drug products. Section 503A addresses compounded drug products only. We acknowledge that FDA's reviews and PCAC meetings included discussions about the availability of dietary supplements with dietary ingredients that were the same or similar to the nominated bulk drug substances. As noted in prior PCAC discussions, FDA's proposals in this context do not impact a substance's availability as a dietary supplement.

Regarding the argument that there is no evidence of any risk that oxitriptan (also known as 5-hydroxytryptophan or 5-HTP) would have the same side effects as other medications used to treat depression, as previously stated in FDA's review (Ref. 5), there is a dearth of reliable scientific data regarding the safety of oxitriptan. We found no data indicating that the use of oxitriptan for depression would be free of the same side effects as other medications used to treat depression, and no reliable scientific data were provided in the comments received on the proposed rule to support this assertion.

Regarding the argument that the mechanism of action of oxitriptan is demonstrably different from that of approved therapies, as previously stated in FDA's review, the psychoactive action of oxitriptan is related to increased production of serotonin in central nervous system tissue (id). Based on this mechanism of action, oxitriptan, particularly with concomitant use of antidepressant drug products, could result in serotonin syndrome, a life-threatening drug interaction, and cases that are likely to be serotonin syndrome have been reported with the use of oxitriptan as a dietary supplement (Ref. 10). In fact, one source cited by a commenter warns against taking oxitriptan with certain approved antidepressants because both increase the brain chemical serotonin and taking both ''might increase serotonin too much and cause serious side effects including heart problems, shivering, and anxiety'' (Ref. 7).

Regarding the argument that oxitriptan's safety profile is significantly better than that of approved products, we disagree. As explained in Response 5, data comparing the safety profiles of compounded drug products with approved drug products are generally not available, and we do not have any such comparative data here. As stated above, the absence of information does not mean that safety risks do not exist. In contrast, approved drug products have been demonstrated to be safe under the conditions of use set forth in the approved labeling, and the benefits of the drug product for the approved conditions of use have been found to outweigh the risks.

Regarding the argument that oxitriptan has been shown to be effective for the treatment of a number of conditions, including depression and insomnia, similarly, the comments provided no reliable scientific data that would cause FDA to change its evaluation of oxitriptan, which balanced the available data on effectiveness with the other three criteria. As stated in the 2016 proposed rule, data supporting the drug's effectiveness for depression and insomnia are limited, and there are no data to support the effectiveness of the long-term use of oxitriptan to treat depression. FDA's conclusion in the 2016 proposed rule regarding the effectiveness of oxitriptan for insomnia and depression was based on FDA's consideration of more recent and comprehensive data than that provided by the commenters, and the information provided by the commenters does not alter that conclusion. We also note that one source cited by a commenter stated that there is insufficient evidence to rate the effectiveness of oxitriptan for insomnia (Ref. 7).

In sum, we have reviewed the scientific references and considered the reasoning set forth in the comments, and they do not change FDA's analysis of oxitriptan as stated in our review (Ref. 5) or our conclusion that it should not appear on the 503A Bulks List.

(Comment 17) Some comments object to the exclusion of piracetam from the 503A Bulks List and request that piracetam be included on the list codified at § 216.23(a). The comments note that FDA has recognized that there is not a significant safety risk related to the use of piracetam. They assert that the recommendation to exclude piracetam from the 503A Bulks List was based on a presumption that piracetam could be obtained through an IND, which was not a proper consideration. One comment provided data about the effectiveness of piracetam for short-term cognitive performance (Ref. 11) and the safety of its administration in high doses to patients with acute stroke (Ref. 12).

(Response 17) We have considered the comments and references cited therein and find no reasoning or data that cause FDA to change its evaluation not to include this substance on the 503A Bulks List. Regarding the safety of piracetam, we note that while our review of piracetam indicated that doses of less than 8 grams per day [2] appear to be unlikely to cause serious adverse reactions or drug interactions, the review also described safety concerns associated with certain patient populations and certain concomitant medications (Ref. 13). Piracetam is not recommended for patients with severe renal impairment because clearance of the compound is dependent on the renal creatinine clearance and would be expected to diminish with renal insufficiency. Piracetam is also not recommended for those taking concomitant anticoagulants because piracetam reduces platelet function, interferes with clotting factors, and prolongs bleeding time at certain doses. We also note that, in evaluating piracetam, we considered the three other criteria in addition to the safety of piracetam.

Although it is well characterized chemically and physically and has been used in compounded drug products for approximately 40 years, as stated in its review, FDA is concerned about the effectiveness of piracetam (id.). The available data do not show a clear benefit associated with the use of piracetam (id.). Numerous studies of piracetam have been conducted, and all but a few were designed poorly or used inappropriate statistical methods to support conclusions that piracetam is effective as a treatment for the studied condition (id.). The publications that suggest piracetam is effective for treating cognitive impairment, acute vertigo, or stroke are inconsistent, and there are also publications that conclude that piracetam is ineffective for treating these same conditions (id.). We were able to identify a single, well-designed and executed study of piracetam, which showed that it is ineffective for the treatment of cognitive impairment (Ref. 14).

The two scientific articles referenced in the comments, one of which is discussed in FDA's evaluation of piracetam (Ref. 11), and the other of which addressed the safety of high doses of piracetam when used as a treatment for acute stroke (Ref. 12), do not address FDA's concerns regarding the lack of data supporting its effectiveness in treating serious and life-threatening conditions such as stroke. For the reasons set forth above, neither the scientific references nor the reasoning set forth in the comments provide a basis for FDA to change its analysis of piracetam according to the four criteria (Ref. 13), or FDA's ultimate conclusion that piracetam should not appear on the 503A Bulks List.

Finally, we acknowledge that the possibility of pursuing an IND application for piracetam was discussed at the PCAC meeting (Ref. 15) to inform the public of a pathway to study and access piracetam. FDA did not consider the availability of an IND in its review of piracetam under the four criteria, however (Ref. 13). As FDA explained in its review, based on the absence of a clear benefit associated with piracetam, the seriousness of the conditions for which piracetam was proposed for use, and the availability of safe and effective medications for many of these uses that have undergone greater scientific scrutiny (id.), FDA proposed piracetam not be placed on the 503A Bulks List.

(Comment 18) One comment objects to the exclusion of silver protein mild from the 503A Bulks List and requests that silver protein mild be included on the list codified at § 216.23(a). The comment states that silver protein mild is well characterized physically and chemically, has a long history of use, is relatively nontoxic, and side effects are only rarely reported.

(Response 18) We have considered the comment and find no reasoning or data therein that cause FDA to change its

[2] Note that FDA's review stated that doses of less than ''8 kg/day'' appear unlikely to cause serious adverse reactions or drug interactions, but ''kg'' was a typographical error. That statement of the review should have been ''8 g/day.''

evaluation not to include this substance on the 503A Bulks List. As stated in the 2016 proposed rule, silver protein mild is not well-characterized, and the term ''silver protein mild'' can refer to a variety of different drug products. FDA is also concerned about the safety of silver protein mild, which can cause argyria (a permanent ashen-gray discoloration of the skin, conjunctiva, and internal organs) (Ref. 13). Despite the commenter's characterization of the substance as relatively nontoxic, FDA remains concerned that chronic use of silver protein mild may result in permanent discoloration of the conjunctiva, cornea, and/or lens (id.). As for the commenter's characterization that the side effects are rarely reported, we note that the use of silver protein mild declined precipitously after the introduction of FDA-approved ocular anti-infectives. As described in FDA's review, numerous articles and books published when silver protein mild was more commonly used described deposits of silver in the conjunctiva, lacrimal sac, cornea, and lens following administration (id.).

We also note that there is no reliable evidence that silver protein mild would be effective for the proposed use. It has been studied in two controlled studies. In one study, silver protein mild was found to be numerically, although not statistically, inferior to having no treatment at all. In the second study, silver protein mild was found to be inferior to povidone iodine, which is an FDA-approved drug product (id.). While silver protein mild does have a long history of use, dating back to the early 1900s, as noted above, the use of silver protein mild declined dramatically after the introduction of FDA-approved ocular anti-infectives (id.).

The reasoning set forth in the comment does not address FDA's concerns about the characterization, safety, or effectiveness of silver protein mild, and does not change FDA's conclusion that silver protein mild should not appear on the 503A Bulks List.

(Comment 19) Some comments object to the exclusion of tranilast from the 503A Bulks List and request that tranilast be included on the codified list at § 216.23(a). The commenters note that FDA's proposal not to include tranilast is contrary to the advice of the PCAC. They assert that FDA's view is based on a faulty understanding of the increased bilirubin observed in clinical trials and note that the proposed topical dosage is well below that used in those trials. One comment described anecdotal reports that the topical use of tranilast has been effective in the treatment of keloids and hypertrophic scars. Another comment asserted that tranilast has been available in Japan for over 30 years, apparently without detrimental effects.

(Response 19) We have considered the comments and decline to include tranilast on the 503A Bulks List. As stated in the 2016 proposed rule, FDA has serious concerns about the safety of tranilast when administered orally, and there is insufficient information about the systemic absorption of topical tranilast formulations to determine whether topical administration of the drug product presents the same safety concerns (81 FR 91071 at 91079). No new data about the use of tranilast were provided in the comments; rather, the comments provided only anecdotal reports about the use of tranilast and further discussion of the same data presented to the PCAC, which FDA considered prior to publishing the 2016 proposed rule. The reasoning in the comments did not sufficiently address FDA's safety concerns regarding the use of this substance.

We acknowledge that the PCAC recommended including tranilast on the 503A Bulks List with a restriction to topical use. However, advisory committee recommendations are not binding on FDA. Rather, FDA considers the PCAC's advice but makes an independent judgment regarding whether particular substances should appear on the 503A Bulks List. As we explained in our supplemental review of tranilast (Ref. 16) and the 2016 proposed rule, the government-approved Japanese tranilast product label provided evidence of teratogenicity in animals and contraindicated the use of tranilast in pregnant women or women who may become pregnant. We did not find that the risk of prescribing a potential teratogen to women who may be or may become pregnant was outweighed by the potential benefit of treating scar tissue. Therefore, FDA continues to believe that the criteria weigh against placing tranilast on the 503A Bulks List.

Regarding the commenter's statements about the effectiveness of tranilast for keloids and hypertrophic scarring, scientific data supporting effectiveness for those uses are lacking. While there is some evidence that tranilast may be effective for allergic disorders, evidence of effectiveness for those other uses is either not available or inconclusive (Refs. 5 and 16).

(Comment 20) One comment objected to the rejection of substances that are dietary supplements from the 503A Bulks List. The commenter states that by rejecting these substances from the list, FDA is forcing consumers to use products that are subject to less quality oversight and lack physician supervision. The commenter proposes that dietary supplements only be rejected for proven safety concerns.

(Response 20) As stated in Response 16, a substance's availability as a dietary ingredient or supplement is not a criterion when evaluating a substance for inclusion on the 503A Bulks List. Dietary supplements are intended for oral ingestion only, and are not intended to be used to treat diseases, and therefore, are subject to a different legal and regulatory scheme than drug products. Section 503A of the FD&C Act addresses compounded drug products only. To the extent FDA's reviews and PCAC meetings included discussions about the availability of dietary supplements with dietary ingredients that were the same or similar to the nominated bulk drug substances, we note that FDA's proposals in this context do not impact a substance's availability as a dietary supplement.

Regarding the comment about the lack of quality oversight for dietary supplements, we note that dietary supplement manufacturers are required to comply with FDA's Current Good Manufacturing Practice regulations for dietary substances and are subject to inspection by FDA (21 CFR part 111). Regarding physician supervision, we note that physicians may recommend dietary supplements to their patients regardless of whether the substance appears on the 503A Bulks List.

4. Dietary Supplement Monographs and Other Monographs

(Comment 21) Some commenters objected to FDA's interpretation, as stated in the 2016 proposed rule, that dietary supplement monographs are not ''applicable monographs'' for purposes of determining which substances may be included in compounded drug products under section 503A(b)(1)(A)(i)(I) of the FD&C Act. They note that physicians may prescribe dietary supplements. They also state that in a ''2014 guidance,'' [3] FDA said that dietary supplement monographs were ''applicable monographs'' under section 503A, and that change in policy has not been explained.

(Response 21) We disagree that dietary supplement monographs should be considered ''applicable monographs'' for purposes of section 503A of the FD&C Act. As stated in the 2016 proposed rule, section 503A sets forth conditions that must be met for a

[3] One comment appears to refer to the July 2014 Request for Nominations as ''guidance'' on this topic.

compounded drug product to qualify for certain exemptions from the FD&C Act. Among other conditions, section 503A(b)(1)(A)(i) of the FD&C Act requires that a bulk drug substance used in a compounded drug product meet one of the following criteria: (1) Comply with the standards of an applicable USP or NF monograph, if one exists; (2) be a component of an FDA-approved human drug product, if a monograph does not exist; or (3) be on a list of bulk drug substances that may be used for compounding, to be developed by FDA through regulation. FDA has interpreted the term ''an applicable United States Pharmacopoeia (USP) or National Formulary (NF) monograph'' to refer to official drug substance monographs. Therefore, a substance that is the subject of a dietary supplement monograph, but not a drug substance monograph, may only be compounded if the substance is a component of an FDA-approved drug product or is on the FDA's list of bulk drug substances that may be used for compounding.

This interpretation is both legally supportable and in the best interest of the public health. Under the FD&C Act, drugs and dietary supplements are different product categories that are subject to different regulatory schemes. Section 503A, the key statutory provision for this rulemaking, concerns pharmacy compounding of drug products, not dietary supplements. It states that a drug product may be compounded under section 503A(a) of the FD&C Act if the licensed pharmacist or licensed physician compounds the drug product using bulk drug substances that comply with the standards of an *applicable United States Pharmacopoeia or National Formulary monograph,* if a monograph exists, and the United States Pharmacopoeia chapter on pharmacy compounding (emphasis added). (See section 503A(b)(1) of the FD&C Act.)

Accordingly, it is reasonable to interpret the phrase ''applicable United States Pharmacopoeia monograph'' in this statutory provision as a reference to USP *drug* monographs, not USP dietary supplement monographs. Moreover, adopting the alternative interpretation urged by the comment—*i.e.,* that ''applicable'' USP monographs include dietary supplement USP monographs—would not be in the best interest of the public health. USP monographs for dietary supplements can differ in significant ways from USP monographs for drugs because of the differences between dietary supplements and drug products. For example, dietary supplements are intended for ingestion only, and the standards contained in the USP dietary supplement monographs are likewise intended for dietary supplements that will be ingested; the standards are not appropriate for use in compounding drug products that may have different routes of administration (*e.g.,* intravenous, intramuscular, topical). In addition, the USP limits for elemental impurities are different for drugs and dietary supplements: There are limits specified in USP General Chapters for many more elemental contaminants for drugs than there are for dietary supplements. Furthermore, the bioburden allowable for dietary supplements is considerably higher than that allowed for drug substances. Relying on the standards of a dietary supplement monograph for a substance that will be used in compounding drug products could therefore put patients at risk.

We disagree with the commenter's statement that a 2014 guidance stated that dietary supplement monographs were ''applicable monographs'' under section 503A of the FD&C Act. FDA is unaware of any Agency statements that support that view, including the July 2014 Request for Nominations.

(Comment 22) One comment asserted that the Homeopathic Pharmacopeia of the United States (HPUS) homeopathic monographs and other types of monographs should be considered ''applicable monographs'' under section 503A(b)(1)(A)(i)(I) of the FD&C Act, making substances that are the subject of such monographs eligible for use in compounding. The comment asserted that the Drug Quality and Security Act (DQSA) (Pub. L. 113–54) gives FDA authority to designate sources other than USP or NF monographs as ''applicable monographs.'' The comment also noted that the FD&C Act recognizes the HPUS as ''official'' in 21 U.S.C. 358(b), and in the definitions at 21 U.S.C. 321, the FD&C Act defines ''drug'' to include articles recognized in the HPUS.

(Response 22) We disagree that HPUS homeopathic monographs and other types of monographs should be considered ''applicable monographs'' under section 503A. The provisions of DQSA cited in the comment do not apply to section 503A of the FD&C Act. Rather, the language of section 503A explicitly applies only to applicable USP or NF monographs. Therefore, we decline to consider HPUS or other types of monographs to be ''applicable monographs'' under section 503A(b)(1)(A)(i)(I) of the FD&C Act.

(Comment 23) One commenter asserted that incorporating the statements about FDA's interpretation of ''applicable monographs'' from the Interim Policy Guidance effectively and improperly converts that guidance document to rulemaking. The commenter pointed out that regulations cannot be issued through guidance documents and stated that the guidance should be rescinded.

(Response 23) We disagree with this comment. Describing an interpretation of the applicable statute in both a guidance document and in a preamble to a proposed rule does not ''convert'' the guidance document to a rulemaking and has no impact on the status of the guidance. The guidance document was issued in accordance with our ''Good guidance practices'' regulation (21 CFR 10.115).

5. Conflict of Interest

(Comment 24) One comment stated that FDA should consider its ''conflict of interest'' arising from the Agency's receipt of funds under the Prescription Drug User Fee Act (PDUFA) related to new drug applications (NDAs). According to the commenter, these funds cause FDA to be biased in favor of approved products.

(Response 24) We disagree with this comment. It is unclear what action the commenter was suggesting that FDA take to address this perceived ''conflict of interest.'' We note that the receipt of PDUFA fees related to NDAs has not affected FDA's ability to be impartial when evaluating bulk drug substances for inclusion on the 503A Bulks List. The Agency believes that compounded drugs can play a critical role for patients whose medical needs cannot be met by an approved drug.

Moreover, FDA's recommendations on particular bulk drug substances are subject to discussion with the PCAC and USP, and are the subject of notice and comment rulemaking. If, through the rulemaking process, FDA receives feedback that any party believes its recommendations are biased in any particular cases, FDA will consider that feedback before finalizing its proposal to include, or not include, a substance on the 503A Bulks List.

6. Qualifiers for Use of Substances on the 503A Bulks List

(Comment 25) One comment requested that FDA allow inclusion of bulk drug substances on the list with certain qualifiers or limited uses, such as dose or dosage form. The comment stated that such qualifiers will give FDA greater leeway to add bulk drug substances to the list, which will benefit patients.

(Response 25) We agree that in some limited cases, it may be appropriate to place bulk drug substances on the 503A

Bulks List subject to a restriction on use, such as the route of administration. For example, several of the substances that are being added to the list in this rulemaking are restricted to topical use only. For the substances we are not including on the list in this rulemaking, we found no relevant qualifiers on the compounded drug product, such as route of administration, that would have justified inclusion of the substances on the list.

7. Process Issues Related to FDA's Evaluation of Nominated Bulk Drug Substances and PCAC Consultations

(Comment 26) One comment raised concerns about the composition of the PCAC. The commenter asserted that the professions most familiar with compounded drug products are not represented on the PCAC, and neither FDA nor the PCAC has the necessary expertise to make judgments on the nominated bulk drug substances. In particular, according to the commenter, naturopaths need to be consulted, and a counterbalance to the representation by Public Citizen and the Pew Charitable Trusts is needed on the committee. The comment stated that PCAC members may have conflicts of interest.

(Response 26) We disagree with the comment. Of the current PCAC members, seven are pharmacists, and five are physicians. Twelve committee members have experience related to drug compounding, including experience in the preparation, prescribing, and use of compounded medications, as well as compounding-related research activities. In accordance with section 503A of the FD&C Act, one member is a representative from USP, and one member is a representative from the National Association of Boards of Pharmacy.

Industry participated in the selection of two additional committee members—one from the pharmaceutical manufacturing industry and one from the compounding industry. Additionally, a consortium of consumer advocacy representatives participated in the selection of a consumer representative.

More than 100 names were submitted to the Agency in response to the January 13, 2014, **Federal Register** notices requesting nominations.[4] (79 FR 2177; 79 FR 2178; 79 FR 2179.) In addition, FDA identified qualified candidates from its own pool of special government employees. The selection process of candidates that were not designated representatives of particular groups included evaluation for conflicts of interest as required by 21 CFR 14.80, and for the relevancy of their qualifications for the purpose of the committee. Candidates with actual or potential conflicts of interest in matters that would come before the committee were eliminated from consideration. For example, for those candidates not representing a particular group, FDA reviewed whether the candidate owned a compounding pharmacy, consulted for the compounding industry, or supplied bulk drug substances for compounding, because those activities would likely raise a financial interest that could be affected by the matters expected to come before the committee.

In general, members are invited to serve for overlapping terms of up to 4 years. As it has to date, the Agency will consider future nominations for membership and strive to select members with robust and relevant experience and expertise related to drug compounding.

Nominations may be submitted to the Advisory Committee Membership Portal at any time and submitted nominations will be considered as vacancies occur. See *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm.* See *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/CommitteeMembership/ApplyingforMembership/default.htm* for more information on the nomination procedure.

(Comment 27) One comment asserted that FDA has ''unfairly screen[ed]'' the evidence provided by nominators to the PCAC, has ''misrepresented'' the availability of other routes of approval of drug products compounded with the nominated bulk drug substance, and has ''manipulated'' the PCAC into rejecting certain nominated substances. The commenter stated that FDA appeared to be ''cherry-picking'' studies only to show negative data, and was not scrutinizing studies that showed safety concerns with the use of the bulk drug substance in the same way that it has scrutinized studies the nominators put forward to show effectiveness.

(Response 27) We disagree with this comment. As stated above, FDA is determining whether to place a substance on the list after weighing available data and information in light of the four criteria set forth in this rulemaking and considering feedback from PCAC, USP, and the public. FDA considers publicly available studies that are relevant to the evaluation criteria, regardless of the source of those studies.

As stated above, if members of the public believe FDA is not giving adequate weight to certain studies, or is otherwise misrepresenting information presented to the PCAC in any particular case, they are encouraged to submit a comment to the docket for the NPRM in which the substance at issue is addressed. Nominators and the public are also invited to present at PCAC meetings where they have an opportunity to discuss their interpretation of the relevant studies and address the PCAC regarding each substance considered. FDA will consider all feedback received before finalizing its proposal to include, or not include, a substance on the 503A Bulks List.

(Comment 28) Some comments stated that nominators were not being given equal time with FDA to make presentations to the PCAC, and instead were limited to 10-minute presentations. Commenters asserted that this imbalance is unfair and has resulted in skewed decision making by the PCAC. Commenters also asserted that nominators were given insufficient notice of PCAC meetings and did not have adequate time to prepare.

(Response 28) We acknowledge that FDA presentations have been allotted more time than those by nominators, which we believe is appropriate given that FDA is tasked with developing the 503A Bulks List and is necessary for FDA to present fully on the reviews of the bulk drug substances.

Regarding notice of PCAC meetings, FDA has notified the public at least 20 days prior to PCAC meetings, and the Agency strives to give notice further in advance where possible. However, further advance notice is not always possible due to the need to coordinate various logistical issues.

(Comment 29) Some commenters noted that it was not possible for nominators to provide the information FDA requested in its July 2014 Request for Nominations for the list of bulk drug substances that can be compounded under section 503A of the FD&C Act for two reasons. First, commenters stated there is a gap between the stated criteria and how FDA is applying the criteria, and therefore, nominators did not have sufficient notice of what information would be needed for FDA's decision making. Second, commenters asserted that it is not possible to provide the information FDA required for a nomination because decisions about how a compounded drug is used are at the discretion of the physician.

(Response 29) We disagree with this comment. As noted previously, FDA is applying the four criteria set forth in

[4] FDA issued another request for nominations for the PCAC in the **Federal Register** of March 27, 2018 (83 FR 13133).

this rulemaking when evaluating bulk drug substances for inclusion on the list. FDA considers the information requested in the July 2014 Request for Nominations and bases its decision on the physical and chemical characterization, safety, effectiveness, and historical use of the bulk drug substance in compounded drug products. If nominators believe that there is additional information relevant to those four criteria that would be helpful to consideration of nominations that are still pending with FDA for evaluation, that information can be submitted for FDA's consideration via Docket No. FDA–2015–N–3534.

With respect to the concern about challenges in submitting nominations because physicians may prescribe compounded drug products tailored to the needs of individual patients, we note that physicians and prescribers, who may have unique insights on how compounded drug products are used in particular cases, may submit information for FDA's consideration via Docket No. FDA–2015–N–3534.

(Comment 30) Some comments objected to FDA's process regarding bulk drug substances that were nominated without adequate information for FDA to evaluate the substance. One commenter requested that FDA issue letters to the parties whose nominations were rejected informing them of the specific deficiencies with the nomination. The comment described this process as resource-intensive, but necessary because access to the bulk drug substance is being ''cut off.''

(Response 30) We disagree with this comment. The July 2014 Request for Nominations identifies the information that the Agency is requesting in the nominations, and nominations containing the information requested in the July 2014 Request for Nominations will be deemed adequate.

As described in the Interim Policy Guidance, Docket No. FDA–2015–N–3534 is open to receive new nominations, including renominations of substances previously nominated with inadequate supporting information, or additional information about bulk drug substances previously nominated with adequate information to allow evaluation. FDA is evaluating new information provided to the docket on a rolling basis and is periodically adding newly nominated or renominated substances to ''Category 1'' (the category for adequately supported nominations that will be evaluated for inclusion on the 503A Bulks List) when appropriate.

(Comment 31) One comment stated that clarity is needed regarding the process by which substances that have been ''considered and rejected'' by the PCAC may be renominated. The comment noted that new or additional information about the substance may become available that warrants further evaluation by FDA and the PCAC.

(Response 31) We have considered this comment and are clarifying the process for providing additional information about substances that have been considered by the PCAC. Bulk drug substances, including those that have been evaluated by FDA and presented to the PCAC and USP, remain under consideration until they are addressed in a final rule. Individuals and organizations may submit additional information relevant to the evaluation criteria about a use proposed in the original nomination(s) for a bulk drug substance to Docket No. FDA–2015–N–3534 until that substance is addressed in an NPRM. When a substance is addressed in an NPRM, individuals and organizations may submit additional information relevant to the evaluation criteria about the use(s) evaluated for that bulk drug substance as a comment to that proposed rule. As noted above, after the substance is addressed in a final rule, individuals and organizations may submit a citizen petition to FDA under 21 CFR 10.30 asking FDA to amend the list (*i.e.,* to add or delete bulk drug substances).

If an individual or organization seeks to use a bulk drug substance that has been evaluated by FDA and not recommended in FDA's review for placement on the 503A Bulks List, for a use, dosage form, or route of administration that was not previously evaluated by FDA, or where there is otherwise a substantive change between the use of the bulk drug substance sought by the individual or organization and how it was evaluated by FDA, the individual or organization may file a citizen petition under 21 CFR 10.30 requesting that FDA reconsider its evaluation of the bulk drug substance, regardless of whether that substance has been addressed in an NPRM or final rule. In responding to such citizen petitions, FDA generally intends to consider whether, for example, the petitioner provides information not previously considered or shows a significant change in circumstances supported by scientific references that alters the Agency's analysis of the four criteria.

(Comment 32) One comment stated that FDA is only sending certain nominations to the committee and appeared to be ''approving'' some nominations without consulting the PCAC.

(Response 32) We disagree with this comment, the basis of which is unclear. FDA acknowledges that it is evaluating and consulting with USP and the PCAC only on substances that were nominated with adequate support to allow the Agency's review, as described in the Interim Policy Guidance. FDA is not, however, ''approving'' the use of any bulk drug substances or proposing to include bulk drug substances on the 503A Bulks List, without consulting USP and the PCAC.

(Comment 33) One comment stated that FDA should have consulted with the PCAC before seeking nominations for the 503A Bulks List or before the Agency evaluated the first set of bulk drug substances for inclusion on the list.

(Response 33) The statute does not require that FDA seek nominations for the 503A Bulks List, or that it consult the PCAC, at any specific stage prior to undertaking rulemaking. Section 503A requires only that FDA consult with the PCAC before issuing regulations to implement subsection (b)(1)(A)(i)(III). FDA sought nominations for the 503A Bulks List and began evaluating substances for inclusion on the list before consulting with the PCAC because this enabled the Agency to prepare robust background materials for PCAC meetings and thereby obtain more meaningful PCAC and public input prior to proposing a rule describing the criteria.

8. Availability of Ingredients for Physician Use

(Comment 34) One comment objected to the rulemaking generally as infringing on the practice of medicine and overregulating physicians' choices of ingredients that can be used in compounded drug products.

(Response 34) The FD&C Act establishes the framework for regulating the drugs that physicians may prescribe. Within this framework, once a drug becomes legally available, with certain limited exceptions, FDA does not interfere with physicians' decisions to use it when they determine that in their judgment it is medically appropriate for their patients. The Agency believes that this rulemaking is consistent with this framework and does not overregulate.

(Comment 35) The comment asserted that this action amounts to poor public health policy and will stifle innovation, because drugs will not be researched or considered for new drug applications unless they show some initial promise.

(Response 35) We disagree. FDA is carrying out its statutory mandate in a manner that seeks to protect the public

from exposure to bulk drug substances that are not suitable for use in compounded drug products. We believe it protects the public health to prevent the use of drug products for which there is insufficient evidence that benefits to the patients might outweigh possible risks. To protect human subjects and the integrity of any research, it is important that drugs generally not be studied in humans outside of an investigational new drug application.

9. ''Grandfathering In'' Use of Bulk Drug Substances

(Comment 36) One comment objected to this rulemaking generally, based on FDA's lack of regulation in this arena previously. The commenter asserted that the compounding industry has developed under State law, and use of bulk drug substances in compounding should be considered ''grandfathered in.'' The comment noted that many of the bulk drug substances at issue were in use prior to 1962.

(Response 36) We disagree with this comment. Section 503A of the FD&C Act does not provide for ''grandfathering in'' the use of bulk drug substances, including those in use prior to 1962. Moreover, FDA is considering the length and extent of the historical use of the bulk drug substance in compounded drug products when determining whether to recommend the substance for inclusion on the 503A Bulks List.

10. ''Regulatory Freeze Pending Review'' Memorandum and Executive Order 13771

(Comment 37) One comment objected to this rulemaking based on the January 20, 2017, memorandum signed by Reince Priebus on behalf of President Trump entitled ''Regulatory Freeze Pending Review'' and January 30, 2017, Executive Order 13771 entitled ''Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs'' because FDA has not identified two regulations to be eliminated.

(Response 37) The requirements outlined in Executive Orders 13771 and 13777 have been considered in issuing this final rule, and this rule will be accounted for as appropriate under both executive orders.

11. Rulemaking

(Comment 38) Some commenters alleged that FDA's actions related to this rulemaking, many of which are described in the comments summarized above, have been arbitrary and capricious in violation of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*). In addition, one commenter stated that FDA's actions through this rulemaking are arbitrary and capricious because the rulemaking goes beyond concerns about the safety of compounded drug products, which applies only to sterile drug products. That commenter noted that Congress enacted the DQSA to address concerns surrounding sterility and contamination.

(Response 38) We disagree with this comment. FDA has followed proper rulemaking procedures and has not acted in an arbitrary and capricious manner in violation of the APA.

Section 503A requires FDA to issue the 503A Bulks List through a rulemaking process, and it gives the Agency discretion to consider relevant criteria (see section 503A(c)(2) of the FD&C Act). FDA is establishing the four criteria described above, and applying these criteria to bulk drug substances that are not the subject of an applicable USP–NF monograph or a component of an FDA-approved drug product. Such substances may be used to compound sterile or non-sterile drug products. Accordingly, FDA applies the established criteria to bulk drug substances that may be used to compound sterile or non-sterile drug products. FDA notes that the safety criterion is not limited to consideration of sterility and contamination, and FDA may have safety concerns about bulk drug substances used to compound sterile and non-sterile drug products.

VI. Effective Date

This final rule will become effective 30 calendar days after the date of its publication in the **Federal Register**.

VII. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13771 requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' We believe that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because we do not have enough information about the effect of the final rule on small entities, we find that the final rule will have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $150 million, using the most current (2017) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

We evaluated 10 bulk drug substances for this final rule. We will place six bulk drug substances on the 503A Bulks List, and we will not place four substances on the 503A Bulks List. We expect that the rule will affect compounding pharmacies and other producers that market the affected substances or drug products made from the affected substances, consumers of drug products containing the affected substances, and payers that cover these drug products or alternative treatments. Because we lack sufficient information to quantify most of the costs and benefits of this final rule, we also include a qualitative description of potential benefits and potential costs.

In table 1, we summarize the impacts of the final rule. The present value of the costs of the final rule equals $3.33 million at a 7 percent discount rate and $3 million at a 3 percent discount rate. The final rule will result in annualized costs of $0.42 million at a 7 percent discount rate, or $0.31 million at a 3 percent discount rate.

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE FINAL RULE

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized Monetized ($m/year)	.....	.....	.....	.....	.....	.....	
Annualized Quantified	.....	.....	.....	.....	.....	.....	
Qualitative	Potential gains or losses in consumer surplus, depending on consumer preferences for compounded drugs. Potential public health benefits from increased use of other drug products that may be more effective.						
Costs:							
Annualized Monetized ($m/year)	$0.42	$0.27	$0.56	2016	7	10	
Annualized Quantified	0.31	0.21	0.42	2016	3	10	
Qualitative	Costs to submit INDs for some compounded drug products.						
Transfers:							
Federal Annualized Monetized ($m/year)	From:			To:			
Other Annualized Monetized ($m/year)	From:			To:			
Effects: State, Local, or Tribal Government: None. Small Business: None. Wages: None. Growth: None.							

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the proposed rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. 17) and at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm*.

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, FDA is not required to seek clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

X. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive Order and, consequently, a tribal summary impact statement is not required.

XII. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov*. References without asterisks have copyright restriction and can be viewed at Dockets Management Staff. They are not available publicly on the internet due to copyright restriction. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

* 1. Food and Drug Administration, FDA Guidance for Industry on Interim Policy on Compounding Using Bulk Drug Substances Under Section 503A of the Federal Food, Drug, and Cosmetic Act, 2017; available at *https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM469120.pdf*.

* 2. Food and Drug Administration, Transcript of the February 23, 2015, Meeting of the Pharmacy Compounding Advisory Committee (Afternoon Session), 2015; available at *https://wayback.archive-it.org/7993/20170404155240/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/PharmacyCompoundingAdvisoryCommittee/UCM444500.pdf*.

* 3. Memorandum to File on Food and Drug Administration Consultations with United States Pharmacopeia, September 26, 2016.

* 4. Letter from the United States Pharmacopeia to FDA, October 7, 2016.

* 5. Food and Drug Administration Briefing Document for the June 17–18, 2015,

Meeting of the Pharmacy Compounding Advisory Committee, 2015; available at *https://wayback.archive-it.org/7993/20170405230419/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/PharmacyCompoundingAdvisoryCommittee/UCM449535.pdf.*

6. Birdsall, T.C., 1998, ''5-Hydroxytryptophan: A Clinically-Effective Serotonin Precursor,'' *Alternative Medicine Review,* 3(4):271–80; available at *https://www.ncbi.nlm.nih.gov/pubmed/9727088.*

7. MedlinePlus, 5–HTP; available at *https://medlineplus.gov/druginfo/natural/794.html* (last reviewed November 30, 2017).

* 8. Drugs.com, Prozac Side Effects, 2018; available at *https://www.drugs.com/sfx/prozac-side-effects.html.*

9. Jakoben, J.C., K.K. Katakam, A. Schou, et al., 2017, ''Selective Serotonin Reuptake Inhibitors Versus Placebo in Patients with Major Depressive Disorder. A Systematic Review with Meta-Analysis and Trial Sequential Analysis.'' *BMC Psychiatry,* 17(1):58.

* 10. Food and Drug Administration Supplemental Review of Oxitriptan, November 2018.

11. Fang, Y., Z. Qiu, W. Hu, et al., 2014. ''Effect of Piracetam on the Cognitive Performance of Patients Undergoing Coronary Bypass Surgery: A Meta-Analysis.'' *Experimental and Therapeutic Medicine,* 7:429–434; available at *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3881046/.*

12. De Reuck, J. and B. Van Vleymen, 1999, ''The Clinical Safety of High-Dose Piracetam—Its Use in the Treatment of Acute Stroke.'' *Pharmacopsychiatry,* 32 Suppl 1:33–37; available at *https://www.ncbi.nlm.nih.gov/pubmed/10338106.*

* 13. Food and Drug Administration Briefing Document for the February 23–24, 2015, Meeting of the Pharmacy Compounding Advisory Committee, 2015; available at *https://wayback.archive-it.org/7993/20170405230436/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/PharmacyCompoundingAdvisoryCommittee/UCM433804.pdf.*

14. UCB Pharma SA, 2007. A multicenter, randomized, double-blind, placebo-controlled, parallel-group study of the efficacy and safety of 9600 and 4800 mg/day piracetam (oral 800 mg tablets, b.i.d.) taken for 12 months by subjects suffering from mild cognitive impairment (MCI) Brussels: UCB, Inc. Clinical Study Summary; available at *https://www.ucb.com/_up/ucb_com_patients/documents/N01001_CSS_20070907.pdf.*

* 15. Food and Drug Administration, Transcript of the February 24, 2015, Meeting of the Pharmacy Compounding Advisory Committee; available at *https://wayback.archive-it.org/7993/20170404155242/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/PharmacyCompoundingAdvisoryCommittee/UCM444501.pdf.*

* 16. Food and Drug Administration Supplemental Review of Topical Tranilast, April 25, 2016.

* 17. Economic Analysis of Impacts, available at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

List of Subjects in 21 CFR Part 216

Drugs, Prescription drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 216 is amended as follows:

PART 216—HUMAN DRUG COMPOUNDING

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353a, 353b, 355, and 371.

■ 2. Add § 216.23 to subpart B to read as follows:

§ 216.23 Bulk drug substances that can be used to compound drug products in accordance with section 503A of the Federal Food, Drug, and Cosmetic Act.

(a) The following bulk drug substances can be used in compounding under section 503A(b)(1)(A)(i)(III) of the Federal Food, Drug, and Cosmetic Act.

(1) Brilliant Blue G, also known as Coomassie Brilliant Blue G–250.

(2) Cantharidin (for topical use only).

(3) Diphenylcyclopropenone (for topical use only).

(4) N-acetyl-D-glucosamine (for topical use only).

(5) Squaric acid dibutyl ester (for topical use only).

(6) Thymol iodide (for topical use only).

(b) After balancing the criteria set forth in paragraph (c) of this section, FDA has determined that the following bulk drug substances will not be included on the list of substances that can be used in compounding set forth in paragraph (a) of this section:

(1) Oxitriptan.

(2) Piracetam.

(3) Silver Protein Mild.

(4) Tranilast.

(c) FDA will use the following criteria in evaluating substances considered for inclusion on the list set forth in paragraph (a) of this section:

(1) The physical and chemical characterization of the substance;

(2) Any safety issues raised by the use of the substance in compounded drug products;

(3) The available evidence of the effectiveness or lack of effectiveness of a drug product compounded with the substance, if any such evidence exists; and

(4) Historical use of the substance in compounded drug products, including information about the medical condition(s) the substance has been used to treat and any references in peer-reviewed medical literature.

(d) Based on evidence currently available, there are inadequate data to demonstrate the safety or efficacy of any drug product compounded using any of the drug substances listed in paragraph (a) of this section, or to establish general recognition of the safety or effectiveness of any such drug product. Any person who represents that a compounded drug made with a bulk drug substance that appears on this list is FDA approved, or otherwise endorsed by FDA generally or for a particular indication, will cause the drug to be misbranded under section 502(a) and/or 502(bb) of the Federal Food, Drug, and Cosmetic Act.

Dated: February 11, 2019.

Scott Gottlieb,

Commissioner of Food and Drugs.

[FR Doc. 2019–02367 Filed 2–15–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

32 CFR Part 162

[Docket ID: DOD–2018–OS–0084]

RIN 0790–AK46

Productivity Enhancing Capital Investment (PECI)

AGENCY: Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Final rule.

SUMMARY: This final rule removes the DoD regulation issued to explain to contractors how the Productivity Enhancing Capital Investment (PECI) program could be used by DoD components to fund projects that improve productivity. This rule implemented an Executive Order which has since been revoked. The associated internal programs were discontinued, and internal guidance was cancelled. The content of this part is obsolete.

DATES: *Effective Date:* This rule is effective on February 19, 2019.

FOR FURTHER INFORMATION CONTACT: Dana F. Kline, 703–695–4506, *dana.f.kline.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is

impracticable, unnecessary, and contrary to public interest because it is based on removing obsolete information. This rule implemented Executive Order 12637, ''Productivity Improvement Program for the Federal Government,'' which was revoked by Executive Order 13048, ''Improving Administrative Management in the Executive Branch,'' on June 10, 1997. The DoD-level program was discontinued in 2010, and the corresponding internal DoD guidance was canceled. Any associated reporting was sunset thereafter. The content of the rule is obsolete and should be removed.

This rule is not significant under Executive Order (E.O.) 12866, Regulatory Planning and Review, therefore, the requirements of E.O. 13771, Reducing Regulation and Controlling Regulatory Costs do not apply.

List of Subjects in 32 CFR Part 162

Armed forces, Arms and munitions, Government contracts.

PART 162—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 162 is removed.

Dated: February 12, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 2019–02619 Filed 2–15–19; 8:45 am]

BILLING CODE 5001–06–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 54, and 65

[WC Docket Nos. 10–90, 14–58, 07–135, CC Docket No. 01–92; FCC 18–176]

Connect America Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing a Unified Intercarrier Compensation Regime

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) continues its efforts to bridge the digital divide. The Commission addresses the challenges that rate-of-return carriers face by taking steps to promote broadband deployment, ensure the efficient use of resources, and provide sufficient and predictable support necessary to increase broadband deployment. The Commission also denies three petitions seeking reconsideration of its decision directing the Wireline Competition Bureau (Bureau) to offer additional support up to $146.10 per-location to all carriers that accepted the revised offers of model-based support.

DATES: Effective March 21, 2019, except for the amendments to §§ 54.313 and 54.316, which contain information collection requirements that have not been approved by OMB—the FCC will publish a document in the **Federal Register** announcing the effective date of those amendments awaiting OMB approval—and except for the amendments to §§ 32.1410, 32.2680, 32.2681, 32.2682, 32.3400, 32.3410, 32.4130, 32.4200, 32.4300, 32.7500, 54.643, and 65.450, which are effective January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Suzanne Yelen, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order and Order on Reconsideration in WC Docket Nos. 10–90, 14–58, 07–135, CC Docket No. 01–92; FCC 18–176, adopted on December 12, 2018 and released on December 13, 2018. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-18-176A1.pdf.* The Further Notice of Proposed Rulemaking (FNPRM) that was adopted concurrently with the Report and Order and Order on Reconsideration will be published elsewhere in this issue of the **Federal Register**.

I. Introduction

1. In the Report and Order, the Commission continues its efforts to bridge the digital divide. According to the Commission's most recently available data, about 30% of rural Americans lack access to fixed, terrestrial high-speed internet of at least 25 Mbps download/3 Mbps upload (25/3 Mbps), the Commission's current speed benchmark, which reflects consumer demand for high-speed broadband services. In urban areas, that number is 2%. The gap between broadband access in rural and urban areas is unacceptable. The Commission must do better. The Commission has made progress in bringing broadband service to rural Americans living in areas served by our nation's largest telecommunications companies, and will realize additional gains as the winners of the Connect America Fund (CAF) Phase II auction begin to deploy 25/3 Mbps or higher speed service to approximately 713,176 locations. But the rules governing smaller, community-based providers—rate-of-return carriers—have not kept pace, making it more difficult for these carriers to bring 25/3 Mbps service to rural America. The Report and Order addresses the challenges that rate-of-return carriers face by taking steps to promote broadband deployment, ensure the efficient use of resources, and provide sufficient and predictable support necessary to increase broadband deployment.

2. By improving access to modern communications services, the Commission can help provide individuals living in rural America with the same opportunities that those in urban areas enjoy. Broadband access is critical to economic opportunity, job creation, education, and civic engagement. And as important as these benefits are in America's cities, they can be even more important in America's more remote small towns and rural and insular areas. Rural Americans deserve to reap the same benefits of the internet—and not run the risk of falling yet further behind.

3. The Report and Order marks a significant next step in closing the digital divide. The Commission recognizes that access to 25/3 Mbps broadband service is not a luxury for urban areas, but important to Americans wherever they live. To that end, the Commission adopts additional measures toward its goal of expanding the availability of affordable broadband service to rural America. First, the Commission makes another model offer to those rate-of-return carriers currently receiving Alternative Connect America Cost Model (A–CAM) support for additional funding if they commit to building out to additional locations at speeds of 25/3 Mbps. Second, the Commission makes a new model offer to those on legacy support in return for specifically tailored obligations to build out broadband networks providing speeds of 25/3 Mbps. Third, for those rate-of-return carriers remaining on legacy support that do not take the new model offer, the Commission adopts a new budget based on uncapped 2018 claims that will be increased by inflation annually, as well as new deployment obligations that require speeds of 25/3 Mbps rather than 10/1 Mbps. Fourth, the Commission adopts measures to mitigate the regulatory burden on providers and encourage the

efficient use of universal service support.

4. In the Order on Reconsideration, the Commission denies three petitions seeking reconsideration of the Commission's decision directing the Bureau to offer additional support up to $146.10 per-location to all carriers that accepted the revised offers of model-based support.

I. Report and Order

5. To promote additional broadband deployment in areas served by existing A–CAM carriers, the Commission initiates a new set of revised model offers which would provide support up to $200 per month, per location. These revised offers, in effect, fund the initial offers extended by the Bureau on August 3, 2016, before those offers were reduced for budgetary reasons. To ensure these revised offers are in the public interest, the Commission conditions them on increased deployment obligations. These increased deployment obligations will further advance the Commission's goal of widespread availability of 25/3 Mbps service throughout the nation.

6. *Discussion.* The Commission authorizes additional support up to $200 per location to all carriers that are currently authorized to receive A–CAM support. Increasing support immediately will result in substantial additional broadband deployment, while balancing overall budgetary constraints. This increase does not affect funding available to those carriers on legacy support.

7. The record uniformly supports increasing the funding cap for A–CAM to $200, as long as doing so does not adversely affect carriers receiving legacy support. With additional funding, parties have made clear the economic, educational, and healthcare benefits that will directly follow.

8. Consistent with the Commission's goal of realizing widespread deployment of 25/3 Mbps service, it increases the deployment obligations associated with this revised offer. In adopting the speed obligations in the *2016 Rate-of-Return Reform Order,* 81 FR 24282, April 25, 2016, the Commission noted that ''our minimum requirements for rate-of-return carriers will likely evolve over the next decade.'' The Commission acknowledged, in particular, NTCA's argument that ''a universal service program premised on achieving speeds of 10/1 Mbps risks locking rural America into lower service levels.'' Although the Commission agreed that ''our policies should take into account evolving standards in the future,'' it required carriers electing A–CAM to deploy 25/3 Mbps service to only a fraction of their fully funded eligible locations. The Commission's recent experience with the CAF Phase II auction, which resulted in more than 99.7% of new locations being served by 25/3 Mbps service, affirms its conclusion that a higher standard of service is achievable.

9. Therefore, the Commission increases the 25/3 Mbps deployment obligations associated with the revised offer. Carriers receiving A–CAM under the existing offers must deploy 25/3 Mbps service to a number of eligible locations equal to at least 25%, 50%, or 75% of the number of fully funded locations, depending on the density of the population in the carrier's service territory. The Commission increases the 25/3 Mbps service requirement to 50% of fully funded locations for low density carriers, 65% of fully funded locations for medium density carriers, and 85% of fully funded locations for high density carriers consistent with ITTA's proposal. ITTA's proposal assumes that carriers will devote the additional support from the revised offer entirely to capital expenses associated with the deployment of new broadband, and estimates the number of locations that carriers in each band would, on average, be able to reach with 25/3 Mbps service as a result. The Commission finds that ITTA's proposal provides a reasonable estimate of how many additional locations a carrier could be expected to serve with 25/3 Mbps service and ensure that all new fully funded locations based on this offer will receive 25/3 Mbps service.

10. The Commission notes that the revised offer will be made available to all carriers that accepted the first A–CAM offer, including those carriers whose offer of model-based support is less than their legacy support (referred to as glide path carriers). Although this will not provide any additional support to glide path carriers during the eight remaining years of the original authorization, it would provide an opportunity for the glide path carriers to receive an additional two years of A–CAM support, through the end of the term of this revised offer, in consideration for additional obligations to deploy 25/3 Mbps service. Glide path carriers currently receive approximately $51 million per year in A–CAM support (excluding transitional support) and would be required to deploy 25/3 Mbps service to over 8,300 additional eligible locations if all companies accepted.

11. If all eligible carriers accept the revised offer, this deployment obligation would increase the number of locations to which carriers would be required to offer 25/3 Mbps service by more than 100,000 locations. This exceeds the more than 39,000 partially funded locations, currently required to be served with 4/1 Mbps or only upon reasonable request, that would be fully funded and would be required to be served by at least 10/1 Mbps service. The Commission further notes that the number of locations subject to the reasonable request standard would be reduced by more than 26,000. The Commission finds that these higher deployment obligations justify the potential $67 million per year cost of funding to the $200 per location cap.

12. In the absence of the increased deployment obligations, the Commission does not believe a revised offer for the existing A–CAM carriers with a $200 per-location funding cap would provide a sufficient value for its limited universal service resources. Absent the higher deployment obligations, in contrast to the increased deployment figures noted above, the revised offer could increase the number of locations that would receive 25/3 Mbps over the course of the support term by only 17,800, with only another 21,678 locations receiving 10/1 Mbps (while still reducing the number of locations subject to provision of broadband service only on reasonable request by more the 26,000). Given a $67 million per year price tag, the Commission does not believe that this result, without more, achieves sufficient ''bang for the buck.''

13. The Commission declines to adopt ITTA's request to count existing locations towards the deployment obligations of existing A–CAM carriers. Specifically, ITTA proposes that a carrier should be permitted to satisfy its deployment obligations by providing service to locations that were ineligible in the original offer because they were in census blocks in which the carrier or its affiliate already served with fiber-to-the-premises or cable facilities. The Commission does not believe this modification would be in the public interest. In most cases, the otherwise eligible locations that were excluded because they were already served by the carrier with fiber-to-the-premises or cable facilities are likely to be relatively less costly to serve than other eligible locations. As a result, ITTA's proposal would allow A–CAM carriers to meet their deployment obligations by serving locations that are, in many cases, far less costly to serve than the ones on which their A–CAM support offers were calculated. Further, by definition, some of these locations are already served by fiber-to-the-premises or cable technology, so making these areas

eligible for deployment would limit the amount of deployment to additional unserved locations. Finally, the Commission notes that this approach would make it much more difficult for the Commission to monitor and verify whether any built out locations are actually new.

14. The Commission declines to adopt Gila River's proposal to apply a Tribal Broadband Factor, as it does with the new model offer, in the following, to existing A–CAM recipients. In the new model offer, the Commission includes a Tribal Broadband Factor to reflect that the assumptions made about the amount of end-user revenues in the model may not be reasonable for Tribal lands. When the existing A–CAM carriers accepted the model offer, they implicitly accepted that the end-user revenue assumptions were sufficiently reasonable for them to meet the deployment obligations associated with the model offer. Accordingly, the Commission does not believe that existing A–CAM carriers require the adjustment that it adopts for the new model offer.

15. To provide carriers accepting this revised A–CAM offer sufficient time to meet the increased deployment obligations, the Commission adopts a modified term of support and deployment milestones for those carriers. The term of the revised offer will be ten years, beginning January 1, 2019, and running until December 31, 2028. Effectively, this revised term extends A–CAM by two years for carriers that elect this revised offer. Carriers electing this revised offer will be obligated to meet the deployment milestones to which they previously agreed with respect to 10/1 Mbps service. In addition, they will be required to meet similar milestones to deploy 25/3 Mbps service to the required number of eligible locations on a ten-year schedule beginning January 1, 2019. In other words, each carrier will be required to serve at least 40% of the requisite number of eligible locations by end of the 2022, 50% by the end of 2023, 60% by the end of 2024, 70% by the end of 2025, 80% by the end of 2026, 90% by the end of 2027, and 100% by the end of 2028.

16. The Commission directs the Bureau to release a public notice announcing the revised model-based support amounts and corresponding deployment obligations and providing carriers that have previously been authorized to receive A–CAM support with 30 days to confirm that they will accept the revised offer. Any such election shall be irrevocable. USAC shall begin disbursing this revised model support the month following a Bureau public notice authorizing those carriers that accept this revised offer.

17. The Commission extends a new model offer, or A–CAM II, to legacy rate-of-return carriers that did not previously elect model support or support pursuant to the Alaska Plan. This offer will re-open a voluntary path for legacy rate-of-return carriers to receive model-based support in exchange for deploying broadband-capable networks to a predetermined number of eligible locations. Expanding the number of carriers receiving model-based support will advance the Commission's longstanding objective to provide high-cost support based on a carrier's forward-looking, efficient costs and will help spur additional broadband deployment in rural areas. As described in the following, this new model offer retains many elements of the original A–CAM offer but makes several critical adjustments to encourage new carriers to take advantage of model-based support and accelerate deployment of broadband networks.

18. *Discussion.* The Commission adopts a new model offer, A–CAM II, as described in detail in the following. This new model offer of up to $200 per location will be available to all existing legacy carriers, including those previously excluded because they had deployed 10/1 Mbps service to more than 90% of eligible locations. The new model offer will include a Tribal Broadband Factor, rely on broadband coverage data from the most recent FCC Form 477 (which the Commission anticipates will be data as of December 2017), and include census blocks where the carrier or its affiliates have deployed fiber-to-the-premises or cable. It will exclude census blocks served by an unsubsidized competitor only when the competitor offers voice and 25/3 Mbps or faster broadband service. In addition to the deployment requirements previously required of A–CAM recipients, carriers accepting the new model offer will be required to deploy 25/3 Mbps service to a number of locations equal to the number of eligible fully funded locations in their service area. The new model offer will be fully funded up to the $200 per-location cap, and it will not affect the budget for rate-of-return carriers remaining on legacy support. To the extent the Report and Order is silent regarding the terms and conditions of the new model offer, the Commission adopts the terms of the original A–CAM offer.

19. While a few commenters unconditionally supported a new model offer to all legacy carriers, many commenters supported the broader new model offer only on the condition that the Commission address the budgetary concerns of carriers remaining on legacy support. Because the new model offer has no impact on funds available for rate-of-return carriers receiving legacy support, the Commission believes they have satisfied the primary concerns of these parties.

20. The Commission also is not persuaded by the Broadband Alliance's argument that any new model offer should be deferred until the Commission has gathered evidence about the efficacy of the existing A–CAM program as compared to legacy support. The Broadband Alliance suggests that legacy support may possibly be more effective because its members have ''already deployed [fiber-to-the-home] to 70 percent of their network, on average,'' but that model-based companies ''will not reach'' that same milestone until 2024. However, the Broadband Alliance contradictorily argues that whether legacy support or A–CAM offers better results cannot be empirically known for a number of years. In any event, the Commission disagrees with their argument. First, the Commission notes that Broadband Alliance ignores the difference between eligible locations (on which A–CAM recipients' deployment obligations are based) and all locations (on which Broadband Alliance's deployment percentage is based). Second, the Broadband Alliance seems to assume that A–CAM carriers will not deploy service before they are required to do so, but deployment submissions to the High Cost Universal Broadband (HUBB) portal show that there are A–CAM carriers deploying at faster rates than required by the Commission's rules. Further, the fixed amount of model-based support guaranteed to the carriers provides enormous benefits to carriers in planning capital spending, allowing them to deploy broadband to areas they would not have otherwise deployed than if they needed to base decisions on varying levels of legacy-based support.

21. *$200 per-location funding cap.* Consistent with the original A–CAM offer and with the new offer to existing A–CAM carriers described in this document, the Commission sets the per-location cap at $200. The Commission does not limit the amount of support available through this offer and does not adopt any provision to reduce the funding cap based on the amount of support resulting from carrier elections of this offer. Most commenters supported funding the new model offer up to a $200 per-location cap, rather than the proposed $146.10 per-location cap.

22. The Commission declines to make further adjustments to the per-location funding cap. Specifically, the Commission rejects WISPA's request to reduce significantly the per-location cap to account for changes in technologies and business models that reflect that not all deployments are fiber. While WISPA advocates for an ad hoc change in the way cost estimates are used to calculate support, the rationale for WISPA's proposal implies a major reconsideration in the model's methodology for estimating the costs of deployment. The Commission specified the use of a wireline network architecture to estimate model costs in the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, and rejected arguments that the model should also estimate wireless costs. Moreover, there is no evidence in the record to support how to construct a model based on the costs of deploying broadband with wireless technologies. Without a rigorous method of estimating the alternative costs of serving specific areas, considering their specific topography and other characteristics, the Commission cannot determine whether WISPA's suggested cost savings would even be achievable for any particular carrier. For example, the cost savings may be associated disproportionately with locations that are above the funding threshold by a relatively small amount. In that case, lowering the funding cap would have no effect on locations that could be cost-effectively served with wireless technologies, while reducing funding for model locations that could not be.

23. *Carriers Eligible for New Model Offer.* The new model offer will be extended to all carriers that currently receive legacy support, *i.e.,* CAF BLS and HCLS, and do not receive A–CAM or Alaska Plan support. Expanding the number of carriers receiving model-based support will advance the Commission's longstanding objective to provide high-cost support based on forward-looking efficient costs to help spur additional broadband deployment in rural areas. Model-based support, backed by significant, verifiable deployment obligations, provides the appropriate incentives for carriers to serve their rural and high-cost communities efficiently with modern broadband networks. For that reason, the Commission believes it is in the public interest to make the new model offer available to all carriers, including those that were not previously eligible. The Commission discusses some notable elements of this broad eligibility.

24. First, the Commission will extend the offer to carriers that have reported deploying 10/1 Mbps service to more than 90% of eligible locations. All commenters addressing this question support this approach. The Commission recognizes that the high-cost of maintaining networks in rural America means that the deployment of 10/1 Mbps does not end the need for high-cost support. Further, the model is an appropriate tool for determining high-cost support even when a carrier has fully deployed broadband service. The model's cost module, which calculates the cost of deploying and maintaining the network, estimates the static, life cycle cost of a network fully deploying fiber-to-the-premises, and does not distinguish between carriers that have already deployed broadband and those that have not. As such, the model appropriately estimates the forward-looking costs of a carrier that is maintaining a broadband network and replacing its depreciated assets. Finally, because the Commission's deployment obligations require significant deployment of 25/3 Mbps service, it is likely that A–CAM II support will, in fact, spur deployment of higher speeds, even for carriers that were previously excluded due to their reported 10/1 Mbps deployment. The Commission therefore finds that it is appropriate to extend the model offer to all rate-of-return carriers receiving legacy support, regardless of the existing deployment.

25. Second, the Commission extends the offer of support to all legacy carriers, even those that would receive more annual support from the model than under legacy rate-of-return support mechanisms. The model and its associated deployment obligations provide effective incentives for efficient and widespread deployment of high-quality, 25/3 Mbps broadband service. If the model indicates that a carrier should receive additional support, then that suggests the carrier may require additional support to deploy or maintain its broadband network. And the Commission believes that providing the long-term funding certainty to such carriers, along with verifiable deployment obligations, outweighs the additional costs to the Fund. Although some commenters would prefer to limit the new model offer to carriers willing to accept lower payments than they have historically received, they rely on the rationale that doing so would enable the Commission to provide additional funding to other legacy and A–CAM carriers. As the Commission explains in the following, it delinks the legacy budget from the model budgets, ensuring that its decisions here do not impact those carriers that remain on legacy support mechanisms.

26. The Commission declines to adopt Shawnee and Moultrie's proposal to limit the loss of support for each glide path carrier to a specified percentage of its current legacy support, essentially setting carrier-specific funding caps. Under Shawnee and Moultrie's proposal, some carriers could have funding caps well in excess of $200 per location, by virtue of their current high levels of legacy support. The Commission does not believe, at this time, that using model-based support to fund those very high cost locations is an effective use of universal service resources.

27. Third, the Commission declines to exclude carriers from eligibility for the new model offer if the offer would include no fully funded locations. In other words, a carrier may elect the offer even if it would be required to deploy only 4/1 Mbps or on reasonable request. The Commission notes, however, that new model offers meeting this criterion would represent a very small number of carriers and very little support; moreover, these carriers can always exceed the minimum obligation.

28. *Revising Model Parameters.* The Commission adopts revised model parameters for the purpose of extending the new model offer. The revised parameters will encourage carriers to take advantage of model-based support.

29. First, for reasons similar to those for which the Commission permits carriers with more than 90% deployment to participate, it finds that the new model offer should include census blocks where fiber-to-the-premises or cable has already been deployed by the incumbent or its affiliate. ITTA, WTA, and USTelecom support this modification, and no commenter opposed it. Including census blocks which already have some fiber-to-the-premises will promote more and higher speed deployment to locations in those census blocks that do not currently have 25/3 Mbps or better service. Moreover, the Commission has previously recognized that areas with partially or fully-deployed fiber-to-the-premises may still require high-cost support to maintain existing service. The cost module of the model does not distinguish between those areas that have or have not had 25/3 Mbps service, and the model fairly estimates the costs of providing service even if that service has already been deployed.

30. Second, the Commission adjusts the model so that it excludes locations presumed to be served by unsubsidized competitors only when the

unsubsidized competitor provides voice and at least 25/3 Mbps service. Previously, the model excluded areas served by unsubsidized competitors only if they provided voice and 10/1 Mbps or faster service. Based on the Commission's recent experience with the CAF Phase II auction, it believes that a higher standard of service is achievable. Given the Commission's commitment to using model-based support to achieve widespread deployment of 25/3 Mbps service, the Commission finds it necessary to exclude locations from eligibility only when a competitor provides a comparable level of service. NTCA, in particular, has emphasized the need for deployment of networks capable of providing 25/3 Mbps or greater service throughout rural areas. Simultaneously asking carriers to deploy 25/3 Mbps service while excluding from eligibility locations served by competitors with inferior service would consign many more rural locations to lower quality service for at least the term of the new model offer.

31. The Commission is not persuaded by WISPA's arguments that the model should exclude locations presumed to be served by unsubsidized competitors when the unsubsidized competitor provides at least 10/1 Mbps, rather than 25/3 Mbps. WISPA argues that there is ''inherent inequity'' in providing A–CAM II support to rate-of-return carriers in areas where they provide 10/1 Mbps but excluding areas from A–CAM II only if an unsubsidized competitor provides 25/3 Mbps. The Commission finds no such inconsistency in these model parameters. Rate-of-return carriers that have already deployed 10/1 Mbps currently receive high-cost support pursuant to legacy mechanisms and likely require support in areas where the model indicates their forward-looking costs exceed their reasonable end-user revenues. Providing A–CAM II model-based support that requires them to widely deploy 25/3 Mbps service is not inconsistent with the separate consideration that A–CAM II support is not required in areas where an unsubsidized competitor already provides 25/3 Mbps service.

32. WISPA further argues that the Commission's universal service resources would be better used if A–CAM II excluded areas where an unsubsidized competitor provides service of at least 10/1 Mbps because that unsubsidized competitor may provide 25/3 Mbps service at a future date or because the current service may be closer to 25/3 Mbps than 10/1 Mbps. To create a functional model offer the Commission must have a brightline threshold for whether an unsubsidized competitor's service is sufficient to make an area ineligible for A–CAM II support. WISPA's proposal to address hypothetical future unsubsidized services, or services that do not meet the threshold, would effectively lower the threshold. The Commission concludes that reducing the threshold does not appropriately drive deployment of the 25/3 Mbps service that is the new service standard.

33. Finally, WISPA notes that the 25/3 Mbps unsubsidized competitor standard harms service providers that have invested in reliance on ''the Commission's representations that the establishment of 10/1 Mbps service would be sufficient to avoid government-funded subsidies flowing to competitors.'' WISPA does not cite with specificity any such representations, and the Commission finds that such reliance would be misplaced in any event. Congress explicitly defined universal service as ''an evolving level of telecommunications services . . . taking into account advances in telecommunications and information technologies and services.'' The Commission has previously stated that broadband speeds would be subject to an evolving standard, which indicates that higher speed thresholds would likely be established at a later time. Indeed, the Commission first determined that advanced telecommunications capability required 25/3 Mbps in 2015. Further, the areas subject to the new model offer currently receive high-cost support from legacy mechanisms that support rate-of-return carriers without regard to whether a competitor provides 10/1 service, except in the rare case where a competitive provider has completely overbuilt the incumbent provider.

34. Third, the Commission modifies the model by updating the broadband coverage data with the most recent publicly available FCC Form 477 data (which the Commission anticipates will be data as of December 2017) prior to any additional offer of support. This broadband coverage data is used to determine which census blocks are served by unsubsidized competitors providing 25/3 Mbps broadband service, so that universal service resources can be effectively targeted to areas that require high-cost support. NCTA and WISPA support the use of FCC Form 477 data to identify areas of competitive overlap. Relying on the certified FCC Form 477 data will permit us to avoid a time-consuming and administratively burdensome challenge process. In the challenge process for the first A–CAM offer, the Bureau granted only 61 challenges of the more than 250 requests to change A–CAM coverage. Even that low success rate may overstate the consequences of the granted challenges because those particular census blocks still would not be considered ''unserved'' if there were other unsubsidized providers reporting service in those census blocks. Further, given the Commission's decision to adjust the model so that it will only exclude locations presumed to be served by unsubsidized competitors providing at least 25/3 Mbps service, the Commission believes that even fewer locations will be excluded based on competitive overlap, and many fewer will be linked to the type of false positives that the challenge process is intended to address.

35. The Commission's reliance on FCC Form 477 data is consistent with the process the Commission used in the Connect America Phase II auction proceeding. There, the Commission found that FCC Form 477 data superseded the results of the prior Connect America Phase II model support proceeding. The Commission further did not require the Bureau ''to entertain challenges from parties seeking to establish that a block reported as served on a certified FCC Form 477 . . . is unserved.'' In other words, the Connect America Phase II auction proceeding did not permit the type of challenges at issue here. In declining to permit such challenges, the Commission found that the Phase II model support process ''was very time-consuming and administratively burdensome for all involved.'' The Commission specifically found that it is ''difficult for the incumbent provider to prove a negative—that a competitor is not serving an area. . . .'' This burden of proving a negative is precisely the burden that possible electors of a new model offer would carry in their challenge process.

36. Several commenters argue in favor of retaining a challenge process. Although a challenge process might make some modest improvement to the quality of the data, the Commission remains unconvinced that the challenge process represents a significant improvement over the FCC Form 477 data, such that the benefits of the improved data would outweigh the significant administrative burdens of conducting a challenge process.

37. The Blooston Rural Carriers (Blooston), while conceding that the challenge process is administratively burdensome and that only 20% were granted in the past, argue that the ''volume of [challenges] . . . clearly

demonstrates the inaccuracy of [the 477] data.'' Blooston does not explain why the absolute number of challenges is more relevant than the low success rate of the challenges, nor does it try to quantify in any way the supposed benefit of the challenge process. Blooston further cites two Mobility Fund proceedings in which the Commission did not rely on FCC Form 477 data to suggest the ''importance of a bona fide challenge process used in connection with Form 477 data.'' The Commission does not find the two Mobility Fund proceedings cited by Blooston informative here. The Mobility Fund Phase I process did not rely on FCC Form 477 data (which did not collect the relevant broadband deployment information at that time), and instead used commercially available data to preliminarily identify eligible areas. In the Mobility Fund Phase II proceeding, the Commission ultimately decided to adopt an industry consensus proposal to perform a one-time data collection very specifically tailored to identify qualified 4G LTE coverage for the purposes of Mobility Fund II. Identifying qualified 4G LTE coverage is a significantly more complex issue than determining whether qualified broadband service is offered in a census block, and there is no industry consensus surrounding an alternative data collection process in this proceeding. Neither case provides any useful data regarding the benefits or burdens of a challenge process for the FCC Form 477 data. Similarly, to demonstrate the supposed inadequacies of FCC Form 477 data, TCA points to the Commission's review of study areas receiving legacy high-cost support to identify study areas 100% overlapped by unsubsidized competitors but that proceeding uses a much higher standard for competitive coverage than is used to determine A–CAM eligibility.

38. WTA and Granite State support the use of a challenge process, but specifically do so as a means of setting a higher standard for when a census block would be deemed ineligible for the new model offer. WTA argues specifically that the challenge process should be based on the ''actual availability'' of service ''throughout the census block.'' Granite State argues in favor of ''a challenge process similar to the one adopted for the 100 percent overlap and rate-of-return challenge process where the competitor has the burden of proof.'' The Commission declines to adopt their proposals. Neither proposal includes sufficient detail to determine how the challenge process would work in the model offer context. Moreover, both proposals would appear to make locations eligible for model support even if they are served by unsubsidized competitors providing comparable service, on the grounds that the unsubsidized competitors do not provide service throughout the census block. Providing model support for such locations would be inconsistent with the Commission's policy, adopted in the *USF/ICC Transformation Order,* to condition Connect America Fund broadband obligations on not spending the funds in areas already served by an unsubsidized competitor.

39. Finally, to address the unique challenges of deploying high-speed broadband to rural Tribal communities, the Commission incorporates a Tribal Broadband Factor into the model. Specifically, A–CAM incorporates nationwide assumptions about take rates and potential average revenues per subscriber to estimate a reasonable amount of end-user revenues per location that form the basis of the $52.50 per location funding threshold. Those assumptions may be unrealistic given the ''high concentration of low-income individuals [and] few business subscribers'' in many rural, Tribal areas. By reducing the funding threshold by 25% for locations in Indian country—in other words, by setting a high-cost funding benchmark of $39.38 on Tribal lands—the revised model directly addresses the lower expected end-user revenues in rural, Tribal areas and by improving the business case will spur further broadband deployment there. The Commission believes that 25% is a reasonable approximation of the additional funding needed in Tribal areas. Because A–CAM support is calculated at the census block level, the Tribal Broadband Factor will efficiently target support to carriers that serve significant Tribal lands, as well as those carriers that serve only a minimal amount of Tribal lands or a small number of housing units on Tribal lands in their study area. For the purpose of this revised parameter, the Commission adopts the definition of ''Tribal lands'' that was used in the *USF/ICC Transformation Order* and later modified in the *2015 Lifeline Reform Order,* 80 FR 40923, July 14, 2015. Several commenters support this revised parameter.

40. To fully effectuate this Tribal Broadband Factor, the Commission also raises the funding cap for Tribal lands to $213.12 per location to reflect the additional funding arising from the lower threshold. The Commission notes that this approach is consistent with Sacred Wind's proposal to adopt another tier of model support for carriers serving Tribal lands.

41. The Commission declines to adopt alternatives to the Tribal Broadband Factor proposed by the National Tribal Telecommunications Association (NTTA) and Gila River Telecommunications, Inc. (Gila River). Both propose a different tribal broadband factor that would be applied to increase support (both A–CAM and legacy) provided to carriers serving Tribal lands by 25%. Providing additional legacy support, without any particular correlation to circumstances faced by carriers serving Tribal lands, would not be an effective use of universal service resources in support of broadband deployment. Hypothetically, a carrier receiving high (but permissible) universal service support could receive enough additional support from this proposed factor that it could meet its revenue requirement without any subscribers and could receive more than an additional dollar of support for each additional dollar it spent. In contrast, the Tribal Broadband Factor the Commission adopts here makes model-based support more attractive for carriers serving Tribal lands by addressing a very specific element of model support—the estimated end-user revenues. NTTA further argues that, even with the Tribal Broadband Factor, most carriers serving Tribal lands are estimated to receive less support than they currently do under legacy support mechanisms. The Commission notes that some carriers have elected to receive A–CAM despite a reduction in support due to the stability of support and improved incentives for efficiently offering service.

42. *Term of Support.* The Commission adopts a ten-year term of support for carriers that elect the new model offer, beginning January 1, 2019. The Commission concludes carriers electing the new model offer should have ten-year terms to maximize broadband deployment. A ten-year term will also permit the Commission to align the deployment obligations of those accepting the new model offer with the terms set for the existing A–CAM carriers without adjusting the new model offer to a shorter term. Further, beginning the new model period on January 1, 2019 will reduce the short-term burden on the Fund; an earlier date would require the possible upfront payment of true-ups associated with a prior start date.

43. A ten-year term for the new model offer will align the termination of the term of the new model offer with existing A–CAM carriers that accept the revised offer adopted above. Multiple

commenters supported aligning the terms of support, and none opposed it. Carriers that decline the revised offer will have terms that end prior to the term of the new model offer. The Commission anticipates that it will take into account the different termination dates in a subsequent rulemaking to determine how support will be awarded at the end of the 10-year term and develop a plan that addresses them.

44. *Transition.* The Commission adopts the same three-tiered transition process for carriers that receive less A–CAM support than they had received under legacy support mechanisms as the Commission used for existing A–CAM recipients. Specifically, the Commission bases the transition payments on the percentage difference between model support and legacy support, as described in the *2016 Rate-of-Return Reform Order.* In that Order, the Commission found that ''a tiered transition is preferable because it recognizes the magnitude of the difference in support for particular carriers. At the same time, the transition is structured in a way that prevents carriers for whom legacy support is greater than [A–CAM] support from locking in higher amounts of support for an extended period of time.'' USTelecom and Concerned Rural LECs support the tiered transition process.

45. Several commenters propose alternatives to the transition payments that focus on capping reductions to a specific percentage of current support levels. The Commission declines to adopt these proposals. Permanently locking carriers into specified levels of support based on the legacy mechanisms, higher than what the model would provide, is inconsistent with the Commission's goal of moving carriers toward more rational, efficient levels of support.

46. As in the *2016 Rate-of-Return Reform Order,* if the difference between legacy and model-based support is 10% or less, the carrier will have a one-year transition; if greater than 10% but not more than 25%, then the transition period will be four years; and if the difference is greater than 25%, then the transition will occur over the full-term of the plan, with no extra transition support only in the final year of the term.

47. For carriers electing the new model offer, the Commission adopts 2018 claims as the base year for calculating transitional support. This is the most recent year for which complete data will be available when the new model offers are likely to be released.

48. *Deployment Obligations.* The Commission adopts robust obligations for carriers accepting the new model offer to deploy 25/3 Mbps to all fully funded locations. This requirement is consistent with the Commission's goal of realizing widespread deployment of 25/3 Mbps service throughout rural America. In adopting the speed obligations in the *2016 Rate-of-Return Reform Order,* the Commission noted that ''our minimum requirements for rate-of-return carriers will likely evolve over the next decade.'' The Commission acknowledged, in particular, NTCA's argument that ''a universal service program premised on achieving speeds of 10/1 Mbps risks locking rural America into lower service levels.'' Although the Commission agreed that ''our policies should take into account evolving standards in the future,'' it required carriers electing A–CAM to deploy 25/3 Mbps service to only a fraction of their fully funded eligible locations. The Commission's recent experience with the CAF Phase II auction, which resulted in more than 99.7% of new locations being served by 25/3 Mbps service, affirms its conclusion that a higher standard of service is achievable. Accordingly, the Commission does not adopt the same speed requirement as are used for existing A–CAM carriers, as urged by several commenters. The Commission instead requires carriers electing model support to maintain voice and existing broadband service as of December 31, 2018, and to offer 25/3 Mbps or higher service to at least the number of locations fully funded by the model by the end of the support term.

49. Consistent with the previous A–CAM offer, the Commission also requires carriers electing model support to offer at least 4/1 Mbps to a defined number of locations that are not fully funded by the end of the support term. Carriers with a density of more than 10 housing units per square mile will be required to offer at least 4/1 Mbps to 50% of all capped locations; and carriers with a density of 10 or fewer housing units per square mile will be required to offer at least 4/1 Mbps to 25% of all capped locations. The remaining capped locations will be subject to the reasonable request standard.

50. The Commission will require carriers electing the new model offer to provide a minimum usage allowance of the higher of 170 GB per month or one that reflects the average usage of a majority of consumers, using Measuring Broadband America data or a similar data source. In addition, the Commission will require carriers electing to receive model support to certify that 95% or more of all peak period measurements of round-trip latency are at or below 100 milliseconds. This latency standard will apply to all locations that are fully funded. As stated previously, the Commission ''recognize[s] there may be need for relaxed standards in areas that are not fully funded, where carriers may use alternative technologies to meet their public interest obligations.'' Therefore, the Commission adopts the high-latency metric used in the CAF Phase II auction proceeding for any capped locations served by a non-terrestrial technology. Under the high-latency standard, carriers are required to certify that 95% or more of all peak period measurements of round-trip latency are at or below 750 milliseconds, and with respect to voice performance, a score of four or higher using the Mean Opinion Score (MOS).

51. The Commission adopts the same deployment milestones that the Commission required for existing A–CAM recipients, except delayed by two years to reflect the later start of the ten-year term. Specifically, companies accepting the new model offer will be required to offer at least 25/3 Mbps service to 40% of fully funded locations by the end of 2022, to 50% of the requisite number of funded locations by the end of 2023, an additional 10% each year thereafter, and 100% by 2028. In addition, by the end of 2028, these carriers will be required to offer 4/1 Mbps to the requisite percentage of locations depending on density. The Commission also provides the same flexibility afforded other A–CAM recipients to deploy to only 95% of the required number of fully funded locations by the end of the term of support.

52. Consistent with existing obligations, the Commission requires carriers to report geocoded location information for all newly deployed locations that are capable of delivering broadband meeting or exceeding the speed tiers. The Commission also adopts defined deployment milestones so that the same previously adopted non-compliance measures would apply.

53. *Election Process.* The Commission adopts a single-step process whereby electing carriers make an irrevocable acceptance of the offered amount because no support adjustments will need to be made to address budget targets. The Commission directs the Bureau to release a public notice announcing the new model-based support amounts and corresponding deployment obligations and providing carriers with 45 days to confirm that they will accept the revised offer. Any such election shall be irrevocable.

54. To ensure sufficient and predictable support for legacy carriers and spur additional deployment of 25/3 Mbps broadband service, the Commission increases the budget and make corresponding adjustments to carriers' buildout obligations. A budget designed to spur the deployment of 4/1 Mbps broadband to rural America is no longer sufficient or appropriate for deploying the high-speed broadband capable networks of at least 25/3 Mbps that consumers living in rural America demand. Moreover, fluctuations in support reductions make it more challenging to engage in capital planning, potentially resulting in reduced broadband deployment that, in turn, could harm consumers. The Commission therefore establishes a minimum threshold of support for each carrier and establish a budget for legacy carriers that is independent of the fluctuating needs of other rate-of-return support streams. Commensurate with the Commission's changes to provide a sufficient and predictable support mechanism, the Commission adopts measurable deployment obligations that will spur the availability of 25/3 Mbps broadband service throughout rural America.

55. The Commission also adopts further reforms to the legacy program to streamline its rules where possible and promote further predictability and efficiency. For example, the Commission eliminates the capital investment allowance and revise the budget control mechanism to simplify its rules and promote greater certainty. Further, to ensure the efficient use of the Commission's limited funding, it reduces the maximum support that a legacy provider can obtain on a per-line basis and revise the Commission's methodology for allocating support to those areas that are close to 100% overlapped by unsubsidized competitors. Finally, the Commission addresses a number of technical changes, including revising line count reporting requirements and updating accounting rules.

56. To spur broadband deployment, the Commission adopts a budget for legacy rate-of-return carriers based on 2018 unconstrained claims, including an inflationary factor to increase the budget annually. The Commission also establishes a minimum threshold of support for rate-of-return carriers.

57. *Discussion.* The Commission addresses the concerns raised by Congress and the industry by adopting a budget that provides sufficient and predictable support to legacy carriers, while meeting its responsibilities as stewards of public funds. The Commission also adopts a minimum threshold of support for legacy carriers to ensure that they receive sufficient and predicable funding to meet their revised deployment obligations. In adopting this budget for legacy carriers, the Commission continues the progress and adherence towards the Commission's universal service reform principles and goals.

58. The Commission adopts a new budget for legacy carriers based on 2018 uncapped claims—approximately $1.42 billion—increased annually by inflation.

59. The increased legacy budget demanded by the industry and Congress is consistent with the Commission's requirement to base its policies on making services in ''rural, insular, and high cost areas . . . reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.'' Consumers demand higher speeds as they realize the benefits that come with them, and the Commission cannot leave consumers in rural areas behind. Providing legacy carriers an increased budget will provide the means and the certainty necessary to spur investments to meet demand and help achieve the Commission's universal service goals. Without increasing the budget for legacy carriers, the Commission could expect increasing rates, diminishing deployment, and a growing gap between rural and urban areas in broadband availability.

60. The Commission determines that using 2018 unconstrained claims as the basis to reset the budget is sufficient and will help spur broadband deployment in rural areas. Since the budget control mechanism became effective, the Commission has authorized repaying legacy carriers all support reductions since July 1, 2017. The Commission now takes 2018 support claims, *i.e.,* what the carriers are spending today, and increase that by inflation annually going forward. Claims for 2018 reflect a time when legacy carriers are fully engaged in deploying and/or maintaining broadband capable networks. Accordingly, the Commission finds it is a reasonable timeframe from which to establish a budget better tailored for today's broadband needs. Furthermore, by basing the budget on 2018 unconstrained claims, the Commission is using a figure beneficial to meeting consumers' demand because, based on the Commission's claims data, 2018 unconstrained claims are the highest since the *USF/ICC Transformation Order.*

61. Also, with a higher overall budget and a budget control mechanism that does not include a per-line reduction (discussed in the following), the Commission expects a higher degree of predictability for each carrier individually—predictability that over time will increase as carriers become more familiar with the process. A budget also helps with the overall predictability of the fund, which is financially prudent and in the public interest.

62. To mitigate any harmful effects of having a lower 2018 budget, the Commission will reimburse all support reductions due to the budget control mechanism from July 1, 2018 through December 31, 2018, or the effective date of this Report and Order, whichever is later. In addition, there will be no reductions to legacy support from January 1, 2019 through June 30, 2019, as the Commission anticipates claims to increase only slightly over 2018 claims during this time.

63. In addition, rather than awarding legacy support based on the budget remaining once other rate-of-return recipients have been funded under the overall $2 billion budget, the Commission establishes this budget for legacy providers separate and apart from the other programs. In doing so, the Commission provides greater certainty and predictability for legacy providers. The Commission agrees that separate budgets ''enable proponents of the two support mechanisms [legacy and A–CAM] to focus on how best to efficiently maximize broadband deployment under each paradigm.'' Furthermore, the Commission agrees that ''each should be afforded a budget analysis on its own bona fides without regard to the other,'' which will allow us in the future to better evaluate ''each support mechanism on its own merits.'' The Commission also agrees with ITTA's proposal to remove CAF ICC from the budget equation and administer it outside of the legacy budget and A–CAM support mechanism.

64. In establishing a separate budget for legacy carriers, the Commission declines to adopt the joint industry proposal to adopt an overall budget for all the rate-of-return support mechanisms. The Commission finds that an all-encompassing rate-of-return budget is no longer appropriate, given the different obligations and terms of the various rate-of-return funding streams. In light of how other high cost support streams have evolved, the Commission sees no reason going forward why the support amounts for A–CAM, Alaska Plan, and CAF ICC

should affect total legacy support. Legacy carriers should have their own budget—a budget that is suited to allow small, rural carriers to meet consumers' demands in rural areas in furtherance of universal service goals.

65. The Commission finds that a budget in general for legacy carriers is in the public interest. In contrast to other rate-of-return support mechanisms, legacy support is based on carriers' costs, *i.e.,* claims made for support, and support claims from legacy carriers have continued to increase since the Commission adopted a budget in 2011. The industry and NECA forecast continued increases. As the Commission noted in the *2018 Rate-of-Return Reform Order and NPRM,* 83 FR 18951, May 1, 2018 and 80 FR 17968, April 25, 2018, rate-of-return regulation provides incentives for companies to operate inefficiently by ''padding'' operating expenses and over-investing in capital projects to increase profits. Some portion of the continually increasing claims may be due to those incentives. Although commenters contend that there is no evidence to show rate-of-regulation provides incentives to operate inefficiently, that carriers lack the means to over spend/invest as a practical matter, and that the Commission's rules already counteract these alleged incentives, basic economic theory confirms that such motivations exist. The Commission also recognizes, however, that network improvements to meet demand have led to increased claims.

66. Setting a budget cap for legacy carriers is financially prudent and in the public interest. The Commission must be mindful of its obligation to ensure that scarce public resources are spent judiciously. Moreover, as courts have recognized, too much subsidization could affect the affordability of telecommunications services for those that pay for universal service support, in violation of section 254(b). An annual budget cap for a support mechanism that funds carriers' claims—claims that have continually increased at varying rates—helps us meet that obligation. A budget that constrains spending encourages efficiency and resourcefulness, and it ensures a relatively greater level of predictability for the overall CAF. Finally, the Commission notes that the record supports some form of a budget.

67. The Commission will adjust the new budget for legacy carriers based on 2018 uncapped claims increased annually by inflation—the United States Department of Commerce's Gross Domestic Product-Chained Price Index (GDP–CPI). The Commission notes that industry supports budget adjustments using some type of inflationary factor. While NTCA suggests using the Employment Cost Index (ECI) because it recognizes that labor is a key component in rising costs, the ECI only accounts for one specific cost input. However, of the two, the Commission finds that GDP–CPI is more appropriate as it measures price changes in goods and services purchased by consumers, businesses, and governments, and is the inflationary factor the Commission has used for many years in other legacy support mechanisms.

68. Further, in using an inflationary factor to annually increase the overall budget for legacy carriers, the Commission is not conceding that broadband deployment and maintenance costs increase over time commensurate with inflation. In the development of the Connect America Cost Model (CAM), Commission staff found that in the remote, model-supported areas the Commission is subsidizing, costs are unlikely on average to rise going forward; roughly speaking, this is because rising labor costs are offset by falling equipment costs and productivity gains. Some commenters have echoed the belief that new equipment may lower costs. Nonetheless, other parties argue that their costs for labor and equipment have increased or that deployment costs have not been offset by increased productivity or lower equipment costs. Therefore, the Commission adopts an inflationary escalator to increase the budget and note that this increased support will be included in the revised calculation of mandatory deployment obligations. The Commission uses the GDP–CPI to address inflation in other high-cost support mechanisms and see no reason to deviate from that precedent here. Moreover, the Commission declines the industry's request to increase the entirety of the high-cost USF program to reflect inflation or the overall rate-of-return budget. As noted in this document, the Commission believes that giving legacy carriers a separate, independent budget is more appropriate at this time, and the Commission declines to make legacy carrier support dependent on the A–CAM, the Alaska Plan, CAF ICC, or other high-cost support.

69. The Commission addresses issues raised regarding the effect that the increasing number of conversions to broadband-only lines are having on the budget. Several parties have raised the concern that as carriers convert voice and voice/broadband lines to broadband-only lines there will be additional pressure on the universal service budget because federal support for broadband-only lines is typically greater than for voice and voice/broadband lines. This circumstance is in large part because the costs of a broadband-only line are all interstate whereas a voice or voice/broadband line has a portion of its costs recovered through intrastate sources. The Commission believes that increases in support caused by these conversions will be offset through the approach it is taking to account for support for those carriers taking the new model offer.

70. Although the Commission currently has insufficient data to quantify this increase, it concludes that 7% is a reasonable estimate that will promote stability for legacy rate-of-return carriers. The Commission notes that carriers expecting above average numbers of broadband-only conversions (and thus greater funding increases under the legacy mechanism) are more likely to remain on legacy support than those expecting below average conversion rates, putting pressure on the legacy rate-of-return budget. A 7% increase balances the Commission's interest in accounting for expected increases without unduly increasing the rate-of-return budget while it considers long-term means of addressing these conversions, as discussed in the concurrently adopted FNPRM. To account for this increase, the Commission adjusts how it allocates funding for those carriers accepting the new model offer. For carriers that accept a new model offer that will receive more model support than their uncapped claims, USAC shall take those claims out of the legacy budget. However, for carriers accepting a new model offer that will receive less model support than their unconstrained claims (glide-path carriers), USAC shall take only the carriers' model support amounts out of the budget cap. The Commission anticipates that a sufficient number of glide-path carriers will accept model-based support and that the amount of increase to the legacy budget will therefore be at least 7% of the budget cap (as adjusted for those taking model-based support), if not greater. However, to ensure that this is the case, the Commission will increase the budget in July 2019 by 7%. Once the Commission has determined which carriers are accepting the new model offer, if, because of the number of glide-path carriers accepting model support, the legacy budget increases by more than 7%, legacy carriers will benefit from that entire increase in the budget going into effect in July 2020. This will be a one-time increase.

71. This approach will also ensure that if carriers whose legacy support is decreasing choose model-based support, the funding that would have been available to other legacy carriers will continue to be available to those carriers that remain on legacy support. For the same reasons, after any future overlap auctions, the Commission will also leave any resulting savings in the legacy budget. Although the Commission believes that the new budget will account for any support demand increases due to conversions to broadband-only lines, the Commission seeks comment on whether additional measures are needed in the concurrently adopted FNPRM.

72. The Commission recognizes that by setting the budget at 2018 unconstrained claims initially, it is not setting it as high as the industry requests. The industry requests an overall amount that will ''fully fund'' the entire high-cost program so that there is no budget constraint. Universal service support is paid by ratepayers, however, and increasing funding demands on those ratepayers could affect the affordability of telecommunications services, in violation of section 254(b). By adopting an overall budget for legacy carriers based on today's support claims and then limiting future budget increases, the Commission minimizes unexpected increases in the contributions required from ratepayers.

73. Moreover, the Commission still is providing sufficient and appropriate funding for the rate-of-return high-cost program. A–CAM carriers will receive up to $200 per location and all transition payments; Alaska Plan carriers will continue to receive their authorized amounts; CAF ICC will receive its full amounts; and for legacy carriers the Commission will reimburse all support cuts to date due to the budget control mechanism. To encourage efficient and resourceful spending and help minimize contribution burdens, going forward, starting in July 2019, the Commission establishes a budget for the legacy carriers, but to help meet demands and obligations, it still allows for gradual and predictable annual increases. Furthermore, as explained in the following, the Commission revises deployment obligations based on the projected funding that carriers will receive. As the Tenth Circuit stated in upholding the budget adopted in 2011, ''the FCC quite clearly rejected any notion that budgetary 'sufficiency' is equivalent to 'complete' or 'full' funding for carrying out the broadband and other obligations imposed upon carriers who are voluntary recipients of USF funds.''

74. In addition to the new budget described in this document, the Commission also adopts a minimum threshold of support for each carrier. The uncapped threshold will be based on a five-year CAF BLS forecast to be developed by NECA for establishing the carrier-specific deployment obligation, but any amounts greater than that may be subject to a budget control mechanism. Thus, no legacy carrier will receive less support, *i.e.,* HCLS plus CAF BLS, as a result of budget constraints than predicted in this CAF BLS forecast. The Commission links this minimum threshold of support for each carrier to its minimum deployment obligation so that carriers will receive at a minimum, the amount of support that went into determining minimum deployment obligations. This new five-year forecast will be calculated using the budget adopted in this Report and Order, including the annual inflation adjustment, and will be used to calculate each legacy carrier's new mandatory deployment obligations. In conjunction with the new budget, this minimum threshold will provide legacy carriers the sufficiency and predictability that they have argued did not exist under the previous budget. In addition, to the extent any support adjustments may be appropriate, by eliminating the per-line reduction component of the budget control mechanism, the Commission expects that no carrier will see drastic reductions from the budget control mechanism relative to other carriers.

75. While commenters support the general concept of using unconstrained claims for a support ''floor,'' there is no consensus on how any such ''floor'' should be established. Although some commenters express concerns with this approach, the Commission finds that a minimum threshold based on a revised NECA five-year forecast, in combination with the revised budget amounts adopted herein, will ensure that carriers can meet their deployment obligations. The Commission disagrees with NTTA's suggestion that it prioritizes Tribal areas, the highest-cost areas, and then all other areas because it lacks any justification of how such a proposal is consistent with the goals of the high-cost program, and in particular how it would further bringing broadband to all high-cost areas of the country. And the Commission disagrees with a recent industry proposal to use each carrier's ''unconstrained costs over the prior three years'' as a minimum. Such a proposal would essentially require the elimination of the budget constraint mechanism entirely while guaranteeing more support for each carrier than that tied to its deployment obligations. Indeed, this proposal would negate the overall predictability for the fund that a budget provides. The ''floor'' for each carrier would be dependent upon each's spending behavior, which can change annually or even quarterly. As the ''floor'' changes for each carrier, the Commission would be required to adjust the overall budget accordingly. In other words, the Commission could not know with as much predictability how much of the ratepayers' money it would be collectively spending each year on the high-cost program—a situation that as stewards of public funds the Commission aims to avoid. Consequently, the Commission declines to adopt this industry proposal.

76. In the *2018 Rate-of-Return Reform Order and NPRM,* the Commission sought comment on when it should next revisit the budget. Commenters support various timeframes. NTCA, WTA, USTelecom, and the Broadband Alliance suggest that the new budget should be in effect until 2026. ADTRAN recommends the Commission assess the budget four years after adoption, and FWA advocates reviewing the budget no later than three years after adoption. By fully funding A–CAM, the Alaska Plan, and CAF ICC, and adopting a legacy budget that annually adjusts for inflation, the Commission expects that rate-of-return carriers will have stable and sufficient budgets for at least the next five years. Although the Commission does not expect to review the budget prior to 2024, it may be appropriate to revisit the budget at the end of five years to reevaluate whether any changes to the budget are appropriate.

77. By May 1, 2019, the Commission directs USAC, in consultation with Bureau, to publish a new legacy budget cap along with the new budget adjustment factor. USAC will calculate 2018 actual unconstrained legacy support claims plus one year of inflation using GDP–CPI, as reported by NECA in the most recent October annual filing. The budget cap will be that total increased by 7%. USAC, in consultation with the Bureau, will calculate the budget adjustment factor using that budget cap pursuant to sections 54.901(f) and 54.1310(d), as modified in this Report and Order to eliminate the per-line reduction calculation. The budget adjustment factor USAC publishes by May 1, 2019 will be in effect from July 1, 2019 to June 30, 2020.

78. By May 1, 2020, the Commission directs USAC to publish the next legacy budget cap along with the next budget

adjustment factor to be in effect from July 1, 2020 to June 30, 2021. The budget cap will be set at the previous year's budget cap, *i.e.,* July 1, 2019 to June 30, 2020, plus inflation using GDP–CPI, which will be published in the October 2019 filing by NECA. USAC shall then account for the new model offers as follows. For carriers that accept the new model offer, USAC shall deduct those carriers' 2018 actual unconstrained claims plus the two years of inflation out of the legacy budget. For glide-path carriers, USAC shall calculate the total amount by which their 2018 actual unconstrained claims plus two years of inflation exceeds their model support. If that number is greater than 7% of the 2020 budget, USAC shall increase the budget by the amount in excess of 7%. In addition, prior to publishing the results of the 2020 budget cap, USAC shall compare the capped amount for each carrier with the CAF BLS five-year forecast adopted in this Report and Order. If the cap for any individual study area falls below the CAF BLS forecast for that study area in that year, USAC shall raise the cap for that study area to the amount of the CAF BLS forecast. Thus, carriers are assured of receiving at least the amount of support that will be identified in the forecast.

79. Going forward, for the 2021 budget and beyond, USAC shall annually increase the previous year's budget cap by inflation using GDP–CPI. Each year USAC shall use the budget cap to calculate the budget adjustment factor for that budget year, July 1 to June 30. Also, each year, for CAF BLS, USAC shall calculate the pro rata reductions once per year, and for HCLS, USAC shall calculate the pro rata reductions semiannually, which allows the reduction factor to reflect the new rural growth factor for HCLS that goes into effect January 1 of each calendar year. As noted above, if the cap for any individual study area falls below the CAF BLS forecast for that study area in that year, USAC shall raise the cap for that study area to the amount of the CAF BLS forecast. Based on the Commission's experience in implementing the budget control mechanism, it believes that it will enhance predictability with no discernable cost by setting the budget adjustment factor semiannually rather than quarterly.

80. To maximize the benefit resulting from the Commission's new legacy budget, it revises the deployment obligations for legacy carriers commensurate with the minimum threshold of support that will not be subject to the budget constraint. The Commission also revises the minimum speed obligation to 25/3 Mbps, up from 10/1 Mbps.

81. *Discussion.* The Commission revises the deployment obligations for legacy carriers commensurate with the revised budget and minimum threshold of support adopted in this Report and Order. The Commission also resets the five-year deployment term and revise the minimum speed obligation to 25/3 Mbps, up from 10/1 Mbps. By increasing the budget for legacy carriers, the Commission expects those carriers to do more to meet consumer demand and its obligations than they did when the budget was first adopted in 2011.

82. Under the Commission's rules, a carrier's deployment obligations are based, in part, on its five-year forecasted CAF BLS. The original five-year obligations were based on forecasted CAF BLS pursuant to the budget and rules in effect at the time, and also then-current data. Now that the Commission resets the budget for the legacy carriers and adopt a minimum level of support of no less than a carrier's revised CAF BLS five-year forecast, those original forecasts are outdated, and the Bureau must update them. The Commission disagrees with USTelecom and Blooston to the extent they do not support changing deployment obligations at this time. As NTCA stated, buildout obligations should correspond to the level of support; given that the Commission is increasing the amount of support, broadband deployment obligations should increase as well. The assumptions in the five-year forecast of the total CAF BLS support for each rate-of-return legacy study area for the purposes of determining deployment obligations were provided in Appendix D of the Order.

83. The Commission further finds that it is necessary to provide carriers revised CAF BLS deployment obligations at the time it expects to make the new model offers so that carriers can properly evaluate their options. Because the Commission expects the new offers in early 2019 and actual 2018 claims will not be available until March 2019, projected claims for 2018 may be used for calculating forecasted CAF BLS.

84. In addition to forecasted CAF BLS, part of the calculation for determining deployment obligations is a cost-per-location figure based on one of two methodologies. The Commission updates both methodologies to reflect that 25/3 Mbps is the Commission's new broadband standard. The methodologies also factor in the per-line, per-month cap, which the Commission revises in the Report and Order.

85. Revising deployment obligations at this junction is also consistent with the precedent established in the *2016 Rate-of-Return Reform Order.* There, the Commission appropriately decided that at the end of the five-year deployment term, ''carriers with less than 80 percent deployment of broadband service meeting then-current standards in their study areas will be required to utilize a specified percentage of their five-year forecasted CAF BLS to deploy broadband service meeting the Commission's standards where it is lacking in subsequent five-year periods.'' Because the Commission is increasing the budget for legacy carriers, setting a minimum threshold of support, and implementing the current broadband standard of 25/3 Mbps, the Commission is replacing the prior five-year, 10/1 Mbps deployment obligations with new obligations that reflect the increased budget and broadband speed. Therefore, allowing carriers a full five years—rather than the remaining three years of the original deployment term—to complete deployment is warranted.

86. To ensure that consumers in rural areas enjoy a reasonably comparable quality of broadband as those in urban areas, the Commission revises the deployment obligations to require recipients of CAF BLS to offer broadband service at actual speeds of at least 25/3 Mbps. Broadband of at least 25/3 Mbps is now the Commission standard, and deployment obligations for its legacy program must reflect that.

87. To be consistent with CAF BLS deployment obligations being based on a five-year term, the deployment term will run from the effective date of the Report and Order until December 31, 2023. For administrative convenience, the Commission bases this new term on the calendar year starting January 1, 2019. Further, the Commission will count towards the new five-year obligation any locations CAF BLS carriers deployed to with at least 25/3 Mbps since May 25, 2016, regardless of whether the carriers had defined deployment obligations in the original term. CAF BLS carriers that have not had HUBB portal reporting obligations will be provided an opportunity to certify as needed 25/3 Mbps or higher locations deployed to since May 25, 2016. The Commission also maintains the Commission's prohibition on deploying ''terrestrial wireline technology in any census block if doing so would result in total support per line in the study area to exceed'' the per-line, per-month cap, as revised in this Report and Order.

88. In the *2016 Rate-of-Return Reform Order,* the Commission did not set

mandatory deployment obligations for those carriers that had deployed broadband of 10/1 Mbps to 80% or more of their study areas, as determined by FCC Form 477. Rather, the Commission stated that it would monitor the deployment progress of legacy carriers without defined buildout obligations and could ''revisit this framework in the future if such carriers do not continue to make reasonable progress on extending broadband.'' Although those carriers with 80% or greater deployment of 10/1 Mbps have in many cases reported additional deployment, the Commission is unable to evaluate their progress without an understanding of how this new deployment relates to the mandatory obligations it has set for other carriers. Therefore, the Commission finds that all legacy carriers should be subject to deployment obligations.

89. As the Commission did in 2016, it finds that carriers' mandatory deployment obligations should be determined based on a percentage their CAF BLS, with those carriers with greater deployment devoting a lower percentage of support to new deployment and those with relatively lower levels of deployment devoting a higher percentage to new deployment. Therefore, legacy rate-of-return carriers with less than 20% deployment of 25/3 Mbps broadband service in their entire study area, based on the most recently available FCC Form 477 data, will be required to use 35% of their five-year forecasted CAF BLS support specifically for the deployment of 25/3 Mbps broadband service where it is currently lacking. Rate-of-return carriers with 20% or greater but less than 40% deployment of 25/3 Mbps broadband service in their entire study areas, will be required to use 25% of their five-year forecasted CAF BLS support specifically for the deployment of 25/3 Mbps broadband service where it is currently lacking. Rate-of-return carriers with 40% or greater deployment of 25/3 Mbps broadband service in their entire study areas, will be required to use 20% of their five-year forecasted CAF BLS support specifically for the deployment of 25/3 Mbps broadband service where it is currently lacking. Once a carrier has deployed broadband service of 25/3 Mbps to all locations within the study area, it has satisfied its deployment obligation, although the Commission encourages such carriers to continue to look for ways to increase the speed and reduce the latency of their services. Because all legacy carriers will have defined deployment obligations, all will be required to report their locations deployed in the HUBB portal.

90. The Commission finds that the capital investment allowance should be eliminated because its burdens and inefficiencies outweigh any benefits.

91. *Discussion.* The Commission finds that the capital investment allowance should be eliminated because the burdens it imposes outweigh the benefits. To show compliance with the capital investment allowance, legacy carriers must track every capital expenditure and allocate it to locations affected by that expenditure—something carriers were not required to do previously. While carriers always account for their capital expenditures, the requirement to tie these expenditures to particular locations is difficult and time consuming. In addition, the capital investment allowance may discourage marginal capital expenditures that are economically efficient. For instance, the capital investment allowance, which limits the total amount a carrier can spend on a project, may prevent a carrier from deploying broadband to an additional location or locations as part of an existing project if such expenditures would exceed the capital investment allowance. Accordingly, the Commission agrees with commenters that the capital investment allowance does not encourage efficient spending and is creating unnecessary burdens. Moreover, the Commission has found no evidence that the capital investment allowance has encouraged additional capital investment by those carriers below the average level of broadband deployment. Because the burdens and disincentives on deployment in the current capital investment allowance outweigh the purported benefits, the Commission finds that elimination of the capital investment allowance is appropriate.

92. The Commission declines to adopt NTCA's proffer of an engineer's certification and record retention. Carriers are already required to retain documentation for auditing purposes so that USAC can determine whether support is being used for its intended purpose, and NTCA's proposal appears to increase the paperwork burden on carriers without much benefit.

93. In this section, the Commission modifies sections 54.901(f) and 54.1310(d) and eliminate the per-line reduction calculation that is part of the budget control mechanism.

94. *Discussion.* The Commission eliminates the per-line reduction calculation that is part of the budget control mechanism. The previous Commission adopted the per-line and pro rata calculation on grounds that it struck a ''fair balance among differently-situated carriers.'' Although NTCA argues that incorporating the per-line reduction is part of a ''carefully designed balance'' or ''carefully struck balance'' between larger and smaller rate-of-return incumbent local exchange carriers (LECs), the Commission finds that this two-part calculation has resulted in some carriers bearing an unreasonably large share of the support limit.

95. When adopting the budget control mechanism with both the per-line and pro rata mechanisms, the Commission expected a ''fair balance'' among the legacy carriers, large and small. Data since adoption of this mechanism show, however, that the per-line reduction has resulted in an increasingly wide variation of cuts to carriers' support. The table in the following details across all legacy carriers over different time periods reductions in support due to the budget control mechanism with the per-line reduction.

From	To	Average reduction (%)	Standard deviation (%)	5th Percentile (%)	95th Percentile (%)	Weighted average reduction (%)
9/2016	12/2016	5.3	2.3	3.5	8.2	4.6
1/2017	6/2017	9.7	4.4	6.6	14.0	8.7
7/2017	6/2018	13.6	4.0	9.1	20.2	12.3
7/2018	6/2019	17.0	6.3	11.5	24.9	15.5

Number of Legacy Study Areas: 654.

96. What started as a relatively narrow variation has become significantly wider, and now ranges (between the 5th and 95th percentile) from 11.5% to 24.9% reductions in claimed support. The Commission thus concludes that the per-line reduction has not, over time, resulted in the ''fair balance'' that the Commission originally anticipated. The carriers collectively are exceeding their budget, but in applying the budget control mechanism, the Commission cuts some carriers significantly more than others. Given the large variations the Commission has now seen, it believes that it is more equitable for each carrier to have the same percentage reduction across the board. Accordingly, the Commission eliminates the per-line reduction calculation that is part of the budget control mechanism.

97. In addition to making the budget control mechanism more equitable, eliminating the per-line reduction will make it simpler to implement administratively. Eliminating the per-line calculation will make it easier for carriers to determine what their specific support reduction will be and make application of the budget control mechanism more transparent.

98. The Commission amends its rules to reduce the monthly per-line limit on support from $250 to $225, effective July 1, 2019, and then to $200, effective July 1, 2021. The Commission finds that reducing the presumptive cap on support will advance the Commission's goal of implementing responsible fiscal limits on universal service support.

99. *Discussion.* The Commission's experience indicates that a lower limit is justified and will be useful in mitigating wasteful spending. Currently, approximately 14 study areas are affected by the monthly per-line limit. However, carriers serving only 10 of those study areas have petitioned the Commission to justify higher support amounts, and some withdrew their requests following requests for further supporting information. To date, the Commission has awarded relief to only two companies. Further, the Commission's experience reviewing the waiver petitions that have been filed suggests that some companies cannot justify their high expenses. Based on this history, the Commission finds that the $250 per-line monthly limit has been neither too restrictive nor likely to have a negative impact on the ability of carriers to provide service. Moreover, the Commission notes that a reduction to $200 will currently affect approximately 30 study areas that are not already subject to the $250 per-line monthly limit, and the same waiver process would be available to all affected study areas.

100. The Commission is unpersuaded by the arguments of those opposing this change. Contrary to NTCA and SCC's claims, the Commission's experience suggests that, while some carriers legitimately incur high expenses, some of the highest supported carriers have been found to have wasteful or abusive expenses and/or improper accounting procedures. In the *Adak Reconsideration Order,* for example, the Commission denied relief of the $250 cap, affirming findings that the company had ''excessive and unreasonable'' operating expenses, unwarranted executive compensation, and had engaged in improper affiliate transactions. The Commission similarly identified noncompliance in evaluating Allband's request for waiver of the $250 cap, finding that Allband's consistent misapplication of its cost allocation rules rendered its cost accounting ''unreliable.'' Finally, the Commission uncovered improper support payments of more than $27 million in connection with its review of Sandwich Isles Communications, finding that the carrier had misclassified costs and received support for inflated and ineligible expenses. Other carriers may not seek waiver of the $250 monthly per-line limit because they wish to avoid scrutiny. Indeed, despite NTCA's arguments, other existing controls to promote the efficient distribution of support have not been sufficient to prevent the reporting of wasteful or abusive expenses by the highest cost carriers. The Commission does not find that its waiver process is unreasonable and burdensome. Rather, the Commission's review of previously filed waivers has shown that it is more likely that carriers would not be able to justify their high expenses and sought to avoid embarrassing scrutiny. In the Commission's experience, carriers have contributed to the time it has taken to resolve the waiver petitions because of their own reluctance to provide supporting data and the number of violations of the Commission's accounting rules that it has discovered.

101. The Commission does not agree that the budgetary relief that would be provided by this reduction is insignificant or that possible reductions in support will be crippling. Even if the budgetary relief is small, the Commission has an interest in eliminating waste, fraud, and abuse that will be served by the reduction in the monthly per-line cap. Moreover, any carrier entitled to support above the $250 cap can avoid support reductions by justifying its support needs through cost studies and accounting done consistent with our rules.

102. TCA provides no data or even anecdotal evidence in support of its assertion that carriers reduced or slowed deployment to avoid triggering a cap or limitation on support. Further, the Commission notes that it has invited carriers to use the waiver process specifically as an avenue to justify their necessary spending in the type of cases that TCA identifies. If investment is necessary to deploy service, then the expenses will be justifiable in the waiver process.

103. South Park's alternate proposal to modify the operation of the monthly per-line cap or to exempt carriers subject to monthly per-line cap from the budget constraint mechanism would tend to undermine the effect of the rule by exempting some support without regard for whether the underlying expenses have been justified. Exempting carriers subject to the monthly per-line cap from the budget constraint's operation would undermine the budget constraint's purpose of limiting the size of the fund.

104. The Commission declines to adopt, as Allband requests in its comments, a streamlined waiver process to review any requests that Allband might file of the monthly per-line cap, because it previously was granted relief. Allband maintains that a streamlined process would allow it to ''redirect financial resources from such filings to provide expanded lines and services'' to the areas it serves. Although the Commission is mindful of minimizing regulatory burdens in order to maximize the benefit of limited universal service support, the Commission must balance that goal with our responsibility as stewards of the Fund. The Commission does not believe it is appropriate at this time to take further action to reduce Allband's evidentiary burdens in light of its prior misallocation of costs and need for corrective action.

105. Finally, the Commission notes that its decision to reduce the monthly cap in two steps addresses the possibility that a sudden influx of many petitions for waiver will be administratively difficult to manage. By our estimates, only an additional 10 carriers would currently be impacted by the intermediate $225 monthly per-line cap. The two years prior to the further reduction of the cap to $200 should be sufficient to address any petitions for waiver arising from the $225 monthly per-line cap. Both reductions to $225 and $200 will be implemented on July 1, to ease administrative considerations associated with the calculation of the budget constraint mechanism.

106. In this section, the Commission finds that the 100% overlap process the Commission has used to ensure that federal funding is not being used to compete with unsubsidized competitors has not lived up to its promise. Accordingly, the Commission ends that process and replace it with competitive auctions for legacy service areas that are nearly entirely overlapped by unsubsidized competitors. In the concurrently adopted FNPRM, the Commission seeks further comment on several auction-related issues.

107. *Discussion.* The Commission finds that an auction mechanism in certain legacy study areas would be an efficient, market-based way to distribute any high-cost support that may be necessary. In a study area that is 100%, or almost entirely, overlapped by unsubsidized competitors, there may still be some locations within census blocks that do not have access to broadband, *i.e.,* although a block is partially served by an unsubsidized provider not all of the locations in that block are served. As the Commission has noted previously, competitive bidding can result in more efficient levels of support by providing incentives to bid less than current levels of support in the area. The Commission agrees with WISPA in general that an auction in competitive areas ''recognizes that when a competing provider is serving a critical mass of nearby areas, the incumbent carrier is no longer uniquely capable of rolling out new service to locations within the study area that remain unserved.'' While an auction would also require administrative resources, an auction would help move the CAF towards market-based solutions rather than sorting through documentary evidence in hopes of determining whether locations are in fact served by competitors. The Commission also has now seen the success of the CAF II auction, which ''unleashed robust price competition'' so that ''more locations will be served at less cost.'' The total locations awarded support had an initial reserve price (maximum amount) of $5 billion over ten years, but the amount awarded to cover these locations is only $1.488 billion.

108. The Commission determines that support in legacy study areas identified by FCC Form 477 data as entirely or almost entirely overlapped with voice and 25/3 Mbps broadband by an unsubsidized competitor or group of competitors will be awarded through a competitive bidding process. When there are competitors, competitive bidding can be an efficient, market-based way to distribute high-cost support. By auctioning off support in study areas that are entirely or almost entirely overlapped at 25/3 Mbps, the Commission expects to see significant savings relative to current legacy claims in those areas. Competitive bidding will result in a market-based allocation of limited funding in areas where support is overwhelmingly not needed to achieve our universal service goals as evidenced by the amount of unsubsidized competition. And the Commission will dedicate those savings to increasing the overall budget for legacy carriers—shifting support to areas where it is needed most. Currently, there are eight legacy study areas with 100% overlap and seven additional legacy study areas with at least 95% overlap with approximately $12 million in unconstrained projected claims for 2018 respectively. The Commission expects an auction to shift a large portion of that support to other study areas not entirely or almost entirely overlapped.

109. Consequently, the Commission eliminates the current 100% overlap rule and process. By replacing the existing process, the Commission eliminates the resources used to sort through documentary evidence; and if that evidence shows even one location in the study area is not served by unsubsidized competition, the entire process results in zero savings. Although the Commission recognizes that an auction could theoretically result in more funding in an area entirely or almost entirely overlapped by unsubsidized competitors than the existing process, the existing process has yielded almost no tangible results and instead allowed incumbent carriers almost entirely overlapped by unsubsidized competitors to continue to receive support for locations also being served by unsubsidized providers. The Commission believes that it would be better to allow such incumbent carriers to compete against their unsubsidized competitors for federal funds and to use a competitive bidding process to reduce funding to a more competitive level rather than to continue with the status quo.

110. The Commission declines to formally codify a rule for this process until it resolves certain issues it seeks comment on in the concurrently adopted FNPRM, including ensuring the Commission properly addresses issues raised by the incumbent LECs in their comments. In the meantime, the Commission will reserve sections 54.319(a)–(c) of the Commission's rules. The Commission declines to adopt the proposals of WISPA and NCTA to auction study areas that are at least 50% overlapped but seek further comment in the concurrently adopted FNPRM on how to determine which study areas are almost entirely overlapped.

111. The Commission adopts two changes to our rules governing the filing of line count data by rate-of-return carriers on FCC Form 507.

112. *Discussion.* The Commission adopts its proposal to change the date for mandatory line count filings for CAF BLS to March 31 of each year but to continue to require line counts as of December 31 (*i.e.,* reduce the lag until filing to 3 months). This change will ensure that recent line counts are used to apply the monthly cap and administer the budget control mechanism. Currently, when USAC performs the necessary calculations in April of each year, it typically must rely on the carrier's FCC Form 507 from the prior July, which in turn reports line counts as of the prior December 31. In other words, these calculations are based on line counts that are more than 15 months old. By changing the collection date to March 31, USAC will be able to use line count data that is much more recent—only three months old—in determining the monthly cap and administering the budget control mechanism.

113. The Commission declines to make any changes to the HCLS line count filing at this time. When the Commission sought comment regarding whether to modify the FCC Form 507 line filing schedule, it noted that HCLS line counts are currently collected on the same schedule as FCC Form 507, and asked whether conforming changes to the HCLS line count filing would be appropriate. The Commission finds that such changes would not be appropriate because HCLS line counts are collected at the same time as HCLS cost data, and it believes that carriers will find it less burdensome to make the HCLS line count and cost data filing on the same schedule.

114. The Commission also adopts a requirement for rate-of-return carriers that do not receive CAF BLS (*i.e.,* carriers that have elected A–CAM or Alaska Plan support) to file line counts annually on FCC Form 507. Line count data is essential for monitoring and analyzing high-cost universal service programs. Carriers that elected A–CAM were required to file line count data on FCC Form 507 prior to the implementation of A–CAM because they received ICLS, which they no longer do. Likewise, carriers authorized for Alaska Plan were also required to file line count data on FCC Form 507 prior to the implementation of the Alaska Plan. Requiring the A–CAM and Alaska Plan

carriers to continue to provide line count information will allow the Commission to maintain a frequently used data set for assessing whether the Commission's rules are achieving its universal service goals, while being a minimal burden. To lessen what the Commission considers to be an already minimal the burden associated with this data collection, it requires carriers to file this data on July 1 of each year to coincide with other filing dates.

115. The Commission incorporates into its Part 32 accounting rules, the updated lease accounting standards adopted in 2016 by the Financial Accounting Standards Board (FASB and the FASB lease accounting standards). In so doing, the Commission eliminates the need for incumbent LECs to account for leases under different standards in order to comply with our rules and with the FASB lease accounting standards. To expedite the effectiveness of these changes and ease administrative burdens, the Commission also waives its Part 32 rules to the extent necessary, to permit an incumbent LEC to use the FASB standards immediately.

116. *Discussion.* The Commission agrees with TDS telecom that ''maintaining two sets of lease accounts, by its nature,'' imposes burdens on carriers subject to our Part 32 rules. The Commission also agrees that there is no benefit to requiring such carriers to maintain two sets of lease accounts that reflect different accounting procedures for regulated purposes and for financial reporting. Importantly, the amendments the Commission makes to its Part 32 rules will have no impact on a carrier's rates or on the amount of universal service support it receives. The Commission therefore amends its Part 32 rules to conform them to the FASB lease accounting standards, so that carriers can maintain a single set of lease accounts that is consistent with both our rules and the FASB standards.

117. The Commission adopts the definition of a lease as contained in the FASB lease accounting standards, which define a lease as a contract, or part of a contract, that conveys the right to control the use of identified property, plant and equipment (an identified asset) for a period of time in exchange for consideration. As a result of this definitional change, in order to comply with our Part 32 rules, a carrier will need to determine whether a contract is or contains a lease because lessees are required to recognize lease assets and lease liabilities for all leases (financing or operating) other than short-term (less than 12 months) leases. Furthermore, the FASB lease accounting standards require an entity to separate the lease components from the non-lease components (for example, maintenance services or other activities that transfer a good or service to the customer) in a contract. With respect to operating and finance leases, our rules allow carriers to use subsidiary accounts as they deem necessary to most efficiently process the transactions.

118. *Lessee Accounting for Operating Leases.* To be consistent with the FASB lease accounting standard's approach, the Commission amends its rules to require that when a lessee enters into an operating lease longer than one year, it records the net present value of the lease payments. As the lease term runs, the lessee must recognize the lease expense as a straight-line amortization over the life of the lease.

119. *Lessor Accounting for Operating Leases.* The FASB lease accounting standards do not require substantial modifications to our current rules governing a lessor's accounting for operating leases. A lessor will continue to report the capital asset that it is leasing to another entity and to apply the required standards to the asset, such as recording depreciation expense and disclosing changes in the amount of the asset during the fiscal year. The Commission does, however, amend its rules to make clear that a lessor must recognize a long-term lease receivable in Account 1410 ''Other Non-current Assets,'' measuring the amount in generally the same manner as a lessee liability. Pursuant to our amended rules, a lessor must also recognize a deferred inflow of resources equal to the lease receivable plus any up-front payments the lessor received from the lessee that relate to future periods in Account 4300 ''Other long-term liabilities and deferred credits.''

120. The Commission also amends its rules to require that when a carrier, that is a lessor, enters into an operating lease longer than one year, it records the present value of the lease receivables in each account. The lessor must determine the present value of the lease and recognize a deferred inflow of resources equal to the lease receivable plus any up-front payments the lessor received from the lessee that relate to future periods.

121. As the lease term runs, the lessor in the normal course will recognize lease revenue and a credit to the deferred lease account, which will be done as a straight-line amortization over the life of the lease. The actual amount recorded under our amended rules could vary from what would have been recorded under the previous Part 32 rules. Over the length of the lease, however, the lease revenues recognized under either approach will be the same.

122. *Finance Leases.* Other than referring to capital leases as finance leases, no additional changes are necessary to the sections of our Part 32 rules governing finance leases. As with operating leases, carriers may employ subsidiary accounts to facilitate FASB reporting requirements.

123. *Ratemaking and universal service considerations.* Our revisions to Part 32 do not raise any ratemaking or universal service concerns. While there may be slight differences in the timing of certain entries, the overall effect over the length of the lease will not create any material disruptions to the ratemaking and universal service processes.

124. *Effective date.* Section 220(g) of the Act provides that the Commission shall give notice of alterations in the manner or form of the keeping of accounts at least six months before the alterations are to take effect. Thus, the earliest the rules the Commission adopts in this document could become effective would be mid-2019. Because most accounting systems are based on a calendar year, the Commission makes the revised rules effective on January 1, 2020. That is also the first month in which the FASB lease accounting standards are applicable to all entities that use GAAP accounting. For those carriers that must comply with the FASB lease accounting standards before January 1, 2020 and for those that elect an earlier date to conform their accounts to the FASB lease accounting standards, the Commission grants a waiver of Part 32 as described in the following to cover the time period between now and January 1, 2020.

125. *Waiver.* Generally, the Commission's rules may be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the specific facts make strict compliance inconsistent with the public interest. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.

126. On the Commission's own motion, it grants incumbent LECs subject to Part 32 a waiver allowing them to employ the revised procedures adopted herein effective upon release of this Report and Order. Absent such relief, the six-month notice required by Section 220(g) of the Act would require those incumbent LECs subject to the FASB lease accounting standards to have two sets of lease accounts until the revised rules become effective. The Commission finds good cause exists to

grant this waiver to preclude the imposition of duplicative accounting requirements. To encourage efficient use of carrier resources, the Commission extends this waiver to any carrier electing to follow the FASB lease accounting standards before January 1, 2020.

127. The Commission declines to make any changes to the rural growth factor or the application of the HCLS cap.

128. *Discussion.* The Commission declines to make any changes to the rural growth factor or the application of the HCLS cap. Commenters fail to address that HCLS support should be declining as customers switch to broadband-only services, which are supported through CAF BLS. The rural growth factor, which accounts for line loss, results in a declining HCLS cap and a decline in the overall amount of HCLS. When there are fewer lines to be supported, the amount of support should decrease. The Commission also notes that because 100% of the cost above the revenue imputation is available under CAF BLS, relative to HCLS, more support is available to the carrier when that loop becomes a standalone broadband loop.

129. Although the Commission seeks to preserve and advance universal availability of voice service, it also strives to ensure universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions. Increasing HCLS support provides a disincentive for legacy carriers to deploy broadband capable networks. Freezing the HCLS cap or increasing it by removing line loss from the rural growth factor would provide carriers with an incentive to maintain voice-only loops, and discourage the deployment of broadband.

130. While in the past the Commission spoke of limiting increases to HCLS because at that time the number of lines was typically increasing, the Commission noted that ''using a rural growth factor will more accurately reflect changes in the number of rural lines over time.'' Even though the number of voice lines is now typically decreasing, the mechanism adopted by the Commission is still effectively aligning HCLS support appropriately with the number of lines. For these reasons, the Commission does not adopt any changes to the rural growth factor or the application of the HCLS cap.

131. At this time, the Commission finds that no changes to the rate-of-return operating expense (opex) limitation are needed.

132. *Discussion.* The Commission declines to make any changes to the opex limitation at this time. The opex limitation has been in effect for only a limited period of time and was recently adjusted to account for inflation. The Commission finds it prudent to continue to monitor the effects of this modified limitation before adopting any further changes. The Commission also declines to adopt any changes to account for business locations as the Concerned Rural LECs and NTCA recommend. As NTCA notes, the Commission does not have ''public availability of business location data.'' Although future consideration of this issue may be warranted, NTCA's suggestion that the Commission apply ''some kind of factor'' does not provide a sufficient basis or means for us to move forward with any modifications.

133. The Commission directs USAC to collect contributions based on projected demand in order to minimize the universal service burden on consumers and businesses, while ensuring sufficient support to implement the high-cost program.

134. *Discussion.* The Commission concludes that its traditional approach, which bases collections on actual projected demand, will best serve our goals of minimizing the universal service burden on consumers and businesses while ensuring sufficient and predictable support to implement the high-cost program. While the uniform collection may have served a useful purpose when the CAF program was first getting underway, the Commission has largely implemented the CAF program now that the Phase II auction has ended and associated support amounts have been determined. Moreover, now that the Commission has concluded its budget review through this Report and Order, the Commission expects a fairly predictable and stable budget for the high-cost program for the next several years. Finally, collecting only enough support to meet demand enhances transparency and promotes accountability in the high-cost program. The Commission therefore directs USAC to discontinue uniform collections for the high-cost program and going forward to collect contributions based on projected demand.

135. There is no need for us to do a ''full accounting'' of the high-cost support available as SCC recommends. The Commission and USAC always have a full accounting of the amount of high-cost support needed and how much has been collected in excess of this total. There is currently no excess cash in USAC's high-cost account; USAC will need to collect additional funds to meet the requirements of the high-cost program, including the allocations adopted in this Report and Order. The Commission further declines to address SCC's recommendation to ''allocate any unencumbered excess'' from other universal service programs to HCLS and CAF BLS at this time.

II. Order on Reconsideration

136. *Introduction.* In the Order on Reconsideration, the Commission denies three petitions purportedly seeking reconsideration of the Commission's decision in the *2018 Rate-of-Return Reform Order and NPRM* to increase A–CAM support by *approximately* $36.5 million annually—increasing support up to $146.10 per location for all A–CAM carriers authorized on January 24, 2017. Grand River Mutual Telephone Corporation (Grand River) requests additional A–CAM support for 747 locations. Clarity Telecom, LLC (Clarity) requests additional A–CAM support for 2,167 locations. Hamilton County Telephone Co-op (Hamilton) (collectively, Petitioners) requests additional A–CAM support for 2,444 locations. The petitions for reconsideration ''relate to matters outside the scope of the order for which reconsideration is sought.'' Accordingly, the Commission denies them.

137. *Discussion.* The Commission denies all three petitions for reconsideration because they ''relate to matters outside the scope of the order for which reconsideration is sought.'' While on their face, the Petitioners are asking for an additional increase of A–CAM support, in effect, they are requesting that the Commission reconsiders what locations (census blocks) are eligible for A–CAM support. In other words, to increase the amount of support as Petitioners request, the Commission *would* have to first direct the Bureau to revise the A–CAM eligible census blocks, which was not at issue in the *2018 Rate-of-Return Reform Order and NPRM.* Rather, the Commission made the determination regarding eligible census blocks in the *2016 Rate-of-Return Reform Order.* Since that 2016 order, the Commission has not sought comment on or otherwise indicated in any way that would allow changes, modifications, or adjustments to funded locations for authorized A–CAM carriers. Finally, the Commission finds that Petitioners' requests as they phrase them and as they argue pertain only to them and do not justify a change of any rule of general applicability based on their pleadings. Accordingly, the Commission denies the three petitions for reconsideration.

138. Even were the Commission to address the petitions for reconsideration on their merits, the arguments raise nothing new to consider and are identical to petitions the Bureau rejected in the *2016 Orders* and *A–CAM Challenge Process Order.* With respect to Hamilton, its attempt to introduce ''new evidence'' falls short. The ''new evidence'' is that since Hamilton accepted its A–CAM offer, Wisper ISP updated its FCC Form 477 and reduced the number of census blocks that ''knocked out many'' locations. Hamilton also claims that Wisper ISP decommissioned a tower that ''would have supposedly served some of the locations that were rendered ineligible from the A–CAM funding.'' Hamilton then claims that it ''knows without a doubt'' Wisper ISP will not provide service in the area.

139. Regarding the decommissioned tower and Wisper ISP's lack of intention to provide service in the area, Hamilton provides no support or evidence to back its claims. In addition, Hamilton's petition lacks clarity on the number of locations that should be funded due to Wisper ISP's updated FCC Form 477 and its decommissioned tower. Wisper ISP apparently still serves some of the area, so the Commission can surmise that not all of Hamilton's 2,444 locations would be funded. Based on the record before the Commission, however, it cannot determine an exact number. Accordingly, Hamilton's petition is unpersuasive on the merits.

140. As to Clarity and Grand River, the Commission agrees with the Bureau's decision not to waive the date for determining FTTP and cable deployment. As the Bureau determined, administrative closure on the data set for incumbent study areas ''at a specific moment in time'' was necessary for ''efficient implementation of the overall reform effort.'' Moreover, as the Bureau recognized, the Commission clearly stated that under the terms of their offers, ''carriers may not resubmit their previously filed data to reduce their reported FTTP or cable coverage.''

IV. Procedural Matters

A. Paperwork Reduction Act Analysis

141. The Report and Order adopted herein contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), it previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this present document, the Commission has assessed the effects of the new and modified rules that might impose information collection burdens on small business concerns, and find that they either will not have a significant economic impact on a substantial number of small entities or will have a minimal economic impact on a substantial number of small entities.

B. Congressional Review Act

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

143. The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared a FRFA concerning the possible impact of the rule changes contained in the Report and Order on small entities. The FRFA is set forth in the following.

144. In the Report and Order, the Commission adopts further changes to universal service support mechanisms for rate-of-return carriers to spur broadband deployment to consumers in rural America, promote efficiency, and deter waste, fraud, and abuse. The Commission authorizes an offer of up to $200 per location for carriers currently on A–CAM support with revised deployment obligations, and the Commission authorizes a new A–CAM offer of up to $200 per location for current legacy carriers (those carriers receive HCLS and/or CAF BLS). The Commission then creates a separate budget for carriers that remain on legacy support and set that budget at 2018 unconstrained claims, which will be annually adjusted based on an inflationary factor. The Commission also sets a minimum threshold of support for legacy carriers equal to the five-year projection for CAF BLS. The Commission eliminates the per-line reduction that is part of the budget control mechanism, which will make legacy support amounts more predictable and make the budget control mechanism less burdensome administratively. The Commission eliminates the capital investment allowance, which has been deterring economically efficient investments and was administratively overburdensome for the carriers. To further the Commission's efforts in eliminating waste, fraud, and abuse, it reduces the per-line, per-month cap of legacy support from $250 to $225 and then to $200. The Commission modifies a reporting deadline related to line counts so that it is using more recent data in determining carriers subject to the per-line, per-month cap. The Commission also makes line count filings required for all rate-of-return carriers, which provides data it needs to effectively monitor our high-cost program while minimally burdening the carriers. The Commission amends the Uniform System of Accounts (USOA) contained in Part 32 of the Commission's rules to incorporate new lease accounting standards adopted by the Financial Accounting Standards Board (FASB). Amending the USOA eliminates the need for incumbent local exchange carriers (LECs) subject to Part 32 to maintain two methods of accounting for leases. The Commission updates deployment obligations consistent with the reset budget and rules changes adopted in the Report and Order. The Commission adopts changes whereby support in certain legacy areas will be awarded through competitive bidding. Finally, to make sure that consumers in rural areas have access to broadband consistent with demand and what services available in urban areas, the Commission generally makes 25/3 Mbps the minimum obligations for legacy support.

145. There were no comments raised that specifically addressed the proposed rules and policies presented in the *2018 Rate-of-Return Reform Order and NPRM IRFA.* Nonetheless, the Commission considered the potential impact of the rules proposed in the IRFA on small entities and generally reduced the compliance burden for all small entities to reduce the economic impact of the rules enacted herein on such entities.

146. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term

''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

147. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9 percent of all businesses in the United States which translates to 28.8 million businesses.

148. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

149. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

150. In the Report and Order, the Commission requires all rate-of-return carriers, not just legacy carriers, to file line count data in the FCC Form 507, and the Commission changes the deadline for line count reporting. The Commission amends the Uniform System of Accounts (USOA) contained in Part 32 of the Commission's rules to incorporate new lease accounting standards adopted by the Financial Accounting Standards Board (FASB). The Commission updates deployment obligations consistent with the reset budget and rules changes adopted in the Report and Order. By adopting defined deployment obligations for all legacy carriers, the Commission requires all of them to report deployment in the High Cost Universal Broadband (HUBB) portal.

151. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The Commission has considered all of these factors subsequent to receiving substantive comments from the public and potentially affected entities. The Commission has also considered the economic impact on small entities, as identified in comments filed in response to *2018 Rate-of-Return Reform Order and NPRM and IRFA,* in reaching its final conclusions and taking action in this proceeding.

152. The rules that the Commission adopts in the Report and Order take steps to provide greater certainty and flexibility to rate-of-return carriers, many of which are small entities. The Commission authorizes additional support for existing A–CAM carriers. The Commission also authorizes a new A–CAM offer for current legacy carriers, providing them the opportunity to receive model-based support in exchange for deploying broadband-capable networks to a pre-determined number of eligible locations. The Commission recognizes that permitting rate-of-return carriers to elect to receive fix monthly support amounts over the ten years will enhance the ability of these carriers to deploy broadband throughout the term and free them from the administrative burdens associated with doing cost studies to receive high-cost support. For this new offer, as with the existing A–CAM carriers, to provide flexibility, the Commission adopts interim milestones over the support term and permit the carriers to meet their obligations by deploying to 95 percent of the minimum number of locations.

153. Furthermore, the Commission adopts a new and separate budget for the legacy carriers that annually adjusts to factor in inflation and includes a minimum threshold of support not subject to the budget constraint. This will increase the amount of support available providing sufficiency and predictability for the legacy carriers. The Commission reimburses all support reductions budget control mechanism. Another action the Commission takes to make carriers' support more predictable is eliminating the per-line reduction calculation that was part of the budget control mechanism. The Commission also eliminates the capital investment allowance, which provides further relief to legacy carriers. The capital investment allowance had been deterring economically efficient investments and was administratively overburdensome for the carriers.

154. In adopting mandatory line count reporting for all rate-of-return carriers, the Commission notes that this is something that all carriers were required to do previously, and the burden is minimal. In lowering the monthly per-line support for legacy carriers, to minimize the impact, the Commission does it gradually—from $250 to $225, effective July 1, 2019, and then to $200, effective July 1, 2021. In revising the deployment obligations for legacy carriers, to minimize the impact, the Commission restarts the five-year deployment term and allow any locations deployed to with at least 25/3 Mbps broadband in the original term to count towards this new term. Finally, our decision to auction off support in legacy study areas may have a significant economic impact on small entities, but to reduce that impact, the Commission limits the auction to study areas that are significantly overlapped with unsubsidized competition. Moreover, while it affects incumbent LECs, our decision to auction certain legacy areas may have a positive impact on other small entity providers who currently do not receive universal service support.

V. Ordering Clauses

155. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1–4, 5, 201–206, 214, 218–220,

251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151–155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 403, 405, and 1302, the Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration *is adopted,* effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval, and the rules adopted pursuant to section III.C.8 of the Report and Order (paragraphs 115 to 126 of this **Federal Register** summary) shall become effective on January 1, 2020. It is the Commission's intention in adopting these rules that if any of the rules that it retains, modifies, or adopts herein, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

156. *It is further ordered* that Part 32, 54, and 65 of the Commission's rules, 47 CFR part 32, 54, and 65, *are amended* as set forth in the following, and such rule amendments *shall be effective* thirty (30) days after publication of the rules amendments in the **Federal Register**, except that those rules and requirements which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act *will become effective* after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date, and the rules adopted pursuant to section III.C.8 of the Report and Order (paragraphs 115 to 126 of this **Federal Register** summary) shall become effective on January 1, 2020.

157. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and sections 0.331 and 1.429 of the Commission's rules, 47 CFR 0.331 and 47 CFR 1.429, the Petition for Reconsideration filed by GRAND RIVER MUTUAL TELEPHONE CORPORATION on May 2, 2018 *is denied.*

158. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and sections 0.331 and 1.429 of the Commission's rules, 47 CFR 0.331 and 47 CFR 1.429, the Petition for Reconsideration filed by CLARITY TELECOM, LLC on May 10, 2018 *is denied.*

159. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and sections 0.331 and 1.429 of the Commission's rules, 47 CFR 0.331 and 47 CFR 1.429, the Petition for Reconsideration filed by HAMILTON COUNTY TELEPHONE CO-OP on May 8, 2018 *is denied.*

160. *It is further ordered,* pursuant to section 1.3 of the Commission's rules, 47 CFR 1.3, the Commission waives Part 32 rules to the extent necessary to allow carriers subject to those rules to employ the revised procedures adopted in section III.C.8 (paragraphs 115 to 126 of this **Federal Register** summary).

List of Subjects

47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform system of accounts.

47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

47 CFR Part 65

Administrative practice and procedure, Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 32, 54 and 65 as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

■ 1. The authority citation for part 32 continues to read as follow:

Authority: 47 U.S.C. 219, 220 as amended, unless otherwise noted.

■ 2. Amend § 32.1410 by adding paragraphs (l) and (m) to read as follows:

§ 32.1410 Other noncurrent assets.

* * * * *

(l) This account shall include property subject to a lessee operating lease longer than one year.

(1) An operating lease is a contract, or part of a contract, that conveys the right to control the use of identified property, plant and equipment (an identified asset) for a period of time in exchange for consideration.

(2) The amounts recorded in this account at the inception of an operating lease shall be equal to the present value not to exceed fair value, at the beginning of the lease term, of minimum lease payments during the lease term, excluding that portion of the payments representing executory costs to be paid by the lessor, together with any profit thereon. Amounts subject to current treatment shall be included in Account 1350, Other current assets.

(3) Any balance in this account relating to capitalized operating leases shall be excluded in any ratemaking calculations.

(m) This account shall include the amount of lessor receivables from an operating lease longer than one year.

(1) The amount recorded in this account at the inception of an operating lease shall be equal to the present value not to exceed fair value, at the beginning of the lease term, of minimum lease payments during the lease term, excluding that portion of the payments representing executory costs to be paid by the lessee, together with any profit thereon. Amounts subject to current settlement shall be included in Account 1350, Other current assets.

(2) Any balance in this account relating to receivables associated with capitalized operating leases shall be excluded in any ratemaking calculations.

■ 3. Revise § 32.2680 to read as follows:

§ 32.2680 Amortizable tangible assets.

This account shall be used by companies to record amounts for property acquired under finance leases and the original cost of leasehold improvements of the type of character detailed in Accounts 2681 and 2682.

■ 4. Amend § 32.2681 by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 32.2681 Finance leases.

(a) This account shall include all property acquired under a finance lease. A lease qualifies as a finance lease when one or more of the following criteria is met:

* * * * *

(c) The amounts recorded in this account at the inception of a finance lease shall be equal to the original cost,

if known, or to the present value not to exceed fair value, at the beginning of the lease term, of minimum lease payments during the lease term, excluding that portion of the payments representing executory costs to be paid by the lessor, together with any profit thereon.

■ 5. Amend § 32.2682 by revising paragraph (a) to read as follows:

§ 32.2682 Leasehold improvements.

(a) This account shall include the original cost of leasehold improvements made to telecommunications plant held under a finance or operating lease, which are subject to amortization treatment. This account shall also include those improvements which will revert to the lessor.

* * * * *

■ 6. Amend § 32.3400 by revising paragraphs (a)(1) and (b) to read as follows:

§ 32.3400 Accumulated amortization—tangible.

(a) * * *

(1) The accumulated amortization associated with the investment contained in Account 2681, Finance leases.

* * * * *

(b) This account shall be credited with amounts for the amortization of finance leases and leasehold improvements concurrently charged to Account 6563, Amortization expense—tangible. (Note also Account 3300, Accumulated depreciation—nonoperating.)

* * * * *

■ 7. Amend § 32.3410 by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 32.3410 Accumulated amortization—capitalized finance leases.

(a) This account shall include the accumulated amortization associated with the investment contained in Account 2681, Finance Leases.

(b) This account shall be credited with amounts for the amortization of finance leases concurrently charged to Account 6563, Amortization expense—tangible. (Note also Account 3300, Accumulated depreciation—nonoperating.)

* * * * *

■ 8. Amend § 32.4130 by revising paragraph (c) to read as follows:

§ 32.4130 Other current liabilities.

* * * * *

(c) The current portion of obligations applicable to property obtained under finance leases.

* * * * *

■ 9. Amend § 32.4200 by revising paragraph (a)(5) and adding paragraph (a)(9) to read as follows:

§ 32.4200 Long term debt and funded debt.

(a) * * *

(5) The noncurrent portion of obligations applicable to property obtained under finance leases. Amounts subject to current settlement shall be included in Account 4130, Other current liabilities.

* * * * *

(9) The noncurrent portion of obligations applicable to property subject to capitalized operating leases. Amounts subject to current settlement shall be included in Account 4130, Other current liabilities. Any balance in this account relating to capitalized operating leases shall be excluded in any ratemaking calculations.

* * * * *

■ 10. Amend § 32.4300 by adding paragraph (c) to read as follows:

§ 32.4300 Other long-term liabilities and deferred credits.

* * * * *

(c) This account shall include the deferred obligations associated with a capitalize operating lease longer than one year. The amounts recorded in this account at the inception of an operating lease shall be equal to the present value not to exceed fair value, at the beginning of the lease term, of minimum lease payments during the lease term, excluding that portion of the payments representing executory costs to be paid by the lessor, together with any profit thereon.

■ 11. Amend § 32.7500 by revising paragraph (e) to read as follows:

§ 32.7500 Interest and related items.

* * * * *

(e) This account shall include the interest portion of each finance lease and capitalized operating lease payment.

* * * * *

PART 54—UNIVERSAL SERVICE

■ 12. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 13. Amend § 54.302 by adding two sentences to the end of paragraph (a) and revising paragraph (c) to read as follows:

§ 54.302 Monthly per-line limit on universal service support.

(a) * * * Beginning July 1, 2019, until June 30, 2021, each study area's universal service monthly per-line support shall not exceed $225. Beginning July 1, 2021, each study area's universal service monthly per-line support shall not exceed $200.

* * * * *

(c) The Administrator, in order to limit support for carriers pursuant to paragraph (a) of this section, shall reduce safety net additive support, high-cost loop support, safety valve support, and Connect America Fund Broadband Loop Support in proportion to the relative amounts of each support the study area would receive absent such limitation.

§ 54.303 [Amended]

■ 14. Amend § 54.303 by removing and reserving paragraph (b) and removing paragraphs (c) through (m).

■ 15. Amend § 54.308 by

■ a. Revising the first sentence of paragraph (a)(1);

■ b. Adding paragraphs (a)(1)(iii) and (iv); and

■ c. Revising paragraphs (a)(2) introductory text, (a)(2)(i), (a)(2)(ii)(A)(*1*) and (*2*), (a)(2)(ii)(B), and (a)(2)(iii).

The revisions and additions read as follows:

§ 54.308 Broadband public interest obligations for recipients of high-cost support.

(a) * * *

(1) Carriers that elect to receive Connect America Fund-Alternative Connect America Cost Model (CAF–ACAM) support pursuant to § 54.311 are required to offer broadband service at actual speeds of at least 10 Mbps downstream/1 Mbps upstream to a defined number of locations as specified by public notice, with a minimum usage allowance of 150 GB per month, subject to the requirement that usage allowances remain consistent with median usage in the United States over the course of the term. * * *

* * * * *

(iii) Revised A–CAM I carriers, as defined by § 54.311(a)(2), must offer the following broadband speeds to locations that are fully funded, as specified by public notice at the time of the authorizations, as follows:

(A) Revised A–CAM I carriers with a state-level density of more than 10 housing units per square mile, as specified by public notice at the time of election, are required to offer broadband speeds of at least 25 Mbps downstream/3 Mbps upstream to 85 percent of all fully funded locations in the state by the end of the term.

(B) Revised A–CAM I carriers with a state-level density of 10 or fewer, but

more than five, housing units per square mile, as specified by public notice at the time of election, are required to offer broadband speeds of at least 25 Mbps downstream/3 Mbps upstream to 65 percent of fully funded locations in the state by the end of the term.

(C) Revised A–CAM I carriers with a state-level density of five or fewer housing units per square mile, as specified by public notice at the time of election, are required to offer broadband speeds of at least 25 Mbps downstream/3 Mbps upstream to 50 percent of fully funded locations in the state by the end of the term.

(iv) A–CAM II carriers, as defined by § 54.311(a)(3), must offer broadband speeds of at least 25 Mbps downstream/3 Mbps upstream to 100 percent of fully funded locations in the state by the end of the term, and therefore have no additional 10/1 Mbps obligation.

* * * * *

(2) Rate-of-return recipients of Connect America Fund Broadband Loop Support (CAF BLS) shall be required to offer broadband service at actual speeds of at least 25 Mbps downstream/3 Mbps upstream, over a five-year period, to a defined number of unserved locations as specified by public notice, as determined by the following methodology:

(i) *Percentage of CAF BLS.* Each rate-of-return carrier is required to target a defined percentage of its five-year forecasted CAF BLS support to the deployment of broadband service to locations that are unserved with 25 Mbps downstream/3 Mbps upstream broadband service as follows:

(A) Rate-of-return carriers with less than 20 percent deployment of 25/3 Mbps broadband service in their study areas, as determined by the Bureau, will be required to use 35 percent of their five-year forecasted CAF BLS support to extend broadband service where it is currently lacking.

(B) Rate-of-return carriers with more than 20 percent but less than 40 percent deployment of 25/3 Mbps broadband service in their study areas, as determined by the Bureau, will be required to use 25 percent of their five-year forecasted CAF BLS support to extend broadband service where it is currently lacking.

(C) Rate-of-return carriers with more than 40 percent deployment of 25/3 Mbps broadband service in their study areas, as determined by the Bureau, will be required to use 20 percent of their five-year forecasted CAF BLS support to extend broadband service where it is currently lacking.

(ii) * * *

(A) * * *

(*1*) The weighted average unseparated cost per loop for carriers of similar density that offer 25/3 Mbps or better broadband service to at least 95 percent of locations, based on the most current FCC Form 477 data as determined by the Bureau, but excluding carriers subject to the current per-line per-month cap set forth in § 54.302 and carriers subject to limitations on operating expenses set forth in § 54.303; *or*

(*2*) 150% of the weighted average of the cost per loop for carriers of similar density, but excluding carriers subject to the per line per month cap set forth in § 54.302 and carriers subject to limitations on operating expenses set forth in § 54.303, with a similar level of deployment of 25/3 Mbps or better broadband based on the most current FCC Form 477 data, as determined by Bureau; or

(B) The average cost per location for census blocks lacking 25/3 Mbps broadband service in the carrier's study area as determined by the A–CAM.

(iii) *Restrictions on deployment obligations.* No rate-of-return carrier shall deploy terrestrial wireline technology in any census block if doing so would result in total support per line in the study area to exceed the per-line per-month cap in § 54.302.

* * * * *

■ 16. Amend § 54.311 by adding paragraphs (a)(1) through (3) and revising paragraph (c) through (e) to read as follows:

§ 54.311 Connect America Fund Alternative-Connect America Cost Model Support

(a) * * *

(1) For the purposes of this section, ''A–CAM I'' refers to carriers initially authorized to receive CAF–ACAM support as of January 24, 2017, including any carriers that later elected revised offers, except for carriers described in paragraph (a)(2) of this section. For such carriers, the first program year of CAF–ACAM is 2017.

(2) For the purposes of this section, ''Revised A–CAM I'' refers to carriers initially authorized to receive CAF–ACAM support as of January 24, 2017, and were subsequently authorized to receive CAF–ACAM pursuant to a revised offer after January 1, 2019. For such carriers, the first program year of CAF–ACAM is 2017.

(3) For the purposes of this section, ''A–CAM II'' refers to carriers first authorized to receive A–CAM support after January 1, 2019. For such carriers, the first program year of CAF–ACAM is 2019.

* * * * *

(c) *Term of support.* CAF–ACAM model-based support shall be provided to A–CAM I carriers for a term that extends until December 31, 2026, and to Revised A–CAM I and A–CAM II carriers for a term that extends until December 31, 2028.

(d) *Interim deployment milestones.* Recipients of CAF–ACAM model-based support must meet the following interim milestones with respect to their deployment obligations set forth in § 54.308(a)(1)(i) of this subpart. Compliance shall be determined based on the total number of fully funded locations in a state. Carriers that complete deployment to at least 95 percent of the requisite number of locations will be deemed to be in compliance with their deployment obligations. The remaining locations that receive capped support are subject to the standard specified in § 54.308(a)(1)(ii).

(1) A–CAM I and Revised A–CAM I carriers must complete deployment of 10/1 Mbps service to a number of eligible locations equal to 40 percent of fully funded locations by the end of 2020, to 50 percent of fully funded locations by the end of 2021, to 60 percent of fully funded locations by the end of 2022, to 70 percent of fully funded locations by the end of 2023, to 80 percent of fully funded locations by the end of 2024, to 90 percent of fully funded locations by the end of 2025, and to 100 percent of fully funded locations by the end of 2026. By the end of 2026, A–CAM I carriers must complete deployment of broadband meeting a standard of at least 25 Mbps downstream/3 Mbps upstream to the requisite number of locations specified in § 54.308(a)(1)(i). For Revised A–CAM I carriers, the deployment milestones for 10/1 Mbps service described in this paragraph shall be based on the number of locations that were fully funded pursuant to authorizations made prior to January 1, 2019.

(2) Revised A–CAM I and A–CAM II carriers must complete deployment of 25/3 Mbps service to a number of eligible locations equal to 40 percent of locations required by § 54.308(a)(1) of this subpart by the end of 2022, 50 percent of requisite locations by the end of 2023, 60 percent of requisite locations by the end of 2024, 70 percent of requisite location by the end of 2025, 80 percent of requisite locations by the end of 2026, 90 percent of requisite locations by the end of 2027, and 100 percent of requisite locations by the end of 2028.

(e) *Transition to CAF–ACAM Support.* An A–CAM I, Revised A–CAM I, or A–CAM II carrier whose final model-based support is less than the carrier's legacy rate-of-return support in its base year as defined in paragraph (e)(4) of this section, will transition as follows:

(1) If the difference between a carrier's model-based support and its base year support, as determined by paragraph (e)(4) of this section, is ten percent or less, it will receive, in addition to model-based support, 50 percent of that difference in program year one, and then will receive model support in program years two through ten.

(2) If the difference between a carrier's model-based support and its base year support, as determined in paragraph (e)(4) of this section, is 25 percent or less, but more than 10 percent, it will receive, in addition to model-based support, an additional transition payment for up to four years, and then will receive model support in program years five through ten. The transition payments will be phased-down 20 percent per year, provided that each phase-down amount is at least five percent of the total base year support amount. If 20 percent of the difference between a carrier's model-based support and base year support is less than five percent of the total base year support amount, the transition payments will be phased-down five percent of the total base year support amount each year.

(3) If the difference between a carrier's model-based support and its base year support, as determined in paragraph (e)(4) of this section, is more than 25 percent, it will receive, in addition to model-based support, an additional transition payment for up to nine years, and then will receive model support in year ten. The transition payments will be phased-down ten percent per year, provided that each phase-down amount is at least five percent of the total base year support amount. If ten percent of the difference between a carrier's model-based support and its base year support is less than five percent of the total base year support amount, the transition payments will be phased-down five percent of the total base year support amount each year.

(4) The carrier's base year support for purposes of the calculation of transition payments is:

(i) For A–CAM I and Revised A–CAM I carriers, the amount of high-cost loop support and interstate common line support disbursed to the carrier for 2015 without regard to prior period adjustments related to years other than 2015, as determined by the Administrator as of January 31, 2016 and publicly announced prior to the election period for the voluntary path to the model; and

(ii) For A–CAM II carriers, the amount of high-cost loop support and Connect America Fund—Broadband Loop Support disbursed to the carrier for 2018 without regard to prior period adjustments related to years other than 2018, as determined by the Administrator as of January 31, 2019 and publicly announced prior to the election period for the voluntary path to the model.

■ 17. Amend § 54.313 by revising paragraph (f)(1)(i) and adding paragraph (f)(5) to read as follow:

§ 54.313 Annual reporting requirements for high-cost recipients.

* * * * *

(f) * * *

(1) * * *

(i) If the rate-of-return carrier is receiving support pursuant to subparts K and M of this part, a certification that it is taking reasonable steps to provide upon reasonable request broadband service at actual speeds of at least 25 Mbps downstream/3 Mbps upstream, with latency suitable for real-time applications, including Voice over internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas as determined in an annual survey, and that requests for such service are met within a reasonable amount of time; if the rate-of-return carrier receives CAF–ACAM support, a certification that it is meeting the relevant reasonable request standard; or if the rate-of-return carrier is receiving Alaska Plan support pursuant to § 54.306, a certification that it is offering broadband service with latency suitable for real-time applications, including Voice over internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, and at speeds committed to in its approved performance plan to the locations it has reported pursuant to § 54.316(a), subject to any limitations due to the availability of backhaul as specified in paragraph (g) of this section.

* * * * *

(5) Rate-of-return carriers receiving support pursuant to the Alternative Connect America Model or the Alaska Plan, that are not otherwise required to file count data pursuant to § 54.903(a)(1) of this subpart, must file the line count data required by § 54.903(a)(1).

* * * * *

■ 18. Amend § 54.316 by revising paragraphs (b)(2)(i) and (ii) and (b)(3)(i) and (ii) to read as follows:

§ 54.316 Broadband deployment reporting and certification requirements for high-cost recipients.

* * * * *

(b) * * *

(2) * * *

(i) No later than March 1, 2021, and every year thereafter ending on no later than March 1, 2029, a certification that by the end of the prior calendar year, it was offering broadband meeting the requisite public interest obligations specified in § 54.308 to the required percentage of its fully funded locations in the state, pursuant to the interim deployment milestones set forth in § 54.311(d).

(ii) No later than March 1, 2027, a certification that as of December 31, 2026, it was offering broadband meeting the requisite public interest obligations specified in § 54.308(a)(1) to all of its fully funded locations in the state and to the required percentage of its capped locations in the state.

(3) * * *

(i) No later than March 1, 2024, a certification that it fulfilled the deployment obligation meeting the requisite public interest obligations as specified in § 54.308(a)(2) to the required number of locations as of December 31, 2023.

(ii) Every subsequent five-year period thereafter, a certification that it fulfilled the deployment obligation meeting the requisite public interest obligations as specified in § 54.308(a)(2)(iv).

* * * * *

§ 54.319 [Amended]

■ 19. Amend § 54.319 by removing and reserving paragraphs (a) through (c).:

■ 20. Amend § 54.643 by revising paragraph (a)(6)(iv) introductory text to read as follows:

§ 54.643 Funding commitments.

(a) * * *

(6) * * *

(iv) Sustainability plans for applicants requesting support for long-term capital expenses: Consortia that seek funding to construct and own their own facilities or obtain indefeasible right of use or finance lease interests are required to submit a sustainability plan with their funding requests demonstrating how they intend to maintain and operate the facilities that are supported over the relevant time period. Applicants may incorporate by reference other portions of their applications (*e.g.,* project management plan, budget). The sustainability plan must, at a minimum, address the following points:

* * * * *

■ 21. Amend § 54.901 by removing and reserving paragraph (f)(2) and revising paragraph (f)(3).

The revision reads as follows:

§ 54.901 Calculation of Connect America Fund Broadband Loop Support.

* * * * *

(f) * * *

(3) The Administrator shall apply a pro rata reduction to CAF BLS for each recipient of CAF BLS as necessary to achieve the target amount.

* * * * *

■ 22. Amend § 54.903 by revising the first sentence of paragraph (a)(1) to read as follows:

§ 54.903 Obligations of rate-of-return carriers and the Administrator.

(a) * * *

(1) Each rate-of-return carrier shall submit to the Administrator on March 31 of each year the number of lines it served as of the prior December 31, within each rate-of-return carrier study area showing residential and single-line business line counts, multi-line business line counts, and consumer broadband-only line counts separately. * * *

* * * * *

■ 23. Amend § 54.1310 by revising paragraph (d)(2) to read as follows:

§ 54.1310 Expense adjustment.

* * * * *

(d) * * *

(2) Each January 1 and July 1, the Administrator shall apply a pro rata reduction to High Cost Loop Support for each recipient of High Cost Loop Support as necessary to achieve the target amount.

* * * * *

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION, PROCEDURES, AND METHODOLOGIES

■ 24. The authority citation for part 65 continues to read as follow:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 25. Amend § 65.450 by revising paragraph (b)(1) to read as follows:

§ 65.450 Net income.

* * * * *

(b) * * *

(1) Gains related to property sold to others and leased back under finance leases for use in telecommunications services shall be recorded in Account 4300, Other long-term liabilities and deferred credits, and credited to Account 6563, Amortization expense—tangible, over the amortization period established for the finance lease;

* * * * *

[FR Doc. 2019–01827 Filed 2–15–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600, 622, 697

[Docket No. 181009921–8999–02]

RIN 0648–BI46

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagics Resources in the Gulf of Mexico and Atlantic Region; Amendment 31

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

ACTION: Final rule.

SUMMARY: NMFS issued regulations to implement management measures described in Amendment 31 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagics (CMP) of the Gulf of Mexico (Gulf) and Atlantic Region (Amendment 31), as prepared by the Gulf of Mexico (Gulf Council) and South Atlantic Fishery Management Councils (South Atlantic Council) (Councils). This final rule removes Atlantic migratory group cobia (Atlantic cobia) from Federal management under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). At the same time, this final rule implements comparable regulations under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) to replace the existing Magnuson-Stevens Act based regulations in Atlantic Federal waters. The purpose of Amendment 31 is to facilitate improved coordination of Atlantic cobia in state and Federal waters, thereby more effectively constraining harvest and preventing overfishing and decreasing adverse socio-economic effects to fishermen.

DATES: This final rule is effective March 21, 2019.

ADDRESSES: Electronic copies Amendment 31 may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/coastal-migratory-pelagics-amendment-31-management-atlantic-migratory-group-cobia.* Amendment 31 includes an environmental assessment, a fishery impact statement, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS Southeast Regional Office, telephone: 727–551–5753, or email: *karla.gore@noaa.gov.*

SUPPLEMENTARY INFORMATION: The coastal migratory pelagics fishery in the Atlantic region is managed under the FMP and includes cobia, along with king and Spanish mackerel. The FMP was prepared by the Councils and is implemented by NMFS through regulations at 50 CFR part 622 under authority of the Magnuson-Stevens Act.

On October 11, 2018, NMFS published a notice of availability for Amendment 31 and requested public comment (83 FR 51424). On November 9, 2018, NMFS published a proposed rule for Amendment 31 and requested public comment (83 FR 56039). The proposed rule and Amendment 31 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 31 and implemented by this final rule is provided below.

Background

Through the CMP FMP, cobia is managed in two distinct migratory groups. The first is the Gulf migratory group of cobia that ranges both in the Gulf from Texas through Florida as well as in the Atlantic off the east coast of Florida (Gulf cobia). The second is the Atlantic migratory group of cobia that is managed from Georgia through New York (Atlantic cobia). The boundary between these two migratory groups is the Georgia-Florida state boundary. Both the Gulf and the Atlantic migratory groups of cobia were assessed through SEDAR 28 in 2013 and neither stock was determined to be overfished or experiencing overfishing.

The majority of Atlantic cobia landings occur in state waters and, despite closures in Federal water in recent years, recreational landings have exceeded the recreational annual catch limit (ACL) and the combined stock ACL. This has resulted in shortened fishing seasons, which have been ineffective at constraining harvest. Following overages of the recreational and combined stock ACLs in 2015 and 2016, Federal waters closures for recreational harvest occurred in both 2016 (June 20) and 2017 (January 24). Additionally, Federal waters were closed to commercial harvest of Atlantic cobia in 2016 (December 5) and 2017 (September 4), because the commercial

ACL was projected to be reached during the fishing year.

Allowable harvest in state waters following the Federal closures varied by time and area. Harvest in state waters during the Federal closures contributed to the overage of the recreational ACL and the combined stock ACL. The South Atlantic Council requested that the Atlantic States Marine Fisheries Commission (ASMFC) consider complementary management measures for Atlantic cobia, as constraining harvest in Federal waters has not prevented the recreational and combined ACLs from being exceeded. The ASMFC consists of 15 Atlantic coastal states that manage and conserve their shared coastal fishery resources.

In April 2018, the ASFMC implemented the Interstate FMP, which established state management for Atlantic cobia with the purpose of improving cobia management in the Atlantic. Each affected state developed an implementation plan that included regulations in their state waters. In addition, the ASMFC is currently amending the Interstate FMP for Atlantic cobia to establish a mechanism for recommending future management measures to NMFS. Upon implementation of Amendment 31, such management measures would need to be implemented in Federal waters through the authority and process defined in the Atlantic Coastal Act.

The management measures contained within the ASMFC's Interstate FMP are consistent with the current Federal regulations for Atlantic cobia. Under the ASMFC plan, regulations in each state must match, or be more restrictive than, the Interstate FMP management measures. Georgia, South Carolina, North Carolina, and Virginia have implemented more restrictive regulations for the recreational sector in their state waters than those specified in the Interstate FMP. Those regulations include recreational bag and vessel limits, and minimum size limits, in addition to allowable fishing seasons. The Interstate FMP also provides the opportunity for states to declare *de minimis* status for their Atlantic cobia recreational sector if a state's recreational landings for 2 of the previous 3 years is less than one percent of the coastwide recreational landings for the same time period. States in a *de minimis* status would be required to adopt the regulations (including season) of the closest adjacent non-*de minimis* state or accept a 1 fish per vessel per day trip limit and a minimum size limit of 29 inches (73.7 cm), fork length. Maryland, Delaware, and New Jersey have declared a *de minimis* status.

The Magnuson-Stevens Act requires a council to prepare an FMP for each fishery under its authority that requires conservation and management. Any stocks that are predominately caught in Federal waters and are overfished or subject to overfishing, or likely to become overfished or subject to overfishing, are considered to require conservation and management (50 CFR 600.305(c)(1)). Beyond such stocks, councils may determine that additional stocks require conservation and management. Thus, not every fishery requires Federal management and the NMFS National Standard Guidelines at 50 CFR 600.305(c) provide factors that NMFS and the Councils should consider when considering removal of a stock from an FMP. This analysis is contained in Amendment 31.

Based on this analysis, the Councils and NMFS have determined that Atlantic cobia is no longer in need of conservation and management within the South Atlantic Council's jurisdiction and the stock is eligible for removal from the CMP FMP. The majority of Atlantic group cobia landings are in state waters and the stock is not overfished or undergoing overfishing. Additionally, the CMP FMP has proven ineffective at resolving the primary ongoing user conflict between the recreational fishermen from different states, and it does not currently appear to be capable of promoting a more efficient utilization of the resource. Most significantly, the harvest of Atlantic cobia is adequately managed in state waters by the ASMFC and their Interstate FMP, which was implemented in April 2018. For the commercial sector, the ASMFC's Interstate FMP specified management measures for Atlantic cobia that are consistent with the current ACL and accountability measure (AM) specified in the Federal regulations implemented pursuant to the CMP FMP.

Therefore, NMFS and the Councils have determined that management by the states, in conjunction with the ASMFC and Secretary of Commerce, will be more effective at constraining harvest and preventing overfishing, offering greater biological protection to the stock and decreasing adverse socioeconomic effects to fishermen. Further, management of Atlantic cobia by the ASMFC is expected to promote a more equitable distribution of harvest of the species among the states.

Management Measure Contained in This Final Rule

This final rule removes Atlantic cobia from Federal management under the Magnuson-Stevens Act. At the same time, it implements comparable regulations, in Federal waters, under the Atlantic Coastal Act.

Current commercial management measures for Atlantic cobia include a minimum size limit of 33 inches (83.8 cm), fork length and a commercial trip limit of two fish per person per day, not to exceed six fish per vessel per day. Federal regulations for recreational harvest of Atlantic cobia in Federal waters include a minimum size limit of 36 inches (91.4 cm), fork length and a bag and possession of one fish per person per day, not to exceed six fish per vessel per day.

Under the authority of the Atlantic Coastal Act, this final rule implements these same minimum size limits, recreational bag and possession limits, and commercial trip limits in Federal waters. Additionally, this final rule implements regulations consistent with current CMP FMP regulations for the fishing year, general prohibitions, authorized gear, and landing fish intact provisions specific to Atlantic cobia.

The current Atlantic cobia commercial ACL is 50,000 lb (22,680 kg) and the recreational ACL is 620,000 lb (281,227 kg). The removal of Atlantic cobia from Federal management under the Magnuson-Stevens Act removes these sector ACLs. Under this final rule, a commercial quota of 50,000 lb (22,280 kg) is implemented consistent with the current commercial ACL. The current commercial AM requires that if commercial landings reach or are projected to reach the ACL, then commercial harvest will be prohibited for the remainder of the fishing year. This final rule implements commercial quota closure provisions through the Atlantic Coastal Act to prohibit commercial harvest once the commercial quota is reached or projected to be reached.

The ASMFC's Interstate FMP has specified a recreational harvest limit (RHL) of 613,800 lb (278,415 kg) in state and Federal waters and state-by-state recreational quota shares (harvest targets) of the coastwide RHL. During the development of the Interstate FMP, one percent of the amount of the recreational allocation of the current Federal ACL (initially 6,200 lb (2,812 kg)) was set aside to account for harvests in *de minimis* states (Maryland, Delaware, and New Jersey). The harvest targets for each state, in both state and Federal waters, are 58,311 lb (26,449 kg) for Georgia, 74,885 lb (33,967 kg) for South Carolina, 236,316 lb (107,191 kg) for North Carolina and 244,292 lb (110,809 kg) for Virginia. Percentage allocations are based on states'

percentages of the coastwide historical landings in numbers of fish.

The removal of Atlantic cobia from Federal management under the Magnuson-Stevens Act removes the recreational sector AM for Atlantic cobia. The current recreational AM requires that if both the recreational ACL and the stock ACL are exceeded in a fishing year, then in the following fishing year recreational landings will be monitored for a persistence in increased landings. Also, if necessary, the recreational vessel limit will be reduced to no less than 2 fish per vessel to ensure recreational landings achieve the recreational annual catch target, but do not exceed the recreational ACL in that fishing year. Additionally, if the reduction in the recreational vessel limit is determined to be insufficient to ensure that recreational landings will not exceed the recreational ACL, then the length of the recreational fishing season will be reduced.

In place of the current recreational AM, state-defined regulations and seasons implemented consistent with the ASMFC's Interstate FMP are designed to keep harvest within the state harvest targets. If a state's average annual landings over the 3-year time period are greater than their annual harvest target, then the Interstate FMP requires the state to adjust their recreational season length or recreational vessel limits for the following 3 years, as necessary, to prevent exceeding their harvest target in the future years.

Upon implementation of Amendment 31, Atlantic cobia will be managed under the ASMFC's Interstate FMP in state waters and through Atlantic Coastal Act regulations in Federal waters. This will ensure that Atlantic cobia continues to be managed in Federal waters and that there will be no lapse in management of the stock. These regulations are being implemented concurrently with the removal of Atlantic cobia from the CMP FMP and serve essentially the same function as the current CMP FMP based management measures. NMFS expects that the Interstate FMP and Atlantic Coastal Act will provide adequate management of Atlantic cobia in state and Federal waters and ensure that the stock has sufficient conservation and management measures in place.

Comments and Responses

NMFS received 14 comments on the proposed rule and Amendment 31 from members of the public and fishing associations. Of these comments, two supported the actions in the proposed rule and Amendment 31, with which NMFS agrees. Another comment related to potential future measures in Florida state waters along the east coast, which is unrelated to the Atlantic cobia stock and beyond the scope of the actions contained in Amendment 31. NMFS refers the commenter to the State of Florida for potential future changes to state regulations.

NMFS received 11 comments questioning the recreational and commercial management measures contained in the proposed rule. These comments questioned the basis for the less restrictive size and bag limits for commercial vessels, as compared to recreational vessels, harvesting Atlantic cobia. Initially, NMFS notes that all of the management measures contained in this rule are merely continued under the Atlantic Coastal Act from existing Magnuson-Stevens Act based regulations, and none of the size and bag restrictions originate from Amendment 31. The more restrictive recreational size and bag limits were implemented via the final rule associated with Framework Amendment 4 to the FMP (82 FR 36344, August 4, 2017). Prior to that final rule, the size and possession limits were the same for recreational and commercial vessels. The CMP FMP allocates over 90 percent of the harvest of the Atlantic cobia stock to the recreational sector; thus, recreational harvest can easily lead to exceeding acceptable harvest levels for the entire stock, potentially leading to overfishing. Increasing recreational harvest in 2015 and 2016 did exactly that, with recreational landings being more than double the total stock ACL in each year, which resulted in extended Federal closures for the recreational sector. The more restrictive recreational management measures questioned in the comments were implemented to reduce recreational harvest to acceptable levels and promote more equitable fishing opportunities for all anglers through avoiding prolonged Federal closures. Without continuing the more restrictive recreational measures under the Atlantic Coastal Act, NMFS could not expect management measures in Federal waters to constrain the harvest of Atlantic cobia to acceptable levels, thereby helping to prevent overfishing.

No changes were made to this final rule as a result of public comment.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with Amendment 31, the FMP, the Magnuson-Stevens Act, and other applicable laws. Additionally, this final rule is compatible with the effective implementation of the ASMFC's Interstate FMP for Atlantic cobia.

This final rule has been determined to be not significant for purposes of Executive Order 12866. NMFS expects this final rule would reduce regulatory complexity and administrative costs, as well as provide economic benefits to recreational anglers through expanded harvest opportunities in Federal waters and a more stable recreational fishing season for Atlantic cobia.

The Magnuson-Stevens Act and Atlantic Coastal Act provide the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule. Accordingly, the Paperwork Reduction Act does not apply to this final rule.

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 rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. None of the public comments that were received specifically addressed the certification and NMFS has not received any new information that would affect its determination that this rule would not have a significant economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects

50 CFR Part 600

Atlantic, Cobia, Fisheries, Fishing, South Atlantic.

50 CFR Part 622

Atlantic, Cobia, Fisheries, Fishing, South Atlantic.

50 CFR Part 697

Atlantic, Cobia, Fisheries, Fishing, South Atlantic.

Dated: February 12, 2019.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR parts 600, 622, and 697 are amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.725, in paragraph (v), in the table under heading ''III. South Atlantic Fishery Management Council,'' under entry 8, remove and reserve entry 8.C and add entry 25 in numerical order to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	Authorized gear types
* * * * * * *	
III. South Atlantic Fishery Management Council	
* * * * * * *	
25. Atlantic Migratory Group Cobia (Non-FMP):	
A. Commercial Fishery	A. Longline, handline, rod and reel, bandit gear, spear.
B. Recreational Fishery	B. Bandit gear, rod and reel, handline, spear.
* * * * * * *	

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 3. The authority citation for part 622 continues to read as follows:

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

■ 4. In § 622.1, revise the Table 1 entry for ''FMP for Coastal Migratory Pelagic Resources'', and add footnote 9 to Table 1 to read as follows:

§ 622.1 Purpose and scope.

* * * * *

TABLE 1 TO § 622.1—FMPS IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
FMP for Coastal Migratory Pelagic Resources	GMFMC/SAFMC	Gulf[1 9], Mid-Atlantic[1 9], South Atlantic[1 9].
* * * * * * *		

[1] Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.

* * * * * * *

[9] Cobia is managed by the FMP in the Gulf EEZ and in the South Atlantic EEZ south of a line extending due east from the Florida/Georgia border.

* * * * *

■ 5. In § 622.375, revise paragraph (a)(2) to read as follows:

§ 622.375 Authorized and unauthorized gear.

* * * * *

(a) * * *

(2) *Cobia, Gulf migratory group.* Subject to the prohibitions on gear/methods specified in § 622.9, the following are the only fishing gears that may be used in the Gulf EEZ, and in the South Atlantic EEZ south of a line extending due east from the Florida/Georgia border for cobia—all gear except drift gillnet and long gillnet.

* * * * *

■ 6. In § 622.380, revise paragraph (a)(1) and remove and reserve paragraph (a)(2).

The revision reads as follows:

§ 622.380 Size limits.

* * * * *

(a) * * *

(1) In the Gulf and in the South Atlantic EEZ south of a line extending due east from the Florida/Georgia border—33 inches (83.8 cm), fork length.

* * * * *

■ 7. In § 622.381, revise paragraph (a) to read as follows:

§ 622.381 Landing fish intact.

(a) Cobia in or from the Gulf and in the South Atlantic EEZ south of a line extending due east from the Florida/Georgia border, and king mackerel and Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel and Spanish mackerel in paragraph (b) of this section, must be maintained with head and fins intact. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

* * * * *

■ 8. In § 622.382, revise the heading for paragraph (a) and remove paragraph (a)(1)(vi).

The revision reads as follows:

§ 622.382 Bag and possession limits.

* * * * *

(a) *King mackerel and Spanish mackerel* * * *

* * * * *

§ 622.384 [Amended]

■ 9. In § 622.384, remove and reserve paragraph (d)(2).

§ 622.385 [Amended]

■ 10. In § 622.385, remove paragraph (c).

§ 622.388 [Amended]

■ 11. In § 622.388, remove paragraph (f).

■ 12. In appendix G to part 622, revise figure 3 to read as follows:

Appendix G to Part 622—Coastal Migratory Pelagics Zone Illustrations

* * * * *

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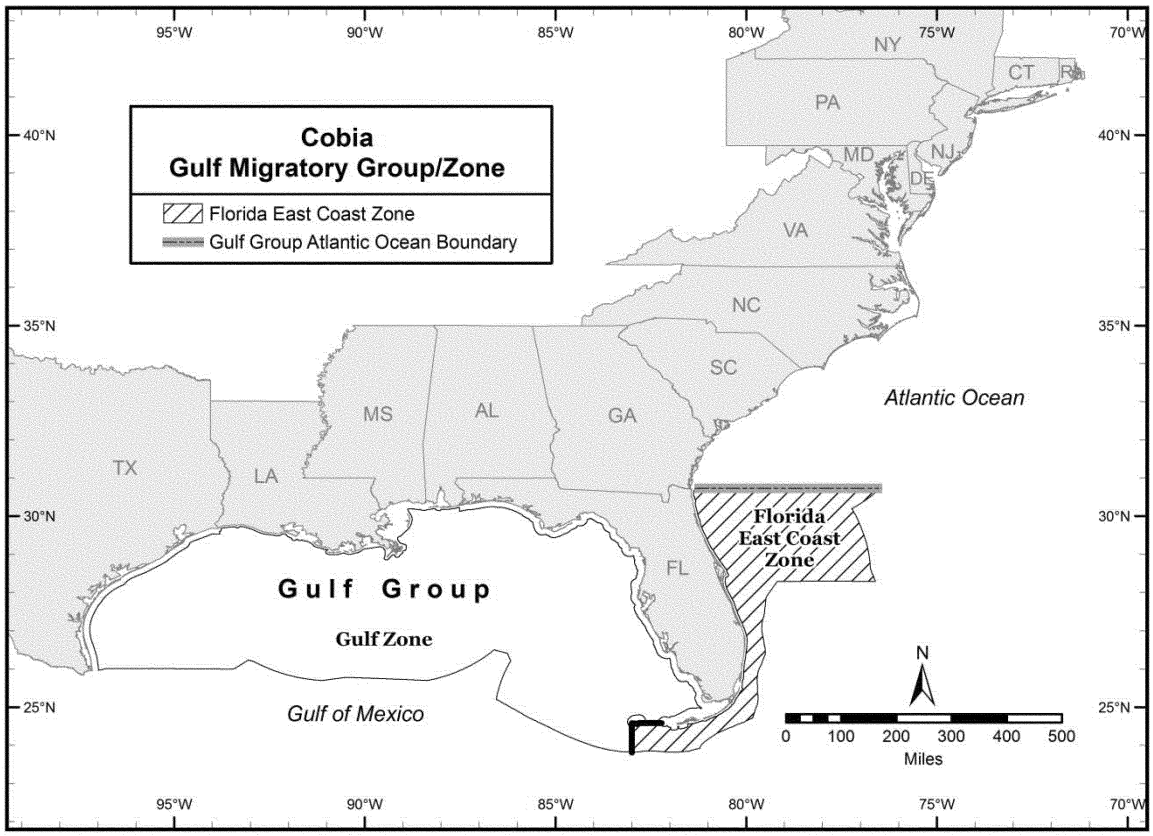

Figure 3 of Appendix G to Part 622--Cobia

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PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 13. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

■ 14. In § 697.2, in paragraph (a), add a definition for ''Atlantic migratory group cobia'' in alphabetical order to read as follows:

§ 697.2 Definitions.

(a) * * *

Atlantic migratory group cobia, means *Rachycentron canadum,* a whole fish or a part thereof, bounded by a line extending from the intersection point of New York, Connecticut, and Rhode Island (41°18′16.249″ N lat. and 71°54′28.477″ W long) southeast to 37°22′32.75″ N lat. and the intersection point with the outward boundary of the EEZ and south to a line extending due east of the Florida/Georgia border (30°42′45.6″ N lat.).

* * * * *

■ 15. In § 697.7, add paragraph (g) to read as follows:

§ 697.7 Prohibitions.

* * * * *

(g) *Atlantic migratory group cobia.* In addition to the prohibitions set forth in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Use or possess prohibited gear or methods or possess fish in association with possession or use of prohibited gear, as specified in this part.

(2) Fish in violation of the prohibitions, restrictions, and requirements applicable to seasonal and/or area closures, including but not limited to: Prohibition of all fishing, gear restrictions, restrictions on take or retention of fish, fish release requirements, and restrictions on use of an anchor or grapple, as specified in this part or as may be specified under this part.

(3) Possess undersized fish, fail to release undersized fish, or sell or purchase undersized fish, as specified in this part.

(4) Fail to maintain a fish intact through offloading ashore, as specified in this part.

(5) Exceed a bag or possession limit, as specified in this part.

(6) Fail to comply with the species-specific limitations, as specified in this part.

(7) Fail to comply with the restrictions that apply after closure of a fishery, sector, or component of a fishery, as specified in this part.

(8) Possess on board a vessel or land, purchase, or sell fish in excess of the commercial trip limits, as specified in this part.

(9) Fail to comply with the restrictions on sale/purchase, as specified in this part.

(10) Interfere with fishing or obstruct or damage fishing gear or the fishing vessel of another, as specified in this part.

(11) Fail to comply with any other requirement or restriction specified in this part or violate any provision(s) in this part.

■ 16. Add § 697.28 to subpart B to read as follows:

§ 697.28 Atlantic migratory group cobia.

(a) *Fishing year.* The fishing year for Atlantic migratory cobia is January 1 through December 31.

(b) *Authorized gear.* Subject to the prohibitions on gear/methods in § 697.7, the following are the only fishing gears that may be used for cobia in the EEZ of the Atlantic migratory group—automatic reel, bandit gear, handline, rod and reel, pelagic longline, and spear (including powerheads).

(c) *Size limits.* All size limits in this section are minimum size limits. Atlantic migratory group cobia not in compliance with its size limit, as specified in this section, in or from the EEZ, may not be possessed, sold, or purchased. A fish not in compliance with its size limit must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on board are in compliance with the size limits specified in this section. If a size limit in paragraph (c)(1) or (2) of this section differs from a size limit from an Atlantic state(s), then any vessel operator in the EEZ must comply with the more restrictive requirement or measure when in the waters off that state.

(1) 33 inches (83.8), fork length, for cobia that are sold (commercial sector).

(2) 36 inches (91.4 cm), fork length, for cobia that are not sold (recreational sector).

(d) *Landing fish intact.* Atlantic migratory group cobia in the EEZ, must be maintained with head and fins intact. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

(e) *Bag and possession limits.* If a bag and/or possession limit in paragraph (e)(1) or (2) of this section differs from a bag and/or possession limit from an Atlantic state(s), then any vessel operator in the EEZ must comply with the more restrictive requirement or measure when in the waters off that state.

(1) *Recreational bag and possession limits.* Atlantic migratory group cobia that are not sold (recreational sector)—1, not to exceed 6 fish per vessel per day.

(2) *Possession limits.* A person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(f) *Quotas.* All weights are in round and eviscerated weight combined.

(1) *Commercial quota.* The following quota applies to persons who fish for cobia and sell their catch—50,000 lb (22,680 kg). If the sum of the cobia landings that are sold, as estimated by the SRD, reach or are projected to reach the quota specified in this paragraph (f)(1), the AA will file a notification with the Office of the Federal Register to prohibit the sale and purchase of cobia for the remainder of the fishing year.

(2) *Restrictions applicable after a quota closure.* (i) If the recreational sector for Atlantic migratory group cobia is open, the bag and possession specified in paragraph (e) of this section apply to all harvest or possession in or from the EEZ. If the recreational sector is closed, all applicable harvest or possession in or from the EEZ is prohibited.

(ii) The sale or purchase of Atlantic migratory group cobia in or from the EEZ during a closure is prohibited. The prohibition on the sale or purchase during a closure does not apply to Atlantic migratory group cobia that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

(g) *Commercial trip limits.* Commercial trip limits are limits on the amount of Atlantic migratory group cobia that may be possessed on board or landed, purchased, or sold from a vessel per day. A person who fishes in the EEZ may not combine a trip limit specified in this section with any trip or possession limit applicable to state waters. Atlantic migratory group cobia specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ. Commercial trip limits apply as follows—Until the commercial quota specified in paragraph (f)(1) of this section is reached, 2 fish per person, not to exceed 6 fish per vessel.

[FR Doc. 2019–02591 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 33
Tuesday, February 19, 2019

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 278 and 279

[FNS–2018–0021]

RIN 0584–AE63

Taking Administrative Actions Pending Freedom of Information Act (FOIA) Processing

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service (FNS) seeks to prevent firms authorized to participate in the Supplemental Nutrition Assistance Program (SNAP or the Program) from delaying administrative actions, such as disqualification or civil money penalties, through submission of Freedom of Information Act (FOIA) requests or appeals. As such, FNS is proposing that FOIA requests and FOIA appeals be processed separately from administrative actions FNS takes against retail food stores. This proposed rule would ensure that retail food stores can no longer use the FOIA process to delay FNS' administrative actions to sanction a retail food store for SNAP violations.

DATES: Written comments must be received on or before April 22, 2019 to be assured of consideration.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Comments should be addressed to Vicky T. Robinson, Chief, Retailer Management and Issuance Branch, Retailer Policy and Management Division, Rm. 418, 3101 Park Center Drive, Alexandria, Virginia 22302.

All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky Robinson, Chief, Retailer Management and Issuance Branch, Retailer Policy and Management, 4th Floor, 3101 Park Center Drive, Alexandria, Virginia 22302, by phone at 703–305–2476, or by email at *vicky.robinson@fns.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

FNS disqualifies firms that violate Program rules from SNAP participation by issuing a charge letter, examining the firm's response to the charges, determining based on the evidence whether the firm violated Program rules, and, if appropriate, informing the firm of any sanctions imposed. The regulations at 7 CFR 278.6 require that the charge letter specify the violations or actions which constitute the basis for disqualification from SNAP or imposition of a civil money penalty. The basis of evidence may include facts established through on-site investigations, inconsistent SNAP redemptions, or transaction data obtained through the electronic benefit transfer (EBT) system. A firm charged with SNAP violations has 10 days to respond to the charge letter. FNS reviews and considers the firm's response to the charge letter before determining whether the firm violated any provisions of the Food and Nutrition Act (the Act) or regulations. If FNS determines that the firm has violated any provision of the Act or regulations, FNS will issue a notice of determination to the firm. In accordance with section 14(a)(18) of the Act, for firms that have been disqualified for trafficking, one of the most serious offenses in the SNAP program, the disqualification becomes effective immediately upon the date of receipt of the notice of determination.

Firms charged with SNAP violations receive extensive procedural protections through administrative and judicial review. Section 14 of the Act and the regulations at 7 CFR part 279 provide retail food stores disqualified from the Program an opportunity to file a request for administrative review within 10 days of the date of delivery of the notice of determination. The request for administrative review allows a firm to submit additional information in support of its position to FNS. If the Agency determination is upheld in administrative review, the determination is final. Unless the firm had been disqualified for trafficking, the disqualification takes effect 30 days after the date of delivery of the final determination.

For retail food stores who feel aggrieved by the final determination, the Act and regulations allow such retail food stores to file a complaint against the United States to obtain judicial review of the final determination within the 30 days of the date of delivery of the final determination. The firm's suit against in the United States is trial de novo and the firm may submit new information to the reviewing court, which determines the validity of the questioned administrative action.

The opportunity to present information in response to a charge letter or during the administrative review process is not an opportunity for discovery; however, the Agency currently holds possible sanctions until a FOIA request is processed. Under 5 U.S.C. 552, any person has the right to obtain access to Federal agency records, except to the extent that such records are protected from release by a FOIA exemption or exclusion. There are no FOIA-specific regulations for SNAP-authorized retail food stores. If a firm files a FOIA request or appeal after the firm is charged with violations, but before FNS issues a notice of determination, FNS currently holds in abeyance administrative action against the firm while the FOIA request and appeal is being processed, allowing the firm to continue redeeming SNAP benefits. Attorneys for some firms submit extensive and complex FOIA requests and appeals, and repeatedly ask for information that has been consistently denied when requested in prior cases, seemingly with the intention of delaying FNS' final determination to disqualify or impose a civil money penalty against the firm. Information the firm may seek though

FOIA is generally the same information requested through the discovery process at the judicial review level.

Retail food store case-specific FOIA requests appear to have become a tool used by retail food stores and their attorneys to delay FNS action on retail food stores violating Program rules. In Fiscal Year (FY) 2017, 437 SNAP retail food stores submitted FOIA requests to FNS after being charged with a SNAP violation. Holding SNAP administrative actions in abeyance during the processing of a firm's FOIA request or appeal has had a serious impact on SNAP integrity as violating firms have continued to participate in SNAP through the FOIA processing period.

As described earlier, in addition to the ten days from receipt of a charge letter that a retail food store has to respond, the statute provides the retail food store another ten days from receipt of a notice of determination to request administrative review and submit further information in support of its position before the determination is made final. However, by statute, permanent disqualification for trafficking in SNAP benefits goes into effect upon receipt of the FNS notice of determination, regardless of whether the firm makes a timely request for administrative review of that determination.

Based on these statutory provisions, it is clear that congressional intent is to remove violating firms from the program in a timely and expeditious manner. By ensuring that the FOIA process is separate from the administrative determination process, this proposed rulemaking would align FNS procedures with congressional intent.

To ensure that any request for records through FOIA does not delay the effective date of the administrative determination, FNS proposes to amend language at 7 CFR 278.6(p), 279.4(c), and 279.6(b) to provide that any filed or pending FOIA request or appeal will not affect when the Agency takes administrative action against a firm determined to have violated SNAP statute or regulations. The proposed rule will have a prospective effect, meaning the Agency would continue processing existing FOIA requests or appeals but would not delay SNAP administrative determinations in any cases.

Regardless of whether the retail food store submits a FOIA request or appeal during the FNS administrative process, in accordance with existing statute and regulations, the action to permanently disqualify a retail food store for trafficking would take effect immediately upon the date the store receives the notice of determination. Determinations to temporarily disqualify or impose a civil money penalty in lieu of disqualification will take effect 10 days after the firm receives the FNS notice of determination, unless the firm makes a timely request for administrative review. For cases other than those involving trafficking, the final agency determination made after the administrative review has been completed would take effect 30 days after the date of delivery of the determination to the firm. Except for firms disqualified from SNAP due to being disqualified from the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), firms will retain their right to administrative and judicial review of the determination made, in accordance with 7 CFR part 279. However, through this proposed action, any FOIA request or appeal filed or pending during the administrative or judicial review process would have no impact on when the agency can take administrative action.

Removing retail food stores from the Program at the point that FNS has determined, based on the evidence, that a store violated SNAP rules, will help ensure that the Program is conducted with integrity and that taxpayer dollars are being used as intended.

Procedural Matters

Executive Order 12866 and 13563

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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget, therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities.

While there may be some impact on small retail food stores, the impact is not significant. This proposed rule primarily impacts retail food stores that have been charged with SNAP trafficking and other violations and FOIA officials at the federal level. The retail food stores this proposed rule would impact would no longer able to delay an FNS determination by submitting FOIA requests. The propose rule would prompt the FNS notice of determination to be issued in a timely manner.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Supplemental Nutrition Assistance Program is listed in the Catalog of Federal Domestic Assistance under Number 10.551 and is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not expected to affect the participation of protected individuals in the Supplemental Nutrition Assistance Program.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. We are unaware of any current Tribal laws that could be in conflict with this rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) to approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

This rule does not contain information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1994.

E-Government Act Compliance

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

List of Subjects

7 CFR Part 278

Banks, banking, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Surety bonds.

7 CFR Part 279

Administrative practice and procedure, Food stamps, Grant programs-social programs.

Accordingly, 7 CFR parts 278 and 279 are proposed to be amended as follows:

■ 1. The authority citation for 7 CFR parts 278 and 279 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

■ 2. In § 278.6, add paragraph (p) to read as follows:

§ 278.6 Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.

* * * * *

(p) *Freedom of Information Act (FOIA) requests.* A FOIA request for records or FOIA appeal shall not delay or prohibit FNS from taking administrative action against a firm under this part, or delay the effective date of the FNS administrative action.

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

■ 3. Revise § 279.4 by adding a new sentence before the last sentence of paragraph (c) to read as follows:

§ 279.4 Action upon receipt of a request for review.

* * * * *

(c) * * * FNS may not grant extensions of time or hold the administrative review process in abeyance solely on the basis of a pending FOIA request for records or FOIA appeal. * * *

■ 4. Revise § 279.6 by adding a new sentence before the last sentence of paragraph (b) to read as follows:

§ 279.6 Legal advice and extensions of time.

* * * * *

(b) * * * The designated reviewer may not grant extensions of time or hold the administrative review process in abeyance solely on the basis of a pending FOIA request for records or FOIA appeal. * * *

Dated: February 12, 2019.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2019–02577 Filed 2–15–19; 8:45 am]

BILLING CODE 3410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 151

[EPA–HQ–OLEM–2017–0444; FRL–9989–49–OLEM]

RIN 2050–AG87

Clean Water Act Hazardous Substances Spill Prevention Proposed Action Under Clean Water Act Section 311(j)(1)(C); Notification of Data Availability—Responses to 2018 Clean Water Act Hazardous Substances Survey (OMB Control No. 2050–0220)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action; notification of data availability.

SUMMARY: EPA is making available for review and comment the data received from respondents of a voluntary survey, ''2018 Clean Water Act Hazardous Substances Survey'' (OMB Control No. 2050–0220). This data is being made available consistent with the preamble to the proposed action ''Clean Water Act Hazardous Substances Spill Prevention'' published on June 25, 2018. The data collected through the voluntary survey is available in *Regulations.gov* at Docket ID: EPA–HQ–OLEM–2017–0444.

DATES: Comments on data from respondents of the voluntary survey posted in Docket ID: EPA–HQ–OLEM–2017–0444 must be received on or before March 5, 2019.

ADDRESSES: Submit comments to Docket ID: EPA–HQ–OLEM–2017–0444 in the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Gregory Wilson, United States Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Ave. NW (Mail Code 5104A), Washington, DC 20460; telephone number: (202) 564–7989; email address: *wilson.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: Detailed background information on the Information Collection Request (ICR) process and the development of the voluntary survey may also be found in *Regulations.gov* at Docket ID: EPA–HQ–OLEM–2017–0444. The proposed action associated with the voluntary survey, Clean Water Act Hazardous Substances Spill Prevention, was published in the **Federal Register** on June 25, 2018 (83 FR 29499). Additional detailed background information on the proposed action can be found in *Regulations.gov* at Docket ID: EPA–HQ–OLEM–2018–0024.

I. What action is EPA taking?

EPA's initial data gathering efforts for the Clean Water Act (CWA) Hazardous Substances (HS) Spill Prevention proposed action focused on assessing the scope of historical CWA HS discharges, identifying relevant industry practices, and identifying regulatory requirements related to preventing CWA HS discharges. EPA also developed a voluntary survey to collect information from states, tribes and territories focused on the universe of potentially-regulated facilities and on CWA HS discharges. EPA anticipated using relevant survey responses to further inform the proposed action.

EPA has already made the voluntary survey data available in *Regulations.gov* at Docket ID: EPA–HQ–OLEM–2017–0444, provided notice of its availability on the EPA website for this action, and provided direct notice to the litigants that the data was available. Nonetheless, EPA is publishing this Notice of Data Availability to ensure the public has an opportunity to review and comment on the data EPA received in response to the voluntary survey. The Agency will consider the supplemental data and related comments as appropriate in the final Clean Water Act Hazardous Substances Spill Prevention action.

II. What is the background for this action?

On July 21, 2015, EPA was sued for failing to comply with the alleged duty to issue regulations to prevent and contain CWA hazardous substance discharges. On February 16, 2016, the United States District Court for the Southern District of New York entered a Consent Decree between EPA and the litigants that required EPA to sign a notice of proposed rulemaking pertaining to the issuance of hazardous substance regulations and take final action after notice and comment on said notice. On June 25, 2018, based on an analysis of the frequency and impacts of reported CWA HS discharges and the existing framework of EPA regulatory requirements, EPA proposed to establish no new spill prevention requirements for CWA HS under Clean Water Act (CWA) Section 311 at this time.

EPA's initial data gathering efforts for the proposed action focused on assessing the scope of historical CWA HS discharges, identifying relevant industry practices, and identifying regulatory requirements related to preventing CWA HS discharges. EPA also used available data to estimate the universe of potentially regulated entities subject to this action. Additionally, EPA developed a voluntary survey intended to collect information from states, territories, and tribes focused on the universe of potentially-regulated facilities and on a 10-year period of CWA HS discharges.

On June 22, 2018, EPA issued the voluntary survey to respondents identified as potential custodians of data relevant to the survey. The voluntary survey was directed at State and Tribal Emergency Response Coordinators (respondents with custodial responsibility for data representing the potentially affected ''facility universe'' that produce, store, or use CWA hazardous substances), as well as state, tribal, and territorial government agencies with custodial responsibility for data on CWA hazardous substance impacts to drinking water utilities and fish kills potentially caused by discharge(s) of CWA hazardous substances. EPA provided 45 days to submit data responsive to the voluntary survey, requesting that information be submitted by August 6, 2018. EPA received responses from: Alabama, California, Delaware, Hawaii, Indiana, Kentucky, Maryland, Minnesota, Missouri, New Hampshire, New Mexico, Oregon, Rhode Island, and Texas. The data collected through the voluntary survey is available for review and comment in *Regulations.gov* at Docket ID: EPA–HQ–OLEM–2017–0444.

Dated: February 6, 2019.

Reggie Cheatham,

Director, Office of Emergency Management.

[FR Doc. 2019–02696 Filed 2–15–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 5, 25, and 97

[IB Docket No. 18–313; FCC 18–159]

Mitigation of Orbital Debris in the New Space Age

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (FCC or Commission) proposes to amend its rules related to

satellite orbital debris mitigation in order to improve and clarify those rules based on experience gained in the satellite licensing process and on improvements in mitigation guidelines and practices, and to address various market developments.

DATES: Comments are due April 5, 2019. Reply comments are due May 6, 2019.

ADDRESSES: You may submit comments, identified by IB Docket No. 18–313, by any of the following methods:

- *Federal Communications Commission's Website: http://apps.fcc.gov/ecfs.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Merissa Velez, 202–418–0751.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), FCC 18–159, adopted November 15, 2018, and released November 19, 2018. The full text of the NPRM is available at *https://docs.fcc.gov/public/attachments/FCC-18-159A1.pdf.* The NPRM is also available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities, send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Comment Filing Requirements

Interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

- *Electronic Filers.* Comments may be filed electronically using the internet by accessing the ECFS, *http://apps.fcc.gov/ecfs.*
- *Paper Filers.* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.
- *Persons with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

Ex Parte Presentations

The Commission will treat this proceeding as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Paperwork Reduction Act

This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we specifically seek comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis

This Notice of Proposed Rulemaking (*NPRM*) represents the first comprehensive look at the Commission's orbital debris rules since their adoption in 2004. The proposed changes are designed to improve and clarify these rules based on experience gained in the satellite licensing process and on improvements in mitigation guidelines and practices, and to address the various market developments described above.

In addition to general disclosure obligations, the Commission has adopted other rules related to physical spacecraft operations, such as requirements for the maintenance of orbital locations in the geostationary-satellite orbit (GSO), and for GSO inclined-orbit operations. In addition, the Commission has specific post-mission disposal requirements for both GSO and non-geostationary (NGSO) satellites.

The Commission reviews these disclosures and determines, on a case-by-case basis, whether the public interest will be served by approval of

the proposed operations. The rules adopted in 2004 provided some general guidance on the content of disclosures, but the Commission generally declined to adopt a particular methodology for the preparation and evaluation of an applicant's orbital debris mitigation plans. Both applicants and the Commission, however, have relied in a number of cases on standards and related assessment tools, such as the technical standards and related software tools developed by NASA for its space activities,[1] to, respectively, prepare such orbital debris plans and assess their adequacy.

Since the Commission's orbital debris rules were adopted in 2004, there have been a number of significant developments with respect to this topic. In addition, the number of debris objects capable of producing catastrophic damage to functional spacecraft has increased.

Proposed deployments of large satellite constellations in the intensely used LEO region, along with other satellites deployed in the LEO region, will have the potential to increase the risk of debris-generating events. New satellite and deployment technologies currently in use and under development also may increase the number of potential debris-generating events, in the absence of improved debris mitigation practices.

Proposal Overview

The Commission proposes a number of changes to our existing disclosure and operational requirements and seek comment on additional potential revisions. In addressing orbital debris mitigation, the Commission has drawn from the technical guidance and assessment tools developed by NASA and the modifications to our rules proposed in this *NPRM* reflect this approach. In some areas where we have proposed general disclosures in lieu of specific design or operational requirements, we believe such disclosures will provide flexibility for us to address ongoing developments in space station design and other technologies. As a general matter, however, if there are well-defined metrics in any of those areas that could provide a basis for a more specific requirement, we ask that those be identified by commenters.

The Commission seeks comment on the suitability of various orbital debris mitigation guidance and standards for application to non-Federal satellite systems.

With respect to the rules proposed here, the Commission revisits the Commission's discussion in 2004, which addressed the Commission's responsibilities and obligations under the Communications Act of 1934 (the Act). The 2004 *Orbital Debris Order* specifically referenced the Commission's authority with respect to authorizing radio communications, including the statements in the Act that charge the FCC with encouraging ''the larger and more effective use of radio in the public interest,'' and provide for licensing of radio communications, upon a finding that the ''public convenience, interest, or necessity will be served thereby.'' Did the 2004 order cite all relevant and potential sources of Commission authority in this area? Do the provisions discussed, or other statutory provisions, provide the Commission with requisite legal authority to adopt the rules we propose today?

The Commission seeks comment on whether there are any areas in which proposed requirements may overlap with requirements that are clearly within the authority of other agencies, so that we may seek to avoid duplicative activities. The Commission asks whether exceptions to applications of the Commission's rules as proposed or other exemptions may be appropriate in any particular circumstances.

Control of Debris Released During Normal Operations

In several recent instances, applicants have sought to deploy satellites using deployment mechanisms that detach from or are ejected from a launch vehicle upper stage and are designed solely as means of deploying a satellite or satellites, and not intended for other operations. Once these mechanisms have deployed the onboard satellite(s), they become orbital debris. As with other manmade objects in space, however, such deployment devices have the potential to collide with other objects and thereby create additional orbital debris. In some instances, the deployment device itself may not require an application for a license from the Commission for radio communications, if it does not have any radio frequency (RF) facilities.

In general, generation of operational debris, including from deployment devices, should be minimized. The Commission proposes to require disclosure by applicants if such devices are used to deploy their spacecraft, as well as a specific justification for their use. In addition, the Commission proposes that the disclosure include information regarding the planned orbital debris mitigation measures specific to the deployment device, including the probability of collision associated with the deployment device itself. Where appropriate, this description of orbital debris mitigation measures may be obtained from the operator of the deployment device. If the deployment device is itself the subject of a separate application for authorization by the Commission (*e.g.,* SHERPA), then the entity seeking a license or a grant of U.S. market access for a satellite may satisfy this disclosure requirement by referencing the deployment device's FCC application or grant. The Commission seeks comment on this proposed informational requirement. The Commission also seeks comment on how this proposal might overlap with informational requirements of other agencies and how we might streamline and minimize informational burden on applicants while mitigating space debris.[2]

Minimizing Debris Generated by Release of Persistent Liquids

Most conventional propellant and coolant chemicals evaporate or dissipate if released from a spacecraft. However, certain types of liquids, such as low vapor pressure ionic liquids, will, if released from a satellite, persist in the form of droplets. At orbital velocities, such droplets can cause substantial or catastrophic damage if they collide with other objects.[3] In the last several years, there has been increasing interest in the use by satellites (including small satellites) of alternative propellants and coolants, some of which would become

[1] In the *Orbital Debris Order,* the Commission observed that NASA had adopted publicly-available safety standards that provided a handbook for debris mitigation analysis and activities. *See* NASA Technical Standard, Process for Limiting Orbital Debris, NASA–STD–8719.14A (with Change 1) (May 25, 2012), *http://www.hq.nasa.gov/office/codeq/doctree/871914.pdf* (*NASA Standard*). The *NASA Standard* is ''consistent with the objectives of the U.S. National Space Policy of the United States of America (June 2010), the U.S. Government Orbital Debris Mitigation Standard Practices (February 2001), the Inter-Agency Space Debris Coordination Committee (IADC) Space Debris Mitigation Guidelines (October 2002), the Space and Missile Center Orbital Debris Handbook, Technical Report on Space Debris (July 2002), the space debris mitigation guidelines of the Scientific and Technical Subcommittee of the United Nations Committee on the Peaceful Use of Outer Space, (A/AC.105/720, 1999 and A/AC.105/890, Feb 2007).'' *Id.* at 5.

[2] To date, deployment devices that are free-flying and are released or detached entirely from the launch vehicle have not been considered upper stages for purposes of FAA regulatory review.

[3] A notable example of this type of debris source involves sodium potassium reactor coolant released from Soviet-era satellites. ''New Debris Seen from Decommissioned Satellite with Nuclear Power Source,'' NASA Orbital Debris Quarterly News, Volume 13, Issue 1 at 1–2 (January 2009), *https://orbitaldebris.jsc.nasa.gov/quarterly-news/pdfs/odqnv13i1.pdf.*

persistent liquids when released by a deployed satellite.

The Commission proposes to include within the rules a requirement to identify any liquids that if released, either intentionally or unintentionally, will persist in a droplet form. The Commission also expects that the orbital debris mitigation plan for any system utilizing persistent liquids should address the measures taken, including design and testing, to eliminate the risk of release of liquids, and to minimize risk from any unplanned release of liquids, for example through a choice of orbit that will result in any released liquids having a very short orbital lifetime. The Commission seeks comment on this proposal.

Safe Flight Profiles

In an effort to ensure that the physical operations of both existing and planned systems do not contribute to the orbital debris environment, particularly in the heavily-used LEO region, the Commission proposes to update its rules.

Quantifying Collision Risk. The Commission proposes that applicants for NGSO satellites must demonstrate that the probability that their spacecraft will collide with a large object during the orbital lifetime [4] of the spacecraft will be no greater than 0.001.[5] The Commission seeks comment on whether, if a spacecraft's orbital debris mitigation plan includes maneuvering to avoid collisions, the Commission should, consistent with current licensing practice, consider this risk to be zero or near zero during the period of time in which the spacecraft is maneuverable, absent contrary information. The *NASA Standard* applies the 0.001 metric on a per-spacecraft basis. The Commission invites comment on whether this metric should also be applied on an aggregate, system-wide basis, *i.e.,* 0.001 for an entire constellation. If such a requirement is adopted on an aggregate basis, would it provide an incentive for evasion of the aggregate limit, for example, through a single controlling party applying for multiple satellite constellations, each of which meets the limit, but which collectively would not? Are existing procedures adequate to identify any such instances of evasion? The Commission also seeks comment on whether it should specify a size for what is considered a large object, or whether it should continue its current case-by-case approach, which in practice typically results in consideration of catalogued objects.[6]

The Commission also seeks comment on whether it should adopt a specific metric for collision with small debris, that is, debris consisting of small meteoroids or other small (approximately <10 cm) debris. The *NASA Standard* provides that for each spacecraft, the NASA program or project demonstrate that during the mission of the spacecraft, the probability of accidental collision with orbital debris and meteoroids sufficient to prevent compliance with the applicable post-mission disposal requirements is less than 0.01. The Commission seeks comment on whether it should incorporate the NASA probability metric into our rules, such that an applicant certify that for each spacecraft, the probability of accidental collision with small objects that would cause loss of control and prevent post-mission disposal is less than 0.01. In its Large Constellation Study, NASA indicated that the implementation of adequate impact protection from small debris can be an important factor in achieving high post-mission disposal reliability for large constellations. The Commission seeks comment on whether this metric should be applied on a per-spacecraft basis, or in the aggregate. Additionally, should the Commission limit this proposed requirement to operations in certain highly-populated orbits, or to large constellations with more than 100 satellites, for example?

The Commission also proposes other revisions to the NGSO-related provisions of the existing rule regarding collision risk. The existing rule states that where a satellite will be launched into a LEO region orbit that is identical, or very similar, to an orbit used by other satellites, the orbital debris mitigation statement must include analysis of potential risk of collision, disclosures regarding whether a satellite operator is relying on coordination with the other system for collision avoidance, and what coordination measures have been or will be taken. First, the Commission proposes to revise the wording of the rule to require that, instead of identifying satellites with similar orbits, the orbital debris mitigation statement must identify the planned and/or operational satellites to which the applicant's satellite poses a collision risk, and indicate what steps have been taken or will be taken to coordinate with the other spacecraft or system and facilitate future coordination, or what other measures the operator may use to avoid collision. Second, the Commission proposes to extend this rule to all NGSO satellites, rather than only those that will be launched into the LEO region, since overlap in orbits among NGSO spacecraft in other regions could equally result in collision creating orbital debris. The Commission anticipates that in lightly-used orbits, the statement can simply indicate that there are no other planned or operational spacecraft posing a collision risk.

Orbit Selection. First, for any NGSO satellites planned for deployment above the International Space Station (ISS) [7] and that will transit through the ISS orbit either during or following the satellite operations, the Commission proposes that the applicant provide information about any operational constraints caused to the ISS or other inhabitable spacecraft and strategies used to avoid collision with manned spacecraft.[8] For example, will the normal operations of the ISS be significantly disrupted or otherwise constrained by the number of collision avoidance maneuvers that may be necessary as satellites in the constellation transit through the ISS orbit, such as during an uncontrolled de-orbit phase? [9]

[4] For purposes of this *NPRM* and our proposed rules, ''orbital lifetime'' is defined as the length of time an object remains in orbit. Objects in LEO or passing through LEO lose energy as they pass through the Earth's upper atmosphere, eventually getting low enough in altitude that the atmosphere removes them from orbit. NASA Technical Standard, Safety and Mission Assurance Acronyms, Abbreviations, and Definitions, NASA–STD 8709.22 at 94 (with Change 2) (October 31, 2012), *http://www.hq.nasa.gov/office/codeq/doctree/NS870922.pdf.*

[5] *NASA Standard* at 32, Requirement 4.5–1. This is consistent with the Commission's recent proposal for satellites licensed pursuant to the proposed streamlined satellite process. *Small Satellite NPRM,* FCC 18–44 at 18, para. 37. NASA applies this metric to programs and projects involving spacecraft ''in or passing through LEO.'' *Id.* We propose to apply this to all NGSO satellites.

[6] *Space-Track.org,* FAQ, *https://www.space-track.org/documentation#/faq* (stating 10 cm diameter or ''softball size'' is the typical minimum size object that current sensors can track in LEO and that is maintained by the DoD in its catalog).

[7] The ISS operates at an altitude of approximately 400 km.

[8] Between 1999 and July 2015, the International Space Station (ISS) conducted 23 total collision avoidance maneuvers. National Aeronautics and Space Administration, Orbital Debris: Quarterly News, ''International Space Station Performs Two Debris Avoidance Maneuvers and a Shelter-in-Place,'' Vol. 19, Issue 3 at 1 (July 2015), *https://orbitaldebris.jsc.nasa.gov/quarterly-news/pdfs/odqnv19i3.pdf; see also* J.-C. Liou, National Aeronautics and Space Administration, ''Orbital Debris Mitigation Policy and Unique Challenges for Cubesats,'' presentation to the 52nd Session of the Scientific and Technical Subcommittee, Committee on Peaceful Uses of Outer Space, United Nations, February 2015, at 9, *available at https://ntrs.nasa.gov/archive/nasa/casi.ntrs.nasa.gov/20150020943.pdf.*

[9] *See* NASA NGSO Constellation Comments at 2 (expressing concern about aspect of disposal plan for SpaceX LEO constellation and recommending that SpaceX ''seek out creative ways to guarantee

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Second, the Commission proposes that an applicant planning an NGSO constellation that will be deployed in the LEO region above 650 km altitude specify why it has chosen that particular orbit given the number of satellites planned and describe any other relevant characteristics of the orbit such as the presence of existing debris. Satellites deployed below 650 km will typically re-enter Earth's atmosphere within 25 years,[10] even absent any propulsive or other special de-orbit capabilities. Thus, the collision risks presented by such satellites are generally lower, even if the satellites fail on-orbit and are unable to perform any affirmative de-orbiting maneuvers.[11] Above this approximately 650 km threshold, a satellite that is not affirmatively de-orbited will remain in orbit for significantly longer periods of time. Accordingly, for NGSO deployments above the 650 km altitude, the Commission proposes that applicants provide a rationale for choosing a higher orbit, even if the satellites will have propulsive de-orbit capabilities.[12]

Third, the Commission seeks comment on whether we should also require a statement concerning the rationale for selecting an orbit from operators of satellites that will remain in orbit for a long period of time relative to the time needed to perform their mission. One example of an alternative guideline is that operators select orbits such that orbital lifetime exceed mission lifetime by no more than a factor of two. The Commission seeks comment on this metric, or alternative metrics that could be incorporated into our rules.

Fourth, certain areas of space are more populated with debris, such as that from the Cosmos 2251/Iridium 33 collision. It may be in the public interest for new constellations to avoid deployment in such areas to minimize risk, or, stated differently, to design constellations to operate in regions of space where the density of objects is lower, and consequently where the risk of collisions with debris objects is lower.[13] The Commission asks whether to require applicants to include an additional disclosure regarding orbit selection based on such risks, or to provide assurances on how the applicant plans to reduce these risks. The Commission also asks whether we should seek additional information or assurances from applicants in more narrow circumstances, for example, where they seek to deploy a large constellation in certain sun-synchronous orbits that have an increased likelihood of congestion.

Fifth, in lieu of an informational requirement, should the Commission require all NGSO satellites planning to operate above a particular altitude to include propulsion capabilities reserved for station-keeping and to enable collision avoidance maneuvers, regardless of whether propulsion is necessary to de-orbit within 25 years? If so, above what altitude?

Finally, the Commission asks whether we should adopt a maximum limit for variances in orbit for NGSO systems. That is, should the Commission limit the variance in altitude above or below the operational orbit specified in an application for an NGSO system,[14] in order to enable more systems to co-exist in LEO without overlap in orbital altitude, and if so, how should an appropriate limit be set? If such a limit is adopted, should it apply only to near-circular obits, or also to elliptical orbits? The Commission seeks comment on these questions, as well as on any additional changes to our rules and policies that may help operators avoid collisions and ultimately reduce the risk of debris generation in heavily-used or otherwise critical orbits.

Tracking and Data Sharing. As an initial matter, the Commission proposes to require a statement from the applicant regarding the ability to track the proposed satellites using space situational awareness facilities, such as the U.S. Space Surveillance Network.[15] The Commission proposes that objects greater than 10 cm by 10 cm by 10 cm be presumed trackable for any altitude up to the geostationary region,[16] although the Commission seeks comment on whether a larger size should be presumed at higher altitudes given any tracking limitations at such altitudes. For objects with any dimension less than 10 cm, the Commission proposes that the applicant provide additional information concerning trackability, which will be reviewed on a case-by-case basis. The Commission also proposes that applicants for NGSO systems disclose, as part of their orbital debris mitigation plans, whether satellite tracking will be active and cooperative (that is, with participation of the operator by emitting signals via transponder or sharing data with other operators) or passive (that is, solely by ground-based radar or optical tracking of the object). The Commission also asks whether applications should certify that the satellite will include a unique telemetry marker allowing it to be readily distinguished from other satellites or space objects. The Commission further seeks comment on whether there are hardware or information sharing requirements that might improve tracking capabilities, and whether such technologies are sufficiently developed that a requirement for their use would be efficient and effective.

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they can avoid the ISS and other high value assets'' for the entire deorbit phase of their planned spacecraft); Science Applications International Corporation, Orbital Traffic Management Study Final Report, Prepared for NASA Headquarters, at E–1–E–2 (Nov. 21, 2016) (SAIC Orbital Traffic Management Study) (''As debris populations grow in LEO, the odds of [micro-meteoroid or orbital debris] root cause events on ISS will become higher (*i.e.,* worsen)[.]'' ''Recent analysis by the Aerospace Corporation suggests that the current large planned constellations could increase collision warnings with ISS six-fold, as the decommissioned spacecraft in those constellations decay through the ISS orbit.'').

[10] This is consistent with the benchmark contained in the current *NASA Standard. NASA Standard* at 37, Requirement 4.6.2.

[11] This altitude may vary depending upon the characteristics of the spacecraft and solar activity, but 650 km represents an average approximation. *See* Inter-Agency Space Debris Coordination Committee, Support to the IADC Space Debris Mitigation Guidelines, IADC–04–06, Rev. 5.5 at 32 (May 2014) (''It is recommended that orbital lifetime be reduced to less than 25 years at the end of mission (approximately 750 km circular orbit for A/m = 0.05 m2/kg, and approximately 600 km circular orbit for A/m=0.005 m2/kg, depending on solar activity to be more exact.''); ESA NGSO FSS Comments at 2 (recommending that for large constellations low operational orbits should be considered, noting that average orbital altitudes of less than 650 km for average satellites (<1 ton) are normally still compatible with a natural decay within 25 years).

[12] As explained in the *Orbital Debris Order,* the U.S. Government Orbital Debris Standard Practices call for the selection of an orbit from which the spacecraft will remain in orbit no longer than 25 years after mission completion, if the planned disposal method is re-entry into Earth's atmosphere through means of natural atmospheric drag, without the use of propulsion systems. *Orbital Debris Order,* 19 FCC Rcd at 11592, para. 61; U.S. Government Orbital Debris Standard Practices 4–1, *available at https://www.orbitaldebris.jsc.nasa.gov/library/usg_od_standard_practices.pdf* (U.S. Government Standard Practices).

[13] NASA NGSO Constellation Comments at 2–3 (NASA expressed some concerns regarding proposed orbit of Theia Holdings A, Inc., NGSO satellite constellation, because of the location of other government satellites nearby and the high percentage of Iridium-33/Cosmos-2251 and Fengyun-1C debris in that region).

[14] As an example of the discussion of issues related to variances in orbital altitude for a particular system, SpaceX expressed concern regarding the proposed operational range for OneWeb's planned NGSO system. *See* Letter from William M. Wiltshire, Counsel to SpaceX, to Marlene H. Dortch, Secretary, FCC, at 2–4, IBFS File Nos. SAT–LOA–20161115–00118 and SAT–LOA–20170301–00027 (filed Dec. 12, 2017).

[15] Space situational awareness facilities track satellites and other space objects using radar and other means.

[16] In the *Small Satellite NPRM,* the Commission proposed that small satellites using the streamlined review process be no smaller than 10 cm x 10 cm x 10 cm, which would help the Commission to process those systems in a streamlined fashion. *Small Satellite NPRM,* FCC 18–44 at 18–19, para. 38.

The Commission seeks comment on whether we should adopt an operational rule requiring NGSO satellite operators to provide certain information to the 18th Space Control Squadron or any successor civilian entity,[17] including, for example information regarding initial deployment, ephemeris, and any planned maneuvers. As an example, communication with the Air Force's 18th Space Control Squadron may be particularly important in the case of a multi-satellite deployment, to assist in the identification of the satellite.[18]

The Commission also proposes that applicants for NGSO systems certify that, upon receipt of a conjunction warning, the operator of the satellite will take all possible steps to assess and, if necessary, to mitigate collision risk, including, but not limited to: Contacting the operator of any active spacecraft involved in such warning; sharing ephemeris data and other appropriate operational information directly with any such operator; and modifying spacecraft attitude and/or operations. The Commission seeks comment on this approach as one designed to reduce collision risks and enhance certainty among operators and asks whether any different or additional requirements should be considered regarding the ability to track and identify satellites in NGSO or respond to conjunction warnings.

Maneuverability. The Commission also proposes that applicants for NGSO satellite authorizations describe the extent of any maneuverability. For example, the description could include an explanation of the number of collision avoidance maneuvers the satellite could be expected to make, and/or any other means the satellite may have to avoid conjunction events. The Commission proposes that the description include a discussion of maneuverability both during satellite's operational lifetime and during the remainder of its time in space prior to disposal. The Commission tentatively concludes that such information can assist us in our public interest determination, in particular regarding any burden that other operators would have to bear in order to avoid collisions and false conjunction warnings. The Commission seeks comment on this conclusion and note that, as proposed, this is an informational requirement, and would not require that all satellites have propulsion or maneuverability. In addition, the Commission observes that some applications have been granted based on an assessment of information regarding differential drag maneuvers. Recognizing that this is an emerging area from the perspective of collision avoidance, the Commission seeks comment concerning effectiveness and suitability of this or other particular maneuvering technologies under real world conditions, and on whether it should implement any specific disclosure requirements with respect to this or other types of emerging maneuvering technology.

Multi-Satellite Deployments. A single deployment of a number of satellites from a launch vehicle or free-flying deployment device could result in some heightened risk of collision between objects, or on a longer-term basis due to the similarity of orbits for the released objects. The Commission seeks comment on whether it should include in our rules any additional informational requirements regarding such launches.[19] Are there mitigation measures that are commonly employed that mitigate such risks, for example through use of powered flight during the deployment phase and/or through phasing of deployment, that the Commission should consider adopting as requirements under some circumstances? In seeking comment, the Commission recognizes that an applicant for a Commission license or authorization may not have access to information regarding other satellites that will be deployed, and ask whether an applicant could obtain general information from the launch provider or aggregator that would assist the Commission in evaluating the risk of collision presented by the deployment itself, even if the launch manifest has not been finalized.

Design Reliability. The Commission seeks comment on whether it would be appropriate to impose a design and fabrication reliability requirement, for example, 0.999 per spacecraft, if a NGSO satellite constellation involves a large number of satellites or will be initially deployed at higher altitudes in LEO. Deployment of large numbers of satellites increases the spatial density of objects in the region of space where the satellites are deployed, and provides an indicator of potential collision risk. The Commission considers a deployment of 100 satellites over a typical 15-year license term to be a deployment of a large number of satellites but seek comment on whether a different number may be appropriate. The Commission considers higher altitudes to be those with a perigee above 600–650 km.[20] From these orbits, spacecraft will typically remain in orbit for several decades to centuries, and present a long-term collision risk, unless active measures are taken to shorten orbital lifetimes. The Commission also seeks comment and suggestions on other possible metrics, and methods for verifying and assessing compliance with any such metric. Further, the Commission is cognizant that technology continues to develop rapidly in the satellite design arena and seek to avoid potential requirements that may wed designers to a current conception of technological limits that could be changed in the future.

Post-Mission Disposal

Probability of Success of Disposal Method

Incorporation of Disposal Reliability Metrics. The Commission proposes to require that applicants provide information concerning the expected reliability of disposal measures involving atmospheric re-entry, and the method by which that expected reliability was derived. The Commission also seeks comment on the metric by which such information should be evaluated; for example, should the Commission specify a probability of success of no less than a set figure, such as 0.90?[21] The Commission also invites comment as to whether, when assessing the reliability of disposal, it should do so on an aggregate, system-wide basis as well as on a per-satellite basis, and on whether, for large constellation deployments, where due to large numbers of spacecraft aggregate effects could be more damaging to the space environment, a more stringent metric should apply. A recent NASA study of large constellations concluded, for

[17] *See* Space Policy Directive 3, Section 6(d)(ii) (''[T]he Secretary of Commerce will make the releasable portions of the catalog [of space objects], as well as basic collision avoidance support services, available to the public, either directly or through a partnership with industry or academia.'').

[18] *See* CubeSat Recommendations at 1 (noting that there were challenges associated with the ORS–3 mission, launching 37 CubeSats, and the DNEPR rocket, launching 31 CubeSats, both in late 2013).

[19] *See* Spaceflight, Inc., IBFS File No. SAT–STA–20150821–0006 (analysis of ''within-plane'' collision risk for 91 objects planned for deployment in a single launch).

[20] For objects orbiting the Earth, the point in orbit that the object is closest to the Earth is known as the object's ''perigee.''

[21] *See NASA Standard* at 41, Requirement 4.6.3.n (specifying that for NASA missions, the probability of success of post-mission disposal operations should be no less than 0.90). This probability metric would apply where post-mission disposal operations will lead to atmospheric reentry or maneuvering the spacecraft into a storage orbit. *See id.* Consistent with the Commission's discussion in the 2004 *Orbital Debris Order,* the Commission does not propose to foreclose direct retrieval of the spacecraft from orbit as a means of post-mission disposal. *Orbital Debris Order,* 19 FCC Rcd at 11591, para. 60.

example, that a 0.99 spacecraft post-mission disposal reliability is needed to mitigate the serious long-term debris generation potential from large constellations.

Other Requirements for Satellites with Planned Operations in LEO. First, the Commission proposes that the applicant certify that all satellites that will operate at an altitude of 650 km or above will be initially deployed into orbit at an altitude below 650 km and then, once it is determined that the satellite has full functionality,[22] be maneuvered up to their planned operational altitude. This would help to ensure that if satellites are found to be non-functional immediately following deployment, such that they will be unable to perform any maneuvers, they will re-enter the atmosphere within 25 years and not persist in LEO for longer periods of time. The Commission posits here that the benefits of the continued viability of the LEO region may outweigh the costs of orbit-raising and seeks comment on the costs and benefits associated with this proposal. Relatedly, the Commission seeks comment on whether it should require that applicants for large constellations test a certain number of satellites in a lower orbit for a certain number of years before deploying larger numbers, in order to resolve any unforeseen flaws in the design that could result in generation of debris.[23]

Second, the Commission proposes that applicants seeking to operate NGSO satellite systems provide a statement that spacecraft disposal will be automatically initiated in the event of loss of power or contact with the spacecraft, or describe other means to ensure that reliability of disposal will be achieved, such as internal redundancies, ongoing monitoring of the disposal function, or automatic initiation of disposal if communications with the spacecraft become limited.

The Commission recognizes that these design features have some associated costs. The Commission seeks comment on the costs and benefits associated with this proposed requirement. The Commission also asks whether it should simply require the design to include automatic disposal by a de-orbiting device in the event of loss of power, and on whether any such requirement would provide adequate flexibility for operators to react, for example, if the particular failure mode results in further propulsive maneuvers running a high risk of explosive fragmentation. Are there other technologies that can be used to ensure that satellite disposal is completed, even in the event of a major anomaly, and should the Commission require use of those technologies for satellites that will operate in particular regions? The Commission proposes that these two requirements would apply to satellites that will operate above 650 km and below 2,000 km, in other words, in the higher portion of LEO. The Commission also seeks comment on whether any requirements should only apply to LEO satellite constellations of a certain size or greater or whether they should apply to all LEO satellites that will operate in the area described.

Means of LEO Spacecraft Disposal. Additionally, the Commission seeks comment on whether there are other rule changes it should consider related to the disposal of spacecraft from the LEO region. Should the Commission adopt a rule that disposal of spacecraft in the LEO region must be by either atmospheric re-entry or direct retrieval? In assessing whether a post-mission disposal plan is sufficiently reliable, what weight, if any, and under what circumstances, should the Commission give to proposals to directly retrieve the spacecraft from orbit at its end of life? [24] Should direct retrieval be considered as a valid debris mitigation strategy, for example, only if the retrieval spacecraft are presented for licensing as part of or contemporaneously with the constellation license?

At this time, there are a number of specific technologies under development for direct spacecraft retrieval, although generally these are nascent technologies and the Commission is not aware of any planned deployments for commercial applications thus far. Direct spacecraft retrieval involves rendezvous and proximity operations, but with potentially the additional challenge of a target spacecraft that is ''non-cooperative,'' *i.e.,* is spinning, is not providing any telemetry, etc. In the context of orbital debris mitigation, testing is ongoing for technologies such as nets and harpoons, and there are numerous other technologies under discussion such as robotic arms and magnetic capture mechanisms. The Commission seeks comment on the status of these and other technologies for spacecraft direct retrieval, including potential future commercial applications. Are there any aids to future use of direct retrieval, such as spacecraft reflective markers or attachment points, that could be adopted now or in the near future?

Disposal of NGSO Satellites In Orbits Above LEO. The Commission also seeks comment on whether to modify its existing rules regarding end-of-life disposal for satellites to include additional provisions concerning disposal of certain NGSO satellites operating in orbits above LEO. As a general matter, there appear to be two types of approaches to post-mission disposal above LEO. One approach is to remove a satellite from its operational orbit to another, relatively stable orbit that is sufficiently distinct from those orbits that are currently used or expected to be used for regular operations, so as to eliminate the risk of collisions with such operating satellites.[25] Another approach is to place a satellite into an unstable orbit, *i.e.,* one in which gravitational forces and solar radiation pressure force a growth in the eccentricity of the orbit, ultimately resulting in lowering of the satellite's perigee and re-entry into the atmosphere.[26] The Commission seeks comment on whether these practices are sufficiently developed to formalize in our rules. The Commission also seeks comment on whether there are any specific guidelines we should include in our rules with respect to these approaches, or with respect to any particular type of orbit.[27]

[22] For example, communications with the satellite have been established and the major satellite systems are operational in accordance with the design, such that the satellite would be able to perform de-orbit maneuvers.

[23] As an example, Telesat Canada, the recipient of a grant of access to the U.S. market for a planned NGSO constellation of 117 satellites, is using prototype satellite(s) for testing and design verification purposes. Telesat Canada, Petition for Declaratory Ruling, IBFS File No. SAT–PDR–20161115–00108, Telesat LOI, Exh. 3 at 5 (granted Nov. 2, 2017). The ESA NGSO FSS comments noted that critical components inducing break-ups are sometimes identified only years after the satellite has been operational, which could result in a large problem with large numbers of satellites, particularly with short production times involved. ESA NGSO FSS Comments at 3.

[24] Direct retrieval of satellites implicates the need to assess rendezvous and proximity operations, and any risk of debris generation from those operations.

[25] *See Satellite CD Radio Inc.,* IBFS File No. SAT–MOD–20091119–00123, Attachment A at 3–7; *O3b Limited,* IBFS File No. SES–LIC–20100723–00952, Technical Information to Supplement Schedule S at 37–40; *Karousel, LLC,* IBFS File No. SAT–LOA–20161115–00113, Letter from Monish Kundra, Karousel LLC, to Jose P. Albuquerque, Chief, Satellite Division, International Bureau, FCC (April 11, 2017) at 7–8. The geostationary disposal requirement in the Commission's rules, intended for satellites orbiting at inclinations of approximately 15 degrees or less, can be viewed as an example of this type of disposal.

[26] *Space Norway AS,* IBFS File No. SAT–PDR–20161115–00111, Technical Information to Supplement Schedule S at 15–18. This approach appears to be more readily available for satellites operating at higher inclinations.

[27] End-of-life Disposal in Inclined Geosynchronous Orbits, Luciano Anselmo & Carmen Pardini, Proceedings of the 9th IAASS Conference, International Association for the Advancement of Space Safety, 2017, pp. 87–94

Post-Mission Lifetime. The Commission asks whether the 25-year disposal guideline contained in the *NASA Standard* remains a relevant benchmark.[28] That is, does the guideline that a spacecraft reenter the atmosphere no more than 25 years after the completion of the spacecraft's mission permit spacecraft designs that result in a longer disposal period than may be in the public interest for a particular satellite mission? Should the disposal guideline instead be proportional to mission lifetime, or specific to the orbital altitude where the spacecraft will be deployed? Solar activity can influence the re-entry periods of satellites in LEO,[29] and future solar activity may vary from predictions. In what manner, if any, should the Commission account for variations in solar activity in our rules and in crafting conditions on the grant of specific licenses? Should satellite operators planning disposal through atmospheric re-entry be required to continue obtaining spacecraft tracking information, for example by using radio facilities on the spacecraft, to the greatest extent possible following the conclusion of the primary mission? In addition to these questions, the Commission seeks comment generally on how to prevent satellites from becoming sources of orbital debris during the period following their mission lifetime and before disposal through atmospheric re-entry.

Casualty Risk Assessment. In order to assist in evaluating the spacecraft design with respect to human casualty risk, the Commission proposes two specific informational requirements for satellites with a planned post-mission disposal of uncontrolled atmospheric re-entry.[30]

First, the Commission proposes that the human casualty risk assessment include all objects that would have an impacting kinetic energy in excess of 15 joules. This is consistent with the *NASA Standard,* wherein the potential for human casualty is assumed for any object with an impacting kinetic energy in excess of 15 joules.[31]

Second, the Commission proposes that where the calculated risk of human casualty from surviving debris is determined to be greater than zero, as calculated using either the NASA Debris Assessment Software or a higher fidelity model,[32] the applicant must provide a statement indicating the actual calculated human casualty risk, as well as the input assumptions used in modelling re-entry. The Commission tentatively concludes that these additional specifications ill enable it to better evaluate whether the post-mission disposal plan is in the public interest and seek comment on this approach. The Commission further invites comment on whether, when assessing human casualty risk, it should do so on an aggregate, system-wide basis as well as on a per-satellite basis, and, if so, what metric should be used to evaluate aggregate risk.

Part 25 GSO Satellite License Term Extensions. Operators of GSO satellites routinely request that the Commission grant license modifications to extend their authorized satellite operations beyond the initial license terms.[33] The Commission proposes to codify our current practice of requesting certain types of information from GSO licensees requesting license term extensions. The rule would specify that applicants should state the duration of the requested license extension and the estimated total remaining satellite lifetime, certify that the satellite has no single point of failure or other malfunctions, defects, or anomalies during its operations that could affect its ability to conduct end-of life procedures as planned, that remaining fuel reserves are adequate to complete deorbit as planned, and that telemetry, tracking, and command links are fully functional. In the event that the applicant is unable to make any of the certifications, the Commission proposes that the applicant provide a narrative description justifying the extension. The Commission seeks comment on this approach.

The Commission proposes to continue to assess the duration of the license term extension on a case-by-case basis, but proposes to limit extensions to no more than five years in a single modification application for any satellite originally issued a 15-year license term. The Commission tentatively concludes that five years may be an appropriate upper limit for a single modification to help ensure reasonable predictions regarding satellite health while affording operators some flexibility. Additionally, if subsequent extensions are sought, the Commission would have the opportunity to review those extension requests in intervals of five years or less. The Commission seek comment on this tentative conclusion. The Commission also seeks comment on what approach it should take with respect to satellites with initial license terms of less than 15 years.

The Commission further seeks comment on whether there are certain types of satellite buses[34] that may warrant heightened scrutiny for purposes of license extensions. In addition, the Commission seeks comment on whether, apart from the review undertaken when a license is extended, there are types or categories of anomalies that should trigger immediate reporting, in order to assess whether reliability of post-mission disposal has been compromised to the

(outlining modified version of the IADC formula for geostationary satellite disposal, to address satellites in highly-inclined geosynchronous orbits and resulting orbital perturbations).

[28] *NASA Standard* at 37, Requirement 4.6.2. The *NASA Standard* provides the option that, for a spacecraft with a perigee altitude below 2,000 km that will be disposed of through atmospheric re-entry, the operator shall leave the space structure in an orbit in which natural forces will lead to atmospheric reentry within 25 years after the completion of mission but no more than 30 years after launch. *Id.*

[29] Relatively weak solar activity can result in a decrease of the atmospheric drag on satellites in LEO, causing longer re-entry periods for retired spacecraft, including beyond a 25-year predicted re-entry period. For a brief summary of satellite drag and its causes, see National Oceanic and Atmospheric Administration, Space Weather Prediction Center, *Satellite Drag, http://www.swpc.noaa.gov/impacts/satellite-drag.*

[30] For missions planning controlled reentry, the Commission anticipates evaluating such plans on a case-by-case basis, consistent with the *NASA Standard. See NASA Standard* at 44, Requirement 4.7.2.

[31] *Id.* The 15-joule limit has been determined to be the limit above which any strike on a person will require prompt medical attention. *NASA Standard,* at 45, Requirement 4.7.3.c. The 1:10,000 standard does not account for sheltering, as it is estimated that as much as 80% of the world's population is either unprotected or in lightly-sheltered structures for purposes of protecton from a falling object with a kilojoule-level kinetic energy. *NASA Standard,* at 45, Requirement 4.7.3.d.

[32] The Debris Assessment modeling software is available for use without charge from the NASA Orbital Debris Program office at *https://www.orbitaldebris.jsc.nasa.gov/mitigation/das.html.* The *NASA Standard* notes that the re-entry risk assessment portion of Debris Assessment Software contains a simplified model which does not require expert knowledge in satellite reentry analyses and is designed to be somewhat conservative. *NASA Standard* at 46, Requirement 4.7.4.d. The use of a simplified model may result in a higher calculated casualty risk than models employing higher fidelity calculations and inputs. *See, e.g.,* NASA Orbital Debris Program Office, Orbital Debris Object Reentry Survival Analysis Tool, *https://orbitaldebris.jsc.nasa.gov/reentry/orsat.html* (last visited Oct. 22, 2018) (explaining that the Object Reentry Survival Analysis Tool (ORSAT) is frequently used for a higher-fidelity survivability analysis after the Debris Assessment Software has determined that a spacecraft is possibly non-compliant with the NASA Safety Standard).

[33] The license terms for grants under part 25 are specified in § 25.121 of the Commission's rules. 47 CFR 25.121. With some exceptions, licenses are typically issued for a period of 15 years. *See id.* The Commission will continue to assess requests for license term extensions for NGSO satellite systems on a case-by-case basis.

[34] A satellite ''bus'' is the colloquial term sometimes used to describe a satellite design (structure, power and propulsion systems, etc.) developed by a manufacturer and adapted for specific missions in response to individual customer requirements.

point that immediate actions may be required.

Proximity Operations

The Commission proposes that applicants be required to disclose whether the spacecraft is capable of, or will be, performing any space rendezvous or proximity operations. The statement would indicate whether the satellite will be intentionally located or maneuvering near another spacecraft or other large object in space. The Commission also seeks comment on whether the proposed notification requirement regarding maneuvers, described above, is sufficient in the context of proximity operations, or whether the rules should include anything more specific regarding information sharing about proximity operations with the Air Force's 18th Space Control Squadron or any successor civilian entity. Such operations present a potential collision risk, and operators will need to address that risk, as well as any risk of explosions or generation of operational debris that might occur through contact between spacecraft, as part of debris mitigation plans. Accordingly, the Commission proposes a disclosure requirement regarding these types of operations.

Operational Rules

Orbit Raising. Because orbit-raising maneuvers are performed by satellites intended for non-geostationary orbits as well as for the geostationary orbit, and the number of satellites engaging in orbit-raising maneuvers may increase if other proposals in this *NPRM* are adopted, the Commission proposes and seeks comment on expanding the provision to include NGSO system operations.

In addition, similar to the provisions for maneuvering at the end-of-life for a GSO satellite,[35] the Commission proposes to require such telemetry, tracking, and command operations to be coordinated between satellite operators as necessary to avoid interference events, rather than require the operations to be performed on a non-interference basis. The Commission tentatively concludes that it is in the public interest that these types of telemetry, tracking and command communications, critical to effective spacecraft maneuvering, be coordinated as necessary to avoid interference, rather than being authorized only on an a non-harmful-interference, unprotected basis. The Commission seeks comment on revising its existing rule regarding orbit raising maneuvers to require coordination of such operations to avoid interference events and to extend the application of the rule to NGSO satellites as well as GSO satellites.

Maintaining Ephemeris Data. The Commission proposes that NGSO operators be required to maintain ephemeris data for each satellite they operate and share that data with operators of other systems operating in the same region of space, as well as with the U.S. governmental entity responsible for the civilian space object database and cataloging. Specifically, the Commission proposes to require that operators share ephemeris data with any other operator identified in its disclosure described above of any operational space stations that may pose a collision risk. The Commission believes this requirement will help to facilitate communications between operators, even before a potential conjunction warning is given. The Commission also proposes that the information be shared by means mutually acceptable to the parties involved, to allow for flexibility and efficiency in sharing of information. The Commission seeks comment on this proposed revision to include these proposed requirements regarding availability of NGSO satellite ephemeris data. The Commission also seeks comment on including similar requirements in the rules for experimental and amateur satellites.

Telemetry, Tracking, and Command Encryption. The Commission seeks comment on whether to include any provisions in our rules concerning encryption for telemetry, tracking, and command communications for satellites with propulsion capabilities, and propose to add a requirement to our operational rules. Should this rule be applicable only to satellites having propulsion systems with certain capabilities, for example, certain ΔV capability? More generally, should the Commission consider such a requirement, regardless of propulsion capabilities, recognizing that other possible harms, such as radio-frequency interference, could result from such scenarios? The Commission anticipates that this rule will have no practical impact for most satellites and systems, which already encrypt communications, and seek comment on whether any burden that would result from adoption of such a rule is justified by the resulting improvements to the security of satellite control operations. Additionally, the Commission seeks comment on whether, if such a rule is adopted, there are any criteria that should be identified with respect to the sufficiency of encryption methods.

Liability Issues and Economic Incentives

The Commission seeks comment on whether Commission space station licensees should indemnify the United States against any costs associated with a claim brought against the United States related to the authorized facilities. Given the potential risk of a claim being presented to the United States under international law, the Commission seeks comment on whether an indemnification by these U.S.-licensed private operators is appropriate. Such an indemnification could take the form of an indemnity agreement, for example, created in consultation with interagency partners, including the U.S. Department of State, to establish the parameters of such an agreement, including the scope of the indemnification and the means to execute the agreement, including by an appropriate U.S. government agency. In the event that a requirement was established, what would be the appropriate form and content of such an agreement?

The Commission further seeks comment on whether the indemnification agreement would in most cases be completed following grant of a space station license within thirty days. If no indemnification agreement has been approved within thirty days following grant, the space station license would be terminated. In order to ensure that the agreement is approved well in advance of launch of the space station, the Commission also seeks comment on whether the agreement would be required to be completed no fewer than 90 days prior to the planned date of launch. In rare instances, this may require applicants to begin the agreement process prior to grant. The Commission seeks comment on these timing matters, including on whether the timeline should be based on the date on which the satellite is integrated into the launch vehicle in preparation for launch, rather than launch date. Finally, the Commission seeks comment on whether any such requirement should be limited to U.S.-licensees, as U.S. licensees generally have a manifest connection to the United States, or whether there are any circumstances in which non-U.S. licensees should also provide indemnification.

[35] 47 CFR 25.283(b) (providing for a space station to operate using its authorized tracking, telemetry, and control frequencies for the purpose of removing the satellite from the geostationary orbit at the end of its useful life, ''on the condition that the space station's tracking, telemetry, and control transmissions are planned so as to avoid electrical interference to other space stations, and coordinated with any potentially affected satellite networks.'').

Related to liability, the Commission also seeks comment generally on the costs and benefits of insurance as an economic incentive for orbital debris mitigation. The Commission seeks comment on how insurance might serve as an economic incentive by incentivizing operators to adopt debris mitigation strategies that reduce risk and lower insurance premiums. How might this impact the amount of insurance that might be required? Could insurance requirements in fact encourage industry to be licensed by or launch from the United States rather than other countries? In the context of insurance, the Commission seeks comment on whether there are any distinctions that might be made between different types of operations that are higher or lower risk. The Commission also seeks comment on whether any distinctions could be made between on-orbit liability and spacecraft re-entry liability, since on-orbit liability is addressed through a fault regime and re-entry liability is addressed through a strict liability regime under the Convention on International Liability for Damage Caused by Space Objects (Liability Convention). For example, should small satellites applying under the new streamlined process proposed in the *Small Satellite NPRM* be exempt from an insurance requirement, since space stations in that category would be relatively lower risk from an orbital debris perspective? As another example, the Commission asks whether GSO space station licensees should be exempt from an insurance requirement since they may present less risk in the post-mission disposal process since they do not typically re-enter Earth's atmosphere.

The Commission further invites comment generally on what economic approaches might be feasible and effective in creating incentives such that appropriate launch vehicle and satellite design choices are made, and appropriate decisions regarding the number of satellites launched are made as well. That is, recognizing debris creation as a negative externality, what approaches might induce private decisions on these design and launch choices to be consistent with the public interest in limiting the growth of orbital debris? Would, for example, a bond requirement, similar to the Commission's performance bond for satellite deployment but applied with respect to successful completion of end of life disposal, provide such an incentive?

Scope of Rules

Amateur and Experimental Operations. The Commission continues to believe that it is appropriate for amateur licensees and experimental applicants to provide a similar amount of disclosure regarding debris mitigation plans as will be required of commercial satellites under any of the changes to Part 25 discussed above that are adopted by the Commission. The Commission seeks comment on this proposal. The Commission also seeks comment on the ephemeris data requirement and indemnification and insurance issues as they relate to experimental licensees and authorized amateur operators.

Non-U.S.-Licensed Satellites. The Commission generally proposes that the new and amended rules discussed in this *NPRM* should be applicable to non-U.S.-licensed satellites seeking access to the U.S. market. In other words, an entity seeking access to the U.S. market must continue to submit the same technical information concerning the satellite involved as is required to be submitted by U.S. satellite license applicants. The Commission seeks comment on this proposal.

In some instances, the Commission notes that applicants have sought approval to engage in very limited transmission and reception activities between non-U.S.-licensed space stations and earth stations in the United States, such as communications exclusively for telemetry, tracking, and command. Although applicants seeking approval for communications such as telemetry, tracking, and command only may have a limited commercial connection to the United States, there is nonetheless a commercial reason those applicants are seeking to transmit and/or receive from a U.S. earth station. Therefore, the Commission seeks comment on whether these applicants should be subject to the same public interest requirements as a U.S.-licensed satellite operating with a U.S. earth station.

The Commission further proposes that non-U.S.-licensed satellites may continue to satisfy the disclosure requirement by showing that the satellite system's debris mitigation plans are subject to direct and effective regulatory oversight by the satellite system's national licensing authority. Recognizing that in other countries authority over radiofrequency communications and authority over space operations are often addressed by different entities, in order to satisfy our orbital debris mitigation disclosure requirements, the Commission would expect information showing that the operator has received a license from the entity overseeing space operations, or has initiated that process. This would include information about whether or not that administration is expected to register the space object with the United Nations Register of Objects Launched into Outer Space.[36] The Commission seeks comment on whether it is appropriate to continue assessing the direct and effective oversight of a foreign licensing authority on a case-by-case basis. Under this approach, approval of foreign oversight for a system design in one case will not necessarily imply similar approval for a different system design.

Regulatory Impact Analysis

In this section, the Commission seek comment on whether regulation of U.S. Commission-licensed space stations will help to limit such debris and result in a net benefit, even if it may give rise to some regulatory costs.

The Commission seeks comment on six approaches to reducing debris in orbit, which include the proposals discussed in the individual rule sections above:

Fewer Launches. One method of reducing orbital debris would be for the Commission to adopt rules that would have the effect of reducing the overall number of satellites launched.

Changes in Satellite Design. Another method of reducing orbital debris would be for the Commission to regulate how satellites or satellite system are designed.

Changes in operations and disposal procedures. This is the approach proposed in the individual rule sections above.

Use of Economic Incentives. In this NRPM, the Commission asks whether there are other economic incentives available that the Commission could offer that would help achieve the public interest in this area.

Active Collision Avoidance. The Commission could also potentially reduce orbital debris by requiring all operators to engage in active collision avoidance, which would involve coordination and maneuvering of spacecraft by operators to limit collisions with other objects in space.

Active Debris Cleanup. Another alternative to the rules proposed in this

[36] The United Nations Register of Objects Launched into Outer Space is maintained by the United Nations Office for Outer Space Affairs. The United Nations Office for Outer Space Affairs reports that 92% of all satellites and other spacecraft launched into Earth's orbit and beyond have been registered. United Nations Office for Outer Space Affairs, Space Object Register, *http://www.unoosa.org/oosa/en/spaceobjectregister/index.html.*

NPRM is for the Commission to consider requiring operators to engage in active debris removal. The Commission asks questions about this disposal method in this *NPRM.*

More broadly, the Commission seeks comment on the appropriate role of the Commission given the various stakeholder agencies and other entities. As discussed above, there are a number of agencies and entities with expertise and interest in mitigating the growth of orbital debris. With various entities playing a role, how does the Commission ensure an appropriate, coordinated approach that avoids duplication of efforts? How can the Commission ensure clarity regarding the roles that various entities can or should play? What agency or entity has the greatest expertise when it comes to the technical, engineering, mathematic, and scientific expertise needed to address orbital debris? Additionally, the Commission provides opportunity for comment on the impact of any potential legislation or other developments related to the Commission's role, that may arise during the pendency of this proceeding.

The Commission seeks comment on this proposed regulatory impact analysis. In connection with this analysis, it also seeks comment on the relative costs and benefits of performance-based regulation versus prescriptive regulation in the context of orbital debris mitigation.

In connection with this *NPRM,* the Commission seeks comment on the benefits and costs of various combinations of these approaches. In addition, to the extent feasible, the Commission identify alternative options, as described in this *NPRM.*

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified in the *NPRM* for comments. The Commission will send a copy of this *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

The Commission originally adopted comprehensive rules relating to the mitigation of orbital debris in 2004. Consideration of orbital debris issues remains an important part of preserving access to space for the long term, as well as the safety of persons and property in space on the surface of the Earth. This *NPRM* represents the first comprehensive update to our rules on orbital debris mitigation since their adoption. The basis for these revisions and additions to those rules includes the Commission's experience gained in the licensing process, updates in mitigation guidelines and practices, and market developments. The Commission's objective is to ensure that space stations applying for a license or grant of market access, or otherwise authorized by the Commission, including experimental and amateur satellite systems, provide a statement concerning plans for orbital debris mitigation that enables the Commission to fully evaluate whether the proposed operations are in the public interest.

With this in mind, this *NPRM* seeks comment on a number of proposals revising the Commission's rules and policies for limiting orbital debris. Adoption of the proposed changes would modify 47 CFR parts 5, 25, and 97 to, among other things:

(1) Require satellite applicants to demonstrate compliance with certain metrics developed for assessing orbital debris mitigation plans by the National Aeronautics and Space Administration (NASA).

(2) Require additional disclosures to the Commission regarding risk of collision, trackability, maneuverability, proximity operations, if any, choice of orbit, and impact on manned spacecraft, if any.

(3) Require information regarding the probability of success for the chosen disposal method, where disposal is planned by atmospheric re-entry.

(4) Require satellite applicants with planned operations in certain orbits to make certifications related deploying at a lower orbit and then raising the satellite(s) for operations.

Legal Basis

The proposed action is authorized under sections 1, 4(i), 301, 303, 307, 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 303, 307, 308, 309, and 310.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by adoption of proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Below, we describe and estimate the number of small entity licensees that may be affected by adoption of the proposed rules.

Satellite Telecommunications and All Other Telecommunications

The rules proposed in this *NPRM* would affect some providers of satellite telecommunications services, if adopted. Satellite telecommunications service providers include satellite and earth station operators. Since 2007, the SBA has recognized two census categories for satellite telecommunications firms: ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both categories, a business is considered small if it had $32.5 million or less in annual receipts.

The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 satellite communications firms that operated for the entire year. Of this total, 482 firms had annual receipts of under $25 million.

The second category of Other Telecommunications is comprised of entities ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily

engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million.

We anticipate that our proposed rule changes may have an impact on space station applicants and licensees, including in some instances small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The *NPRM* proposes and seeks comment on a number of rule changes that would affect reporting, recordkeeping, and other compliance requirements for space station operators. Each of these changes is described below.

The *NPRM* proposes to require several disclosures specifying compliance with several metrics established by NASA, such as probability of collision between the spacecraft and large objects. Many of the entities, for example, experimental licensees, that would be affected by these proposed rules already use a format for their orbital debris mitigation plans that is consistent with the NASA Orbital Debris Assessment Report (ODAR). The ODAR format includes several of the proposed NASA metrics that are incorporated into the proposed rules such as calculations related to re-entry casualty risk. Thus, to the extent that these entities already use the ODAR format, there would be no change to their existing recordkeeping and compliance requirements as a result of these proposed changes. For other entities that have not or would not use the ODAR format to report their orbital debris mitigation plans, some of these changes will involve some additional proposed calculations to provide the appropriate certifications, such as certifying that the probability of collision between a space station and another large object is less than 0.001 and that the probability of collision with small debris or meteoroids that would cause loss of control and prevent post-mission disposal is less than 0.01.

Given the engineering associated with development of a spacecraft, we expect that these calculations will be a natural outgrowth of work already being performed in designing and planning space station(s) operations. The *NPRM* also proposes to require that collision risk information be provided in the aggregate, that is, for the space station constellation as a whole. Since most small entities do not launch and operate large satellite constellations, we do not anticipate that this requirement to provide a collision risk assessment in the aggregate will be burdensome. In addition, we note the new requirement for demonstration that the probability of reliability for a particular disposal method is no less than 0.90, calculated on an aggregate basis. We anticipate that most small entities will be planning disposal of their spacecraft by atmospheric re-entry. So long as the spacecraft is deployed into a low altitude orbit, which most small entities' spacecraft are, atmospheric re-entry will be virtually guaranteed within a certain amount of time.

The *NPRM* also proposes to require that applicants for a space station license or authorization provide disclosures regarding methodologies used for tracking and certifications related to space situational awareness, as well as disclosures regarding choice of orbit and potential impact to manned spacecraft. Information regarding tracking and sharing of data for purposes of space situational awareness should be readily available to applicants and operators. We anticipate that disclosures relating to choice of orbit and potential impacts to manned spacecraft should be an extension of analysis undertaken by a space station operator as part of selection of a launch vehicle and operational orbit.

In addition, the *NPRM* proposes that operators of spacecraft make ephemeris data available to all operators of operational satellite systems identified as potentially raising a collision risk with its system. We anticipate that small entities will generally be operating only a few spacecraft, and so will only need to address this ephemeris data requirement for a limited number of space stations.

We do not expect that the any of the proposed changes relating to the operation of geostationary-orbit (GSO) space stations would affect small entities, since GSO space stations generally cost hundreds of millions of dollars to construct, launch, and operate. Similarly, we do not expect that the proposed requirements applicable to NGSO space stations operating between 650 km and 2,000 km will apply to small entities, since we expect that most lower-cost space systems are deployed at lower altitudes.

The *NPRM* also proposes that U.S. space station licensees or grantees submit an executed agreement indemnifying the United States against any costs associated with a clam brought against the United States related to the authorized facilities. This proposal would apply to experimental licensees and authorized amateur space station license grantees, and would likely increase the compliance requirements for some entities. The *NPRM* also seeks comment on possible insurance requirements for space station licensees/grantees.

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

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' [37]

With respect to the additional orbital debris mitigation plan disclosure requirements described above, we believe that the disclosures will in most instances be consistent with, or a natural outgrowth of, analysis that is already being conducted by space station applicants and/or operators. These additional disclosures should be consistent with the types of operations that are in the space station operator's best interest, such as avoiding collision with other spacecraft. In several instances, certifications are proposed, but in other instances, we believe that a descriptive disclosure is superior to a certification alternative, to provide the applicant with an opportunity to fully explain its plans for Commission evaluation. As an alternative to the disclosures, we could propose not to require any additional information, but as described in the *NPRM,* the public interest in mitigating orbital debris and ensuring the long-term viability of the space environment may weigh in favor of the additional disclosures. Several of the proposals apply only to space

[37] 5 U.S.C. 603(c)(1)–(4).

stations with planned deployment altitudes between above 650 km. This 650 km altitude is based upon anticipated on-orbit lifetimes, as described in the *NPRM,* and we anticipate will not be applicable to most small entities' space stations. That specific altitude was proposed to address orbits where deployments may be of particular concern, without burdening operators planning to deploy in lower orbits. We seek comment in the *NPRM* on the costs and benefits of the proposed requirements applying to space stations deployed above 650 km.

The Commission seeks comment on liability issues related to space station authorizations. In the discussion regarding insurance, for example, the *NPRM* asks whether distinctions might be made between different types of operations that are higher or lower risk. We note that some small entities may be associated with lower risk systems.

The *NPRM* seeks comment from all interested parties. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the *NPRM.* The Commission expects to consider any economic impact on small entities, as identified in comments filed in response to the *NPRM,* in reaching its final conclusions and taking action in this proceeding.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

List of Subjects in 47 CFR Parts 5, 25, and 97

Reporting and recordkeeping requirements, Satellites.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 5, 25, and 97 as follows:

PART 5—EXPERIMENTAL RADIO SERVICE

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 336.

■ 2. Amend § 5.64 by revising paragraph (b)(1), redesignating paragraphs (b)(2) through (4) as (b)(3) through (5), adding new paragraph (b)(2), revising newly redesignated paragraphs (b)(3) through (b)(5) and adding (c), and (d), to read as follows:

§ 5.64 Special provisions for satellite systems.

* * * * *

(b) * * *

(1) A statement that the space station operator has assessed and limited the amount of debris released in a planned manner during normal operations. Where applicable, this statement must include an orbital debris mitigation disclosure for any separate deployment devices not part of the space station launch that may become a source of orbital debris;

(2) A statement indicating whether the space station operator has assessed in the aggregate and limited the probability to 0.01 or less that the space station(s) will become a source of debris by collision with small debris or meteoroids that would cause loss of control and prevent post-mission disposal;

(3) A statement that the space station operator has assessed and limited the probability of accidental explosions or release of liquids that could become debris during and after completion of mission operations. This statement must include a demonstration that debris generation will not result from the conversion of energy sources on board the spacecraft into energy that fragments the spacecraft. Energy sources include chemical, pressure, and kinetic energy and debris includes liquids that persist in droplet form. This demonstration should address whether stored energy will be removed at the spacecraft's end of life, by depleting residual fuel and leaving all fuel line valves open, venting any pressurized system, leaving all batteries in a permanent discharge state, and removing any remaining source of stored energy, or through other equivalent procedures specifically disclosed in the application;

(4) A statement that the space station operator has assessed in the aggregate and limited the probability of the space station(s) becoming a source of debris by collisions with large debris or other operational space stations, including the following information:

(i) Where the application is for an NGSO space station or constellation:

(A) The statement must indicate whether the probability in the aggregate of a collision between the space stations(s) and another large object during the total orbital lifetime of the constellation, including any de-orbit phase, is less than 0.001.

(B) The statement must identify any planned and/or operational space stations that may raise a collision risk, and indicate what steps, if any, have been taken to coordinate with the other spacecraft or system, or what other measures the operator plans to use to avoid collision. This includes disclosure of any planned proximity operations. If the planned space station operational orbit is above 650 kilometers, the statement must specify why the planned orbit was chosen, and if the space station will transit through the orbit of the International Space Station (ISS) or orbit of any other manned spacecraft, at any time during the space station's mission or de-orbit phase, and the statement must describe the potential impact to the ISS or other manned spacecraft, if any, including design and operational strategies that will be used to avoid collision with manned spacecraft.

(C) The statement must disclose the accuracy—if any—with which orbital parameters will be maintained, including apogee, perigee, inclination, and the right ascension of the ascending node(s). In the event that a system is not able to maintain orbital tolerances, *i.e.,* it lacks a propulsion system for orbital maintenance, that fact should be included in the debris mitigation disclosure. Such systems must also indicate the anticipated evolution over time of the orbit of the proposed satellite or satellites. All systems should describe the extent of satellite maneuverability, whether or not the space station(s) design includes a propulsion system; and

(D) In addition, the statement must include a description of the means for tracking the spacecraft, including whether tracking will be active or passive. The space station operator must certify that upon receipt of a space situational awareness conjunction warning, the operator will review the warning and take all possible steps to assess and, if necessary, to mitigate collision risk, including, but not limited to: Contacting the operator of any active spacecraft involved in such warning; sharing ephemeris data and other appropriate operational information with any such operator; modifying spacecraft attitude and/or operations.

(ii) Where a space station requests the assignment of a geostationary-Earth orbit location, it must assess whether there are any known satellites located at, or reasonably expected to be located at, the requested orbital location, or assigned in the vicinity of that location, such that the station keeping volumes of the respective satellites might overlap or touch. If so, the statement must include a statement as to the identities of those parties and the measures that will be taken to prevent collisions; and

(5) A statement detailing the post-mission disposal plans for the space station at end of life, including the quantity of fuel—if any—that will be reserved for post-mission disposal maneuvers. In addition, the following specific provisions apply:

(i) For geostationary-Earth orbit space stations, the statement must disclose the altitude selected for a post-mission disposal orbit and the calculations that are used in deriving the disposal altitude.

(ii) For spacecraft terminating operations in an orbit in or passing through the low-Earth orbit region below 2,000 km altitude, the statement must indicate whether the spacecraft will be disposed of either through atmospheric re-entry within 25 years following the completion of the spacecraft's mission, or by direct retrieval of the spacecraft.

(iii) Where planned post-mission disposal involves atmospheric re-entry of the space station(s):

(A) The statement must include a demonstration that the probability of success for the disposal method will be no less than 0.90, calculated on an aggregate basis.

(B) For space stations with a planned operational altitude between 650 km and 2,000 km, the statement should include a certification that the satellites will be deployed at an altitude below 650 km, and describe the means that will be used to ensure reliability of disposal, such as through automatic initiation of disposal in the event of loss of power or contact with the space station.

(C) The statement must also include a casualty risk assessment. In general, an assessment should include an estimate as to whether portions of the spacecraft will survive re-entry, including all objects that would impact the surface of the Earth with a kinetic energy in excess of 15 joules, as well as an estimate of the resulting probability of human casualty. Where the risk of human casualty from surviving debris is greater than zero, as calculated using either the NASA Debris Assessment Software or a higher fidelity model, a statement must be provided indicating the actual calculated human casualty risk as well as the input assumptions used in the model.

(c) As a condition of their licenses for experimental satellite facilities, licensees must submit an executed agreement indemnifying the United States against any costs associated with a claim brought against the United States related to the authorized facilities. The agreement, or an updated version thereof, must be submitted no later than 30 days after the grant of the license, an assignment of the license, or a transfer of control of the licensee, or at least 90 days prior to planned launch of the space station, whichever is sooner.

(d) For space stations that include onboard propulsion systems, operators must encrypt telemetry, tracking, and command communications with the space station.

PART 25—SATELLITE COMMUNICATIONS

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

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

■ 4. Amend § 25.114 by:
■ a. Revising paragraph (d)(14)(i);
■ b. Redesignating paragraphs (d)(14)(ii) through (v) as paragraphs (iii) through (vi);
■ c. Adding new paragraph (d)(14)(ii); and
■ d. Revising newly redesignated paragraphs (d)(14)(iii) through (v).

The addition and revisions to read as follows.

§ 25.114 Applications for space station authorizations.

* * * * *

(d) * * *

(14) * * *

(i) A statement that the space station operator has assessed and limited the amount of debris released in a planned manner during normal operations. Where applicable, this statement must include an orbital debris mitigation disclosure for any separate deployment devices not part of the space station launch that may become a source of orbital debris;

(ii) A statement indicating whether the space station operator has assessed in the aggregate and limited the probability to 0.01 or less that the space station(s) will become a source of debris by collision with small debris or meteoroids that would cause loss of control and prevent post-mission disposal;

(iii) A statement that the space station operator has assessed and limited the probability of accidental explosions or release of liquids that could become debris during and after completion of mission operations. This statement must include a demonstration that debris generation will not result from the conversion of energy sources on board the spacecraft into energy that fragments the spacecraft. Energy sources include chemical, pressure, and kinetic energy and debris includes liquids that persist in droplet form. This demonstration should address whether stored energy will be removed at the spacecraft's end of life, by depleting residual fuel and leaving all fuel line valves open, venting any pressurized system, leaving all batteries in a permanent discharge state, and removing any remaining source of stored energy, or through other equivalent procedures specifically disclosed in the application;

(iv) A statement that the space station operator has assessed in the aggregate and limited the probability of the space station(s) becoming a source of debris by collisions with large debris or other operational space stations, including the following information:

(A) Where the application is for an NGSO space station or constellation:

(*1*) The statement must indicate whether the probability in the aggregate of a collision between the space station(s) and another large object during the total orbital lifetime of the constellation, including any de-orbit phases, is less than 0.001;

(*2*) The statement must identify any planned and/or operational space stations that may raise a collision risk, and indicate what steps, if any, have been taken to coordinate with the other spacecraft or system, or what other measures the operator plans to use to avoid collision. This includes disclosure of any planned proximity operations. If the planned space station operational orbit is above 650 kilometers, the statement must specify why the planned orbit was chosen, and if the space station will transit through the orbit of the International Space Station (ISS) or orbit of any other manned spacecraft, at any time during the space station's mission or de-orbit phase, and the statement must describe the potential impact to the ISS or other manned spacecraft, if any, including design and operational strategies that will be used to avoid collision with manned spacecraft;

(*3*) The statement must disclose the accuracy—if any—with which orbital parameters will be maintained, including apogee, perigee, inclination, and the right ascension of the ascending node(s). In the event that a system is not able to maintain orbital tolerances, *i.e.,* it lacks a propulsion system for orbital maintenance, that fact must be included in the debris mitigation disclosure. Such systems must also indicate the anticipated evolution over time of the orbit of the proposed satellite or satellites. All systems must describe the extent of satellite maneuverability, whether or not the space station(s) design includes a propulsion system; and

(*4*) In addition, the statement must include a description of the means for tracking the spacecraft, including whether tracking will be active or passive. The space station operator must certify that upon receipt of a space situational awareness conjunction warning, the operator will review the warning and take all possible steps to assess and, if necessary, to mitigate collision risk, including, but not limited to: Contacting the operator of any active spacecraft involved in such warning; sharing ephemeris data and other appropriate operational information with any such operator; modifying space station attitude and/or operations.

(B) Where a space station requests the assignment of a geostationary-Earth orbit location, it must assess whether there are any known satellites located at, or reasonably expected to be located at, the requested orbital location, or assigned in the vicinity of that location, such that the station keeping volumes of the respective satellites might overlap or touch. If so, the statement must include a statement as to the identities of those parties and the measures that will be taken to prevent collisions; and

(v) A statement detailing the post-mission disposal plans for the space station at end of life, including the quantity of fuel—if any—that will be reserved for post-mission disposal maneuvers. In addition, the following specific provisions apply:

(A) For geostationary-Earth orbit space stations, the statement must disclose the altitude selected for a post-mission disposal orbit and the calculations that are used in deriving the disposal altitude.

(B) For spacecraft terminating operations in an orbit in or passing through the low-Earth orbit region below 2,000 km altitude, the statement must indicate whether the spacecraft will be disposed of either through atmospheric re-entry within 25 years following the completion of the spacecraft's mission, or by direct retrieval of the spacecraft.

(C) Where planned post-mission disposal involves atmospheric re-entry of the space station(s):

(*1*) The statement must include a demonstration that the probability of success for the disposal method will be no less than 0.90, calculated on an aggregate basis.

(*2*) For space stations with a planned operational altitude between 650 km and 2,000 km, the statement should include a certification that the satellites will be deployed at an altitude below 650 km, and describe the means that will be used to ensure reliability of disposal, such as through automatic initiation of disposal in the event of loss of power or contact with the space station.

(*3*) The statement must also include a casualty risk assessment. In general, an assessment should include an estimate as to whether portions of the spacecraft will survive re-entry, including all objects that would impact the surface of the Earth with a kinetic energy in excess of 15 joules, as well as an estimate of the resulting probability of human casualty. Where the risk of human casualty from surviving debris is greater than zero, as calculated using either the NASA Debris Assessment Software or a higher fidelity model, a statement must be provided indicating the actual calculated human casualty risk as well as the input assumptions used in the model.

(D) Applicants for space stations to be used only for commercial remote sensing may, in lieu of submitting detailed post-mission disposal plans to the Commission, certify that they have submitted such plans to the National Oceanic and Atmospheric Administration for review.

* * * * *

■ 5. Amend § 25.121 by adding paragraph (f) to read as follows:

§ 25.121 License term and renewals.

* * * * *

(f) *Geostationary Satellite License Term Extensions.* For geostationary space stations issued license term under § 25.121(a)(1), license term extensions authorized by grant of a modification application are limited to five years or less.

■ 6. Amend § 25.161 by adding paragraph (e) to read as follows:

§ 25.161 Automatic termination of station authorization.

* * * * *

(e) The failure to file an executed indemnification agreement in accordance with § 25.166.

■ 7. Add § 25.166 to read as follows:

§ 25.166 Indemnification.

As a condition of their licenses, space station licensees must submit an executed agreement indemnifying the United States against any costs associated with a claim brought against the United States related to the authorized facilities. The agreement, or an updated version thereof, must be submitted no later than 30 days after the grant of the license, an assignment of the license, or a transfer of control of the licensee, or at least 90 days prior to planned launch of the space station, whichever is sooner.

■ 8. Amend § 25.271 by revising paragraph (e) to read as follows:

§ 25.271 Control of Transmitting Stations.

* * * * *

(e) An NGSO licensee or market access recipient must ensure that ephemeris data for its space station or constellation is available to all operators of operational satellite systems identified pursuant to § 25.114(d)(14)(iv)(A)(2) that may raise a collision risk and to the U.S. governmental entity responsible for the civilian space object database and cataloging.

* * * * *

■ 9. Revise § 25.282 to read as follows:

§ 25.282 Orbit raising.

A space station may operate in connection with short-term, transitory maneuvers directly related to post-launch, orbit-raising maneuvers, in the telemetry, tracking, and command frequencies authorized for operation at the assigned orbital position. Such orbit-raising operations must be coordinated on an operator-to-operator basis with any potentially affected satellite networks.

■ 10. Add § 25.290 to read as follows:

§ 25.290 Telemetry, tracking, and command encryption.

For space stations that include onboard propulsion systems, operators must encrypt telemetry, tracking, and command communications with the space station.

PART 97—AMATEUR RADIO SERVICE

■ 11. The authority citation for part 97 continues to read as follows:

Authority: 47 U.S.C. 151–155, 301–609, unless otherwise noted.

■ 12. Amend § 97.207 by:
■ a. Revising paragraph (g)(1)(i),
■ b. Redesignating paragraphs (g)(1)(ii) through (v) as paragraphs (g)(1)(iii) through (vi)
■ c. Adding new paragraph (g)(1)(ii);
■ d. Revising newly redesignated paragraphs (g)(1)(iii) through (vi); and
■ e. Adding paragraphs (h) and (i).

The revisions and additions to read as follows:

§ 97.207 Space station.

* * * * *

(g) * * *

(1) * * *

(i) A statement that the space station licensee has assessed and limited the amount of debris released in a planned manner during normal operations. Where applicable, this statement must include an orbital debris mitigation disclosure for any separate deployment devices not part of the space station launch that may become a source of orbital debris;

(ii) A statement indicating whether the space station operator has assessed in the aggregate and limited the probability to 0.01 or less that the space station(s) will become a source of debris by collision with small debris or meteoroids that would cause loss of control and prevent post-mission disposal;

(iii) A statement that the space station licensee has assessed and limited the probability of accidental explosions or release of liquids that could become debris during and after completion of mission operations. This statement must include a demonstration that debris generation will not result from the conversion of energy sources on board the spacecraft into energy that fragments the spacecraft. Energy sources include chemical, pressure, and kinetic energy and debris includes liquids that persist in droplet form. This demonstration should address whether stored energy will be removed at the spacecraft's end of life, by depleting residual fuel and leaving all fuel line valves open, venting any pressurized system, leaving all batteries in a permanent discharge state, and removing any remaining source of stored energy, or through other equivalent procedures specifically disclosed in the notification;

(iv) A statement that the space station licensee has assessed in the aggregate and limited the probability of the space station(s) becoming a source of debris by collisions with large debris or other operational space stations, including the following information:

(A) Where the space station is a NGSO space station or constellation:

(*1*) The statement must indicate whether the probability in the aggregate of a collision between the space station(s) and another large object during the total orbital lifetime of the constellation, including any de-orbit phases, is less than 0.00;1

(*2*) The statement must identify any planned and/or operational space stations that may raise a collision risk, and indicate what steps, if any, have been taken to coordinate with the other spacecraft or system, or what other measures the operator plans to use to avoid collision. This includes disclosure of any planned proximity operations. If the planned space station operational orbit is above 650 kilometers, the statement must specify why the planned orbit was chosen, and if the space station will transit through the orbit of the International Space Station (ISS) or orbit of any other manned spacecraft, at any time during the space station's mission or de-orbit phase, and the statement must describe the potential impact to the ISS or other manned spacecraft, if any, including design and operational strategies that will be used to avoid collision with manned spacecraft;

(*3*) The statement must disclose the accuracy—if any—with which orbital parameters will be maintained, including apogee, perigee, inclination, and the right ascension of the ascending node(s). In the event that a system is not able to maintain orbital tolerances, *i.e.,* it lacks a propulsion system for orbital maintenance, that fact must be included in the debris mitigation disclosure. Such systems must also indicate the anticipated evolution over time of the orbit of the proposed satellite or satellites. All systems must describe the extent of satellite maneuverability, whether or not the space station(s) design includes a propulsion system; and

(*4*) In addition, the statement must include a description of the means for tracking the spacecraft, including whether tracking will be active or passive. The space station licensee must certify that upon receipt of a space situational awareness conjunction warning, the licensee or operator will review the warning and take all possible steps to assess and, if necessary, to mitigate collision risk, including, but not limited to: Contacting the operator of any active spacecraft involved in such warning; sharing ephemeris data and other appropriate operational information with any such operator; modifying space station attitude and/or operations.

(B) Where a space station requests the assignment of a geostationary-Earth orbit location, it must assess whether there are any known satellites located at, or reasonably expected to be located at, the requested orbital location, or assigned in the vicinity of that location, such that the station keeping volumes of the respective satellites might overlap or touch. If so, the statement must include a statement as to the identities of those parties and the measures that will be taken to prevent collisions; and

(v) A statement detailing the post-mission disposal plans for the space station at end of life, including the quantity of fuel—if any—that will be reserved for post-mission disposal maneuvers. In addition, the following specific provisions apply:

(A) For geostationary-Earth orbit space stations, the statement must disclose the altitude selected for a post-mission disposal orbit and the calculations that are used in deriving the disposal altitude.

(B) For spacecraft terminating operations in an orbit in or passing through the low-Earth orbit region below 2,000 km altitude, the statement must indicate whether the spacecraft will be disposed of either through atmospheric re-entry within 25 years following the completion of the spacecraft's mission, or by direct retrieval of the spacecraft.

(C) Where planned post-mission disposal involves atmospheric re-entry of the space station:

(*1*) The statement must include a demonstration that the probability of success for the disposal method will be no less than 0.90, calculated on an aggregate basis.

(*2*) For space stations with a planned operational altitude between 650 km and 2,000 km, the statement should include a certification that the satellites will be deployed at an altitude below 650 km, and describe the means that will be used to ensure reliability of disposal, such as through automatic initiation of disposal in the event of loss of power or contact with the space station.

(*3*) The statement must also include a casualty risk assessment. In general, an assessment should include an estimate as to whether portions of the spacecraft will survive re-entry, including all objects that would impact the surface of the Earth with a kinetic energy in excess of 15 joules, as well as an estimate of the resulting probability of human casualty. Where the risk of human casualty from surviving debris is greater than zero, as calculated using either the NASA Debris Assessment Software or a higher fidelity model, a statement must be provided indicating the actual calculated human casualty risk as well as the input assumptions used in the model.

(vi) If any material item described in this notification changes before launch, a replacement pre-space notification shall be filed with the International Bureau no later than 90 days before integration of the space station into the launch vehicle.

* * * * *

(h) At least 90 days prior to planned launch of the space station, the license grantee of each space station must submit an executed agreement indemnifying the United States against any costs associated with a claim brought against the United States related to the authorized facilities.

(i) For space stations that include onboard propulsion systems, operators must encrypt telemetry, tracking, and command communications with the space station.

[FR Doc. 2019–02230 Filed 2–15–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 180716667–8667–01]

RIN 0648–BI36

International Fisheries; Pacific Tuna Fisheries; 2019 and 2020 Commercial Fishing Restrictions for Pacific Bluefin Tuna in the Eastern Pacific Ocean; Reopen Public Comment Period

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

ACTION: Proposed rule; reopen public comment period.

SUMMARY: On December 27, 2018, NMFS published a proposed rule in the **Federal Register** to implement annual limits on commercial catch of Pacific bluefin tuna (*Thunnus orientalis*) in the eastern Pacific Ocean (EPO) for 2019 and 2020. Comments were due by January 16, 2019. However, due to a lapse in appropriations, the link to the public comment portal provided in the proposed rule was not active. Consequently, NMFS is reopening the public comment period for an additional 15 calendar days.

DATES: Comments on the proposed rule and supporting documents must be submitted in writing by March 6, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0126, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0126,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Celia Barroso, NMFS West Coast Region Long Beach Office, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier ''NOAA–NMFS–2018–0126'' in the comments.

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

Please submit written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule and subject to the Paperwork Reduction Act to Celia Barroso, NMFS West Coast Region Long Beach Office (see address above) and by email to *OIRA_Submission@omb.eop.gov,* or by fax to (202) 395–7285.

Copies of the draft Regulatory Impact Review (RIR) and other supporting documents are available via the Federal eRulemaking Portal: *www.regulations.gov,* docket NOAA–NMFS–2018–0126, or contact the Highly Migratory Species Branch Chief, Heidi Taylor, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90208, or *WCR.HMS@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Celia Barroso, NMFS, 562–432–1850, *Celia.Barroso@noaa.gov*.

SUPPLEMENTARY INFORMATION: On December 27, 2018, NMFS published a proposed rule under the Tuna Conventions Act of 1950 to implement Inter-American Tropical Tuna Commission Resolution C–18–01 (*Measures for the Conservation and Management of Bluefin Tuna in the Eastern Pacific Ocean, 2019–2020*) and Resolution C–18–02 (*Amendment to Resolution C–16–08 on a Long-term Management Framework for the Conservation and Management of Pacific Bluefin Tuna in the Eastern Pacific Ocean*) (83 FR 66665). This proposed rule would implement annual limits on commercial catch of Pacific bluefin tuna (*Thunnus orientalis*) in the EPO for 2019 and 2020. This action is necessary to conserve Pacific bluefin tuna and for the United States to satisfy its obligations as a member of the IATTC.

As a result of the U.S. government partial lapse in appropriations, the Federal eRulemaking Portal at *www.regulations.gov* that was cited in the proposed rule as a method to provide public comments was not active during the entire comment period. Therefore, NMFS has decided to reopen the period for public comment for an additional 15 days.

The notice of the proposed rule (83 FR 66665, December 27, 2018) contains more background information, which is not repeated here.

Authority: 16. U.S.C. 951 *et seq.*

Dated: February 12, 2019.

Samuel D. Rauch, III,

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

[FR Doc. 2019–02576 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 181210999–9067–01]

RIN 0648–BI56

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Abbreviated Framework Amendment 2

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Abbreviated Framework Amendment 2 (Abbreviated Framework 2) to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region, as prepared and submitted by the South Atlantic Fishery Management Council (Council). If implemented, this proposed rule would revise the commercial and recreational annual catch limits (ACLs) for vermilion snapper and black sea bass in the exclusive economic zone (EEZ) of the South Atlantic. The purpose of this proposed rule is to respond to the results of the latest stock assessments for the species and to help achieve optimum yield (OY) for vermilion snapper and black sea bass.

DATES: Written comments must be received by March 6, 2019.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2018–0133'' by any of the following methods:

• *Electronic Submission:* Submit all electronic comments via the Federal Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-*

0133, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit all written comments to Frank Helies, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

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

Electronic copies of Abbreviated Framework 2, which includes a Regulatory Flexibility Act (RFA) analysis and a regulatory impact review, may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/abbreviated-framework-amendment-2-vermilion-snapper-and-black-sea-bass.*

FOR FURTHER INFORMATION CONTACT: Frank Helies, NMFS SERO, telephone: 727–824–5305, email: *Frank.Helies@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery in the South Atlantic region is managed under the FMP and includes vermilion snapper and black sea bass, along with other snapper-grouper species. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). All weights described in this proposed rule are in round weight, unless otherwise specified.

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks to ensure that fishery resources are managed for the greatest overall benefit to the nation.

In April 2018, Southeast Data, Assessment, and Review (SEDAR) standard assessments were completed for both South Atlantic vermilion snapper (SEDAR 55) and black sea bass (SEDAR 56). The Council's Scientific and Statistical Committee (SSC) reviewed both assessments at their May 2018 meeting, stated that they represented the best scientific information available, and provided the Council with acceptable biological catch (ABC) recommendations for the two species. Based on the results of the SEDAR 55 and SEDAR 56, NMFS determined that neither species was overfished or undergoing overfishing.

Recreational landings of snapper-grouper, including for vermilion snapper and black seas bass are monitored through the Marine Recreational Information Program (MRIP). NMFS notes that as of January 1, 2018, there was a change to the program whereby fishing effort is calculated based on a mail survey instead of through a phone survey. As a result of the changes to MRIP, the NMFS Southeast Fisheries Science Center (SEFSC) revised the vermilion snapper and black sea bass stock assessments (SEDAR 55 and 56) using the newly calibrated MRIP data. The Council's SSC reviewed the revised stock assessments at their October 2018 meeting. However, the SSC did not provide new ABC recommendations to the Council based on the updated assessments. The SSC determined that the new MRIP estimates may warrant data decisions that differ from previous SEDAR assessments, as the new estimates did not go through a data workshop. The Council's SSC requested more information from the SEFSC in the form of full output and diagnostics on the updated assessments. After the SSC receives the additional information from the SEFSC, they may consider changes to the existing ABC recommendations for vermilion snapper and black sea bass.

NMFS notes that the public comment period for this proposed rule is 15 days. As a result of delays in this rulemaking related to the recent partial Federal government shutdown and the regulatory requirement to announce the South Atlantic black sea bass recreational fishing season dates by April 1, 2019, NMFS has determined that a 15 day comment period best balances the interest in allowing the public adequate time to comment on the proposed measures while reducing public uncertainty and confusion by working to implement management measures by April 1, 2019.

Management Measures Contained in This Proposed Rule

This proposed rule would revise the commercial and recreational ACLs for South Atlantic vermilion snapper and black sea bass based on updated information from stock assessments.

Vermilion Snapper

For vermilion snapper, the ACL is allocated between the sectors into a current commercial ACL of 862,920 lb (391,414 kg) and a current recreational ACL of 406,080 lb (184,195 kg). These ACLs were set in Regulatory Amendment 18 to the FMP (78 FR 47574; September 5, 2013) and the current sector allocation were established in Amendment 16 to the FMP (74 FR 30964; July 29, 2009). The current sector allocation for vermilion snapper is 68 percent commercial and 32 percent recreational.

Consistent with the results of SEDAR 55 and the ABC recommendation from the SSC and subsequently accepted by the Council, this proposed rule would increase the commercial and recreational ACLs for vermilion snapper. For the commercial sector, the ACL is further divided into two 6-month seasons and the ACL (commercial quota) is equally divided between the seasons. Any unused quota from the first season in carried over into the second season. Any unused quota from the second season is not carried over into the next fishing year. The two commercial seasons are January through June and July through December each year.

The commercial seasonal quotas would be set at 483,658 lb (219,384 kg), gutted weight; 536,860 lb (243,516 kg) for the 2019 fishing year; 452,721 lb (205,351 kg), gutted weight; 502,520 lb (227,939 kg) for the 2020 fishing year; 431,279 lb (195,625 kg), gutted weight; 478,720 lb (217,144 kg) for the 2021 fishing year; 417,189 lb (189,234 kg), gutted weight; 463,080 lb (210,050 kg) for the 2022 fishing year; and 409,225 lb (185,621 kg), gutted weight; 454,240 lb (206,040 kg) for the 2023 and subsequent fishing years.

The recreational ACL would be set at 455,207 lb (206,478 kg), gutted weight, 505,280 lb (229,191 kg) for the 2019 fishing year; 426,090 lb (193,271 kg), gutted weight, 472,960 lb (214,531 kg) for the 2020 fishing year; 405,910 lb (184,118 kg), gutted weight, 450,560 lb (204,552 kg) for the 2021 fishing year; 392,649 lb (178,103 kg), gutted weight, 435,840 lb (197,694 kg) for the 2022 fishing year; and 385,520 lb (174,869 kg), gutted weight, 427,520 lb (193,920 kg) for the 2023 and subsequent fishing years.

The proposed ACLs are consistent with the Council SSC's ABC recommendation, and this proposed rule would not change the sector allocations.

The vermilion snapper commercial sector has experienced in-season fishing closures every year since 2009 regardless of the amount of the commercial quota. If the catch rates of vermilion snapper in the commercial sector continue as expected, the proposed seasonal quotas would still be expected to result in in-season closures during each of the two commercial seasons as a result of the seasonal quotas being reached. However, the proposed increase to the commercial ACL is expected to extend the commercial fishing season up to 48 days over the entire 2019 fishing year. The projected increase in the number of days for the commercial season is expected to then progressively decrease after 2019 corresponding with the proposed declining ACL values after 2019. For example, the proposed commercial ACL is expected to result in up to 5 additional fishing days in the 2023 fishing year. The recreational sector has not experienced a fishing season closure as a result of reaching its ACL, and if the proposed recreational ACLs are implemented, it is expected that the recreational sector will continue to remain open for the entire fishing year and not close as a result of the recreational ACLs being reached.

Black Sea Bass

The current black sea bass commercial and recreational ACLs were implemented in 2013 through Regulatory Amendment 19 to the FMP (78 FR 58249; September 23, 2013). The current commercial ACL is 755,274 lb (342,587 kg) and the recreational ACL is 1,001,176 lb (454,126 kg).

The ACLs are based on the sector allocation ratio developed by the Council for black sea bass (43 percent commercial and 57 percent recreational) as established in Amendment 13C to the FMP (71 FR 55096; October 23, 2006).

Consistent with the results of SEDAR 56 and the ABC recommendation from the SSC accepted by the Council, this proposed rule would reduce the commercial and recreational ACLs for black sea bass. The proposed commercial ACL would be 276,949 lb (125,622 kg), gutted weight; 326,800 lb (148,234 kg) for the 2019 fishing year; 243,788 lb (110,580 kg), gutted weight; 287,670 lb (130,485 kg) for the 2020 fishing year; and 234,314 lb (106,283 kg), gutted weight; 276,490 lb (125,414 kg) for the 2021 and subsequent fishing years.

The fishing year for the black sea bass recreational sector is from April 1 through March 31, and the recreational ACLs are therefore described as yearly combinations. If implemented, the proposed black sea bass recreational ACL would not take effect until during the 2019–2020 fishing year, which begins on April 1, 2019. The current recreational ACLs are 848,455 lb (384,853 kg), gutted weight, 1,001,177 lb (454,126 kg), which will remain in place for the 2018–2019 fishing year. The proposed recreational ACLs are 367,119 lb (166,522 kg), gutted weight, 433,200 lb (196,496 kg) for the 2019–2020 fishing year; 323,161 lb (146,583 kg), gutted weight, 381,330 lb (172,968 kg) for the 2020–2021 fishing year; and 310,602 lb (140,887 kg), gutted weight, 366,510 lb (166,246 kg) for the 2021–2022 and subsequent fishing years.

The proposed sector ACLs are consistent with the Council SSC's ABC recommendation, and this proposed rule would not change the current sector allocations.

Since 2015, black sea bass total landings have not exceeded 40 percent of the current combined commercial and recreational ACLs. The last fishing season closures for the commercial and recreational sectors occurred in 2012 and 2011, respectively. Based on the projected future commercial landings of black sea bass, for the 2019 fishing year, the proposed commercial ACL is not expected to be exceeded and would therefore not result in an in-season closure as a result of the commercial ACL being reached. However, in the 2020 and 2021 fishing years, commercial in-season closures are projected to occur on November 26 and November 5, respectively. Since 2015, the trend in recreational landings of black sea bass has been downward. The proposed recreational ACLs are not expected to be exceeded and are not expected to result in in-season closures as a result of the sector ACL being reached. Additionally, if the black sea bass stock experiences a year of high recruitment, then these proposed reductions in ACLs would be expected to constrain future harvest and minimize the risk of overfishing.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with Abbreviated Framework 2, the FMP, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

A description of the proposed rule, why it is being considered, and the objectives of, and legal basis for this proposed rule are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, this proposed rule does not implicate the Paperwork Reduction Act.

This proposed rule would increase the commercial and recreational ACLs for vermilion snapper. This proposed rule would reduce the commercial and recreational ACLs for black sea bass. Because the Regulatory Flexibility Act (RFA) does not apply to recreational anglers, only the effects on commercial vessels were analyzed. Any impact to the profitability or competitiveness of for-hire fishing businesses would be the result of changes in for-hire angler demand and would, therefore, be indirect in nature; the RFA does not consider indirect impacts.

The proposed action would directly affect federally permitted commercial fishermen fishing for South Atlantic vermilion snapper and black sea bass. For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

As of July 25, 2018, there were 538 valid or renewable Federal South Atlantic snapper-grouper unlimited permits, 109 valid or renewable 225-lb trip limited permits, and 32 black sea bass pot endorsements. From 2013 through 2017, an average of 208 vessels (all gear) per year landed vermilion snapper in the South Atlantic. These vessels, combined, averaged 1,766 trips per year in the South Atlantic on which

vermilion snapper were landed and 4,578 trips in the South Atlantic that did not land any vermilion snapper or trips that were taken outside the South Atlantic regardless of the species caught. The average annual total dockside revenues were approximately $3.03 million from vermilion snapper, $2.79 million from other species co-harvested with vermilion snapper (on the same trips), and $7.30 million from trips in the South Atlantic on which no vermilion snapper were harvested or trips that occurred outside the South Atlantic regardless of the species caught. The average annual total revenue from all species landed by vessels harvesting vermilion snapper in the South Atlantic was approximately $13.12 million, or $63,000 per vessel. These vessels generated approximately 23.1 percent of their total fishing revenues from vermilion snapper. Of the 208 vessels that landed vermilion snapper, 123 vessels used bandit gear, and they accounted for about 84 percent of all vermilion snapper landings. These 123 vessels generated dockside revenues of approximately $2.56 million from vermilion snapper, $2.14 million from other species co-harvested with vermilion snapper (on the same trips), and $8.88 million from trips in the South Atlantic on which no vermilion snapper were harvested or trips that occurred outside the South Atlantic regardless of the species caught. The average annual total revenue from all species landed by these vessels was approximately $13.58 million, or $110,000 per vessel. These vessels generated approximately 18.9 percent of their total fishing revenues from vermilion snapper.

From 2013 through 2017, an average of 214 vessels (all gear) per year landed black sea bass in the South Atlantic. These vessels, combined, averaged 2,089 trips per year in the South Atlantic on which black sea bass were landed and 3,985 trips in the South Atlantic that did not land any black sea bass or trips that were taken outside the South Atlantic regardless of the species caught. The average annual total dockside revenues were approximately $0.96 million from black sea bass, $3.82 million from other species co-harvested with black sea bass (on the same trips), and $7.58 million from trips in the South Atlantic on which no black sea bass were harvested or trips that occurred outside the South Atlantic regardless of the species caught. The average annual total revenue from all species landed by vessels harvesting black sea bass in the South Atlantic was approximately $12.36 million, or $58,000 per vessel. These vessels generated approximately 7.8 percent of their total fishing revenues from black sea bass. Black sea bass pots are a historically important gear type for harvesting black sea bass. This particular component of the black sea bass commercial sector is currently managed under an endorsement system. At the start of the program in 2012, 32 endorsements were issued to commercial vessels with snapper-grouper permits, but not all vessels harvest black sea bass in any single year. Of the 214 vessels that landed black sea bass, 23 used pots and accounted for about half of all black sea bass landings. These vessels generated revenues of approximately $469,000 from black sea bass, $38,000 from other species co-harvested with black sea bass (on the same trips), and $5,000 from trips in the South Atlantic on which no black sea bass were harvested or trips that occurred outside the South Atlantic regardless of the species caught. The average annual total revenue from all species landed by these vessels was approximately $513,000, or $22,000 per vessel. These vessels generated approximately 91.6 percent of their total fishing revenues from black sea bass, indicating their strong reliance on the species.

Based on the foregoing revenue information, all commercial vessels directly affected by the proposed rule may be considered small entities.

The proposed action for vermilion snapper would increase the commercial ACL, resulting in revenue increases of approximately $724,000 in 2019, $488,000 in 2020, $324,000 in 2021, $217,000 in 2022, and $156,000 in 2023 and thereafter. Over a 5-year period (2019–2023), the net present value (using 7 percent discount rate) of revenue increases would be approximately $1.8 million. Vessels that landed vermilion snapper using bandit gear may be expected to benefit more from the commercial ACL increase than those using hook-and-line gear, because they generally accounted for most of the vermilion snapper commercial landings.

The proposed action for black sea bass would reduce the commercial ACL, resulting in revenue decreases of approximately $0 in 2019, $47,000 in 2020, and $79,000 in 2021, and subsequent years. The net present value of revenue reductions would be approximately $113,000 over 3 years (2019–2021), or $239,000 over 5 years (2019–2023). Vessels using pots for harvesting black sea bass may be more adversely affected than those using other gear types, because black sea bass generally accounted for most of their total fishing revenues.

The negative revenue impacts on vessels harvesting black sea bass are considered minor. Relative to total revenues by vessels harvesting black sea bass, revenue reductions due to the reduced ACLs would be approximately zero in 2019, 0.38 percent in 2020, and 0.64 percent in 2021. One key feature of the black sea bass component of the snapper-grouper fishery is that landings have trended downward, falling to less than 50 percent of the current commercial ACL since 2015, so that the estimated negative revenue effects of the reduced ACL would less likely materialize. In the event landings significantly increase in the future and the estimated revenue reductions would materialize, the proposed ACL would help prevent overfishing the black sea bass stock.

When combining both actions for both vermilion snapper and black sea bass, the net effect of the proposed rule would be an increase in revenue of approximately $1.6 million over 5 years.

The information provided above supports a determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. Because this proposed rule, if implemented, is not expected to have a significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Annual catch limits, Black sea bass, Fisheries, Fishing, South Atlantic, Quotas, Vermilion snapper.

Dated: February 12, 2019.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.190, revise paragraphs (a)(4)(i), (a)(4)(ii), and (a)(5) to read as follows:

§ 622.190 Quotas.

* * * * *

(a) * * *

(4) * * *

(i) For the period January through June each year.

(A) For the 2019 fishing year—483,658 lb (219,384 kg), gutted weight; 536,860 lb (243,516 kg), round weight.

(B) For the 2020 fishing year—452,721 lb (205,351 kg), gutted weight; 502,520 lb (227,939 kg), round weight.

(C) For the 2021 fishing year—431,279 lb (195,625 kg), gutted weight; 478,720 lb (217,144 kg), round weight.

(D) For the 2022 fishing year—417,189 lb (189,234 kg), gutted weight; 463,080 lb (210,050 kg), round weight.

(E) For the 2023 and subsequent fishing years—409,225 lb (185,621 kg), gutted weight; 454,240 lb (206,040 kg), round weight.

(ii) For the period July through December each year.

(A) For the 2019 fishing year—483,658 lb (219,384 kg), gutted weight; 536,860 lb (243,516 kg), round weight.

(B) For the 2020 fishing year—452,721 lb (205,351 kg), gutted weight; 502,520 lb (227,939 kg), round weight.

(C) For the 2021 fishing year—431,279 lb (195,625 kg), gutted weight; 478,720 lb (217,144 kg), round weight.

(D) For the 2022 fishing year—417,189 lb (417,189 kg), gutted weight; 463,080 lb (210,050 kg), round weight.

(E) For the 2023 and subsequent fishing years—409,225 lb (185,621 kg), gutted weight; 454,240 lb (206,040 kg), round weight.

* * * * *

(5) *Black sea bass.* (i) For the 2019 fishing year—276,949 lb (125,622 kg), gutted weight; 326,800 lb (148,234 kg), round weight.

(ii) For the 2020 fishing year—243,788 lb (110,580 kg), gutted weight; 287,670 lb (130,485 kg), round weight.

(iii) For the 2021 fishing year and subsequent fishing years—234,314 lb (106,283 kg), gutted weight; 276,490 lb (125,414 kg), round weight.

* * * * *

■ 3. In § 622.193, revise the first sentence of paragraph (e)(2) and revise paragraph (f)(2)(iv) to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(e) * * *

(2) *Recreational sector.* The recreational ACL for black sea bass is 848,455 lb (384,853 kg), gutted weight, 1,001,177 lb (454,126 kg), round weight for the 2018–2019 fishing year; 367,119 lb (166,522 kg), gutted weight, 433,200 lb (196,496 kg), round weight for the 2019–2020 fishing year; 323,161 lb (146,583 kg), gutted weight, 381,330 lb (172,968 kg), round weight, for the 2020–2021 fishing year; and 310,602 lb (140,887 kg), gutted weight, 366,510 lb (166,246 kg), round weight, for the 2021–2022 and subsequent fishing years. * * *

* * * * *

(f) * * *

(2) * * *

(iv) The recreational ACL for vermilion snapper is 455,207 lb (206,478 kg), gutted weight, 505,280 lb (229,191 kg), round weight, for the 2019 fishing year; 426,090 lb (193,271 kg), gutted weight, 472,960 lb (214,531 kg), round weight, for the 2020 fishing year; 405,910 lb (184,118 kg), gutted weight, 450,560 lb (204,552 kg), round weight, for the 2021 fishing year; 392,649 lb (178,103 kg), gutted weight, 435,840 lb (197,694 kg), round weight, for the 2022 fishing year; and 385,520 lb (174,869 kg), gutted weight, 427,520 lb (193,920 kg), round weight, for the 2023 and subsequent fishing years.

* * * * *

[FR Doc. 2019–02597 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 84, No. 33
Tuesday, February 19, 2019

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

Submission for OMB Review; Comment Request

February 12, 2019.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW, Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by March 21, 2019. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Farm Technology Survey.

OMB Control Number: 0535–NEW.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production value, disposition, and resource use. This project will collect data from a sample of farmers and ranchers with land operated in the State of Hawaii. The reference period will be within one year of the survey date. The survey will be conducted annually if funding allows. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204.

Need and Use of the Information: The purpose of this survey is to collect data related to what types of technologies are used on farms during the past year. These technologies will include both physical and non-physical types such as tablets, applications, automatic sensors, etc. The collected data will be used by the State Department of Agriculture and Land Grant University to determine the need for providing assistance to farmers and ranchers to fulfill their technology needs, indicated by the data.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 2,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 557.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–02594 Filed 2–15–19; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0098]

Notice of Request for Reinstatement of an Information Collection; APHIS Student Outreach Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reinstatement of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request the reinstatement of an information collection associated with the Animal and Plant Health Inspection Service's Student Outreach Program.

DATES: We will consider all comments that we receive on or before April 22, 2019.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0098.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2018–0098, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0098* or in our reading Room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on documents associated with the APHIS Student Outreach Program, contact Ms. Tammy Lowry, AgDiscovery Program Manager, Office of Civil Rights, Diversity, and Inclusion, APHIS, 4700 River Road, Unit 92, Riverdale, MD 20737; (301) 851–4181. For more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information

Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: APHIS Student Outreach Program.

OMB Control Number: 0579–0362.

Type of Request: Reinstatement of an information collection.

Abstract: The Animal and Plant Health Inspection Service's (APHIS') Student Outreach Program is designed to help students learn about careers in animal science, veterinary medicine, plant pathology, and agribusiness. The program allows participants to live on a college campus and learn about agricultural science and agribusiness from university professors, practicing veterinarians, and professionals working for the U.S. Government.

The Student Outreach Program is designed to enrich students' lives while they are still in their formative years. APHIS' investment in the Student Outreach Program not only exposes students to careers in APHIS, it also gives APHIS' employees the opportunity to meet and invest in APHIS' future workforce. Students chosen to participate in the Student Outreach Program will gain experience through hands-on labs, workshops, and field trips. Students will also participate in character and team building activities and diversity workshops. Two programs currently in the Student Outreach Program are AgDiscovery and the Safeguarding Natural Heritage Program: Strengthening Navajo Youth Connections to the Land.

To participate in these programs, students and their parents must submit essays, letters of recommendation, and application packages. These submissions are reviewed and rated by officials to select the participants. In addition, cooperative agreements are used to facilitate the partnerships between APHIS and the participating universities to carry out these programs.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 5.62 hours per response.

Respondents: Individuals and public and private universities.

Estimated annual number of respondents: 1,126.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 1,126.

Estimated total annual burden on respondents: 6,330 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 11th day of February 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–02578 Filed 2–15–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0090]

Notice of Request for Reinstatement of an Information Collection; Permanent, Privately Owned Horse Quarantine Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reinstatement of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request the reinstatement of an information collection associated with regulations for permanent, privately owned horse quarantine facilities.

DATES: We will consider all comments that we receive on or before April 22, 2019.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0090.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2018–0090, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0090* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for permanent, privately owned horse quarantine facilities, contact Dr. Nathaniel Koval, Equine Import Specialist, Strategy and Policy, VS, 4700 River Road, Unit 39, Riverdale, MD 20737; (301) 851–3434. For more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Permanent, Privately Owned Horse Quarantine Facilities.

OMB Control Number: 0579–0313.

Type of Request: Reinstatement of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States based on the regulations in 9 CFR parts 92 through 98.

The regulations in part 93 require, among other things, that certain animals, as a condition of entry, be quarantined upon arrival in the United States. APHIS operates animal quarantine facilities and also authorizes the use of quarantine facilities that are privately owned and operated for certain animal importations.

The regulations in subpart C of part 93 pertain to the importation of horses and include requirements for privately owned quarantine facilities for horses. For permanent, privately owned quarantine facilities, these requirements entail certain information collection activities, including environmental certification, application for facility approval, service agreements, requests to APHIS concerning withdrawal of facility approval, notification to APHIS of facility closure, compliance agreements, security procedures, alarm notification, lists of personnel, signed statements, daily logs and recordkeeping, and requests for variance.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.16 hours per response.

Respondents: Applicants who apply for facility approval; owners and operators of permanent, privately owned horse quarantine facilities; facility employees; authorities who issue and complete environmental certifications; and employees of security companies.

Estimated annual number of respondents: 6.

Estimated annual number of responses per respondent: 20.5.

Estimated annual number of responses: 123.

Estimated total annual burden on respondents: 20 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 11th day of February 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–02579 Filed 2–15–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0099]

Notice of Request for Reinstatement of an Information Collection; National Animal Health Reporting System

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reinstatement of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request the reinstatement of an information collection associated with the National Animal Health Reporting System.

DATES: We will consider all comments that we receive on or before April 22, 2019.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0099.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2018–0099 Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0099* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For more information on the National Animal Health Reporting System, contact Mr. Bill Kelley, Supervisory Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B, MS 2E6, Fort Collins, CO 80526; (970) 494–7270. For more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Reporting System (NAHRS).

OMB Control Number: 0579–0299.

Type of Request: Reinstatement of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal Plant Health Inspection Service (APHIS) is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and other articles to prevent the introduction and interstate spread of livestock diseases and to eradicate such diseases from the United States when feasible. In connection with this mission, APHIS operates the National Animal Health Reporting System (NAHRS), which collects, on a national basis, data monthly from State veterinarians on the presence or absence of diseases of interest to the World Organization for Animal Health (OIE).

As a member country of OIE, the United States must submit reports to the OIE on the status of certain diseases in specific livestock, poultry, and aquaculture species. Reportable diseases are diseases that have the potential for rapid spread, irrespective of national borders, that are of serious socioeconomic or public health consequence, and that are of major importance in the international trade of animals and animal products. The potential benefits to trade of accurate reporting on the health status of the U.S. commercial livestock, poultry, and aquaculture industries include expansion of those industries into new export markets, and preservation of existing markets through increased confidence in quality and disease freedom. This data collection is unique in terms of the type, quantity, and frequency; no other entity is collecting and reporting data to the OIE on the health status of U.S. livestock, poultry, and aquaculture.

We are asking the Office of Management and Budget (OMB) to approve these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our

information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 8 hours per response.

Respondents: State animal health officials.

Estimated annual number of respondents: 52.

Estimated annual number of responses per respondent: 12.

Estimated annual number of responses: 624.

Estimated total annual burden on respondents: 4,992 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 11th day of February 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–02580 Filed 2–15–19; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a roundtable meeting of the Connecticut Advisory Committee to the Commission will convene at 12:00 p.m. (EST) on Thursday, March 7, 2019, at the ACLU, 765 Asylum Avenue, Hartford, CT 06105. The purpose of the meeting is to plan for an April briefing on prosecutorial appointment in Connecticut.

DATES: Thursday, March 7, 2019.

Time: 12:00 p.m. (EST).

ADDRESSES: ACLU, 765 Asylum Avenue, Hartford, CT 06105.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov,* or 303–866–1040.

SUPPLEMENTARY INFORMATION: The purpose of the roundtable meeting is to examine topical civil rights issues in Connecticut. The Committee will hear from elected officials, advocates and experts. The public is invited to the meeting and encouraged to address the committee following the presentations.

If other persons who plan to attend the meeting require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Persons interested in the issue are also invited to submit written comments; the comments must be received in the regional office by Monday, April 8, 2019. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlqAAA,* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Thursday, March 7, 2019; 12:00 p.m. (EST)

I. Welcome and Roll Call
II. Briefing Planning
III. Other Business
IV. Open Comment
V. Adjournment

Dated: February 13, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–02617 Filed 2–15–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of briefing meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a briefing meeting of the Connecticut Advisory Committee to the Commission will convene at 10:00 a.m. (EST) on Tuesday, April 2, 2019, in Room 1D of the Legislative Office Building, 300 Capitol Avenue, Hartford, CT. The purpose of the briefing is for the committee to examine the civil rights implications of the prosecutorial appointment process in Connecticut.

DATES: Tuesday, April 2, 2019, (EST).

Time: 10:00 a.m. (EST).

ADDRESSES: Legislative Office Building, Room 1D, 300 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov,* or 202–376–7533.

SUPPLEMENTARY INFORMATION: If other persons who plan to attend the meeting require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Time will be set aside at the end of the briefing so that members of the public may address the Committee after the formal presentations have been completed. Persons interested in the issue are also invited to submit written comments; the comments must be received in the regional office by Thursday, May 2, 2019. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlqAAA,* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Tentative Agenda

Tuesday, April 2, 2019, at 10:00 a.m. (EST)

I. Welcome and Introductions
II. Briefing
III. Open Session
IV. Adjournment

Dated: February 13, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–02618 Filed 2–15–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Meeting of Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis, Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, we are announcing a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting will address proposed improvements, extensions and research related to BEA's economic accounts. In addition, the meeting will include an update on recent statistical developments.

DATES: Friday, May 10, 2019. The meeting will begin at 9:00 a.m. and adjourn at 3:30 p.m.

ADDRESSES: The meeting will take place at the Suitland Federal Center, which is located at 4600 Silver Hill Road, Suitland, MD 20746.

FOR FURTHER INFORMATION CONTACT: Gianna Marrone, Program Analyst, U.S. Department of Commerce, Bureau of Economic Analysis, Suitland, MD 20746; telephone number: (301) 278–9282.

Public Participation: This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Gianna Marrone of BEA at (301) 278–9282 in advance. The meeting is physically accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Gianna Marrone at (301) 278–9282.

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999. The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, with a focus on new and rapidly growing areas of the U.S. economy. The committee provides recommendations from the perspectives of the economics profession, business, and government.

Dated: February 13, 2019.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2019–02651 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–4–2019]

Foreign-Trade Zone 16—Sault Ste. Marie, Michigan; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Sault Ste. Marie Economic Development Corporation, grantee of FTZ 16, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on February 11, 2019.

FTZ 16 was approved by the FTZ Board on June 11, 1973 (Board Order 94, 38 FR 15671; June 14, 1973).

The current zone includes the following site: *Site 1* (16 acres)—Sault Ste. Marie Industrial Park, Easterday Ave. & 12th St. West, Sault Ste. Marie.

The grantee's proposed service area under the ASF would be Chippewa County, Michigan, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The application indicates that the proposed service area is within and adjacent to the Sault Ste. Marie Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone to include its existing site as a ''magnet'' site. No subzones/usage-driven sites are being requested at this time.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is April 22, 2019. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 6, 2019.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.* For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: February 11, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–02589 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–15–2019]

Foreign-Trade Zone 18—San Jose, California; Subzone 18G Application for Expansion; Tesla, Inc., Livermore, California

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by

the City of San Jose, grantee of FTZ 18, requesting expanded subzone status for the facilities of Tesla, Inc. (Tesla), in Livermore, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on February 12, 2019.

Subzone 18G currently consists of the following sites: *Site 1* (25.28 acres)—3500 Deer Creek Rd, Palo Alto (Santa Clara County); *Site 2* (265.88 acres)—45500 Fremont Blvd., Fremont; *Site 3* (10 acres)—2875 Prune Ave, Fremont; *Site 4* (39.21 acres)—901 and 1055 Page Ave and 47700 Kato Rd., Fremont; *Site 5* (15.79)—47400 Kato Rd., Fremont; *Site 6* (31.91 acres)—6800 and 6900 Dumbarton Circle, Fremont; *Site 7* (0.67 acres)—3777 and 3785 Spinnaker Court, Fremont; *Site 8* (14.93 acres)—31353 Huntwood Ave., Hayward; *Site 9* (6.16 acres)—6753 Mowry Ave, Newark; *Site 10* (4.25 acres)—1250 Elko Dr. Sunnyvale (Santa Clara County); and, *Site 11* (10.60 acres)—1710 Little Orchard St., San Jose.

The proposed expanded subzone would include the following additional sites: *Site 12* (18.8 acres), 800 Atlantis Street, Livermore; and, *Site 13* (32.5 acres), 201 Discovery Avenue, Livermore. Because some of the sites of the proposed expanded subzone are outside FTZ 18's Alternative Site Framework (ASF) service area, authorization of the expanded subzone would not be under the ASF. No authorization for expanded production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 18.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is April 1, 2019. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 15, 2019.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: February 12, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–02590 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Chemical Weapons Convention Declaration and Report Handbook and Forms

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before April 22, 2019.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, 1401 Constitution Avenue NW, Room 6616, Washington, DC 20230 (or via the internet at *docpra@doc.gov.*)

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482–8093 or at *mark.crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Chemical Weapons Convention Implementation Act of 1998 and Commerce Chemical Weapons Convention Regulations (CWCR) specify the rights, responsibilities and obligations for submission of declarations and reports and inspections of certain chemical facilities. This information is required for the United States to comply with the Chemical Weapons Convention (CWC), an international arms control treaty.

II. Method of Collection

Submitted electronically or on paper.

III. Data

OMB Control Number: 0694–0091.

Form Number(s): Form 1–1, Form 1–2, Form 1–2A, Form 1–2B.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 779.

Estimated Time per Response: 10 minutes—12 hours per response.

Estimated Total Annual Burden Hours: 14,813.

Respondent's Obligation: Mandatory.

Legal Authority: Executive Order 13128 authorizes the Department of Commerce (DOC) to issue regulations necessary to implement the Act and U.S. obligations under Article VI and related provisions of the Convention.

Estimated Total Annual Cost to Public: $51,300.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–02645 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On January 30, 2019, the United States Court of International Trade (the CIT) entered final judgment sustaining the Department of Commerce's (Commerce) second remand results pertaining to the fifteenth administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (China) for Shenzhen Xinboda Industrial Co., Ltd. (Xinboda). Commerce is notifying the public that the final judgment in this case is not in harmony with the final results and partial rescission of the fifteenth antidumping duty administrative review, and that Commerce has amended the dumping margin found for Xinboda.

DATES: Applicable February 19, 2019.

FOR FURTHER INFORMATION CONTACT: Alexander Cipolla, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4956.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 2011, Commerce published the *Final Results* pertaining to mandatory respondent Xinboda, along with other exporters.[1] In the *Final Results,* Commerce selected India as the primary surrogate country.[2] Pursuant to section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), and applying our intermediate input methodology, Commerce used prices published for Azadpur in India to value whole raw garlic bulbs (bulbs). Commerce calculated a rate of $0.06 per kilogram for Xinboda, and the separate rate respondents.[3]

On April 16, 2014, the CIT remanded for Commerce to: (1) Consider information indicating the Azadpur bulb prices might involve a higher level of processing that potentially double-counted processing of factors of production (FOPs) reported by Xinboda that Commerce included in normal value (NV); (2) consider information indicating that prices for grade A bulbs already reflect prices for grade S.A. bulbs; (3) explain why Tata Tea's financial statements are useable, in light of information Xinboda provided allegedly indicating that Tata Tea received countervailable subsidies, and why Garlico Industries Limited's (Garlico) statements are not useable; (4) explain further the intermediate labor methodology or revise the surrogate value (SV) for labor; and (5) explain why zeroing is permissible in non-market economy (NME) reviews.[4]

On August 4, 2014, Commerce filed the *First Remand Results,* revising Xinboda's rate from $0.06 per kilogram to $0.02 per kilogram.[5] In accordance with the *First Remand Opinion,* Commerce adjusted its NV calculation by removing the costs of self-produced and consumed green leaf from the surrogate manufacturing overhead ratio from Tata Tea. In addition, we revised our SV for labor, in compliance with Commerce's current surrogate labor rate methodology. We revised our margin calculation to exclude the inland freight expense of transportation expenses for raw garlic bulbs from Indian growers to the Azadpur market.[6] Commerce continued to rely on grade A and grade S.A. bulb data from the Azadpur market data, explaining that those prices were ''more similar'' to the input being valued and that the Researcher Declaration submitted by Xinboda was unreliable and did not undermine the Azadpur prices to the point of being unusable. Commerce also continued to rely on Tata Tea's financial statements in order to value the surrogate financial ratios and gave a more fulsome explanation of Commerce's practice in interpreting the ''reason to believe or suspect'' standard regarding whether financial statements contain evidence of countervailable subsidies. Finally, we continued to utilize our zeroing methodology.

On December 15, 2017, the CIT sustained Commerce's application of its zeroing methodology, and the SV for labor in the *First Remand Results.*[7] However, the Court again remanded the *First Remand Results* for Commerce to reconsider the SV for whole raw garlic bulbs and the selection of surrogate financial statements.[8] Per the Court's instructions, Commerce recalculated Xinboda's rate using only the contemporaneous grade A bulb prices from the Azadpur data. In addition, as directed by the Court, Commerce adjusted the surrogate bulb value in order to reflect the expenses associated with intermediaries and further processing of the garlic bulb. Moreover, Commerce continued to apply financial ratios derived from the 2010 unconsolidated financial statements of Tata Tea, after further explaining our practice regarding the ''reason to believe or suspect'' standard for countervailable subsidies in financial statements.[9] The calculations performed in the *Second Remand Results* resulted in a weighted-average dumping margin of $0.00 per kilogram for Xinboda.

On January 30, 2019, the CIT sustained Commerce's *Second Remand Results* with respect to the fifteenth administrative review of the AD order on fresh garlic from China.[10]

Timken Notice

In its decision in *Timken,*[11] as clarified by *Diamond Sawblades,*[12] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Act, Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's January 30, 2019, final judgment sustaining the *Second Remand Results* constitutes a final decision of the Court that is not in harmony with Commerce's

[1] *See Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, in Part, of the 2008–2009 Antidumping Duty Administrative Review,* 76 FR 37321 (June 27, 2011) (*Final Results*) and accompanying Issues and Decision Memorandum (IDM).

[2] *See* IDM.

[3] *See Final Results,* 76 FR at 37326.

[4] *See Shenzhen Xinboda Industrial Co., Ltd.* v. *United States,* Slip Op. 14–45, Court No. 11–00267 (CIT 2014) (*First Remand Opinion*).

[5] *See* ''Final Results of Redetermination Pursuant to Remand, *Shenzhen Xinboda Industrial Co., Ltd.* v. *United States,* Court of International Trade No. 11–00267, Slip Op. 14–45,'' dated August 14, 2014 (*First Remand Results*).

[6] *Id.* at 6.

[7] See *Shenzhen Xinboda Industrial Co.* v. *United States,* CIT Slip Op. 17–166, Consol. Ct. No. 11–00267 (December 15, 2017) (*Second Remand Opinion*).

[8] *See Second Remand Opinion* at 4.

[9] *See* Memorandum, ''Final Results of Redetermination Pursuant to Remand: Fresh Garlic from the People's Republic of China, *Shenzhen Xinboda Industrial Co., Ltd.* v. *United States,* U.S. Court of International Trade, Consol. Ct. No. 11–00267, Slip Op. 17–166,'' dated April 24, 2018 (*Second Remand Results*).

[10] *See Shenzhen Xinboda Industrial Co., Ltd.* v. *United States,* CIT Slip Op. 19–16, Consol. Ct. No. 11–00267 (January 30, 2019) (Slip Op. 19–16).

[11] *See Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[12] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Final Results.[13] This notice is published in fulfillment of the *Timken* publication requirements.

Amended Final Results

Because there is now a final court decision, we are amending the *Final Results* with respect to the dumping margins calculated for Xinboda. Based on the *Second Remand Results,* as affirmed by the CIT, the revised dumping margin for Xinboda, for the period of review of November 1, 2008, through October 31, 2009, is $0.00 per kilogram.

Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld on appeal, Commerce will instruct U.S. Customs and Border Protection to liquidate the unliquidated entries of subject merchandise based on the revised dumping margin above.

Cash Deposit Requirements

Commerce will not update the cash deposit requirements for Xinboda as it has later-determined rates from subsequent administrative reviews.

Notification to Interested Parties

This notice is issued and published in accordance with section 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: February 11, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–02585 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC) Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of an Open Meeting of a Federal Advisory Committee.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The teleconference is scheduled for Thursday, March 7, 2019, at 2:30 p.m. Eastern Daylight Time (EDT). The deadline for members of the public to register or to submit written comments for dissemination prior to the teleconference is 5:00 p.m. EDT on Thursday, February 28, 2019. The deadline for members of the public to request auxiliary aids is 5:00 p.m. EDT on Tuesday, February 26, 2019.

ADDRESSES: The meeting will take place via teleconference. For logistical reasons, all participants are required to register in advance by the date specified above. Please contact Ms. Amy Kreps at the contact information below to register and obtain call-in information.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Kreps, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 28018, 1401 Constitution Avenue NW, Washington, DC 20230 (Phone: 202–482–3835; Fax: 202–482–5665; email: *amy.kreps@trade.gov*)

SUPPLEMENTARY INFORMATION: The teleconference will take place on March 7, 2019, from 2:30 p.m. to 4:30 p.m. EDT. The general meeting is open to the public, and time will be permitted for public comment from 4:15–4:30 p.m. EDT. Members of the public seeking to attend the teleconference are required to register in advance. Those interested in attending must provide notification by Thursday, February 28, 2019, at 5:00 p.m. EDT, via the contact information provided above. This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to OEEI at (202) 482–3835 no less than one week prior to the teleconference. Requests received after this date will be accepted, but it may not be possible to accommodate them.

Written comments concerning ETTAC affairs are welcome any time before or after the meeting. To be considered during the meeting, written comments must be received by Tuesday, February 26, 2019, at 5:00 p.m. EDT to ensure transmission to the members before the teleconference. Minutes will be available within 30 days of this meeting.

Topic to be considered: The agenda for the March 7, 2019, meeting includes providing the newly re-chartered committee with briefings on Federal Advisory Committee Act (FACA) requirements and an overview of ETTAC operations. OEEI will make the final agenda available to the public one week prior to the meeting. Please email *amy.kreps@trade.gov* or contact 202–482–3835 for a copy.

Background: The ETTAC is mandated by Section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c), to advise the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, through the Secretary of Commerce, on the development and administration of programs to expand U.S. exports of environmental technologies, goods, services, and products. The ETTAC was most recently re-chartered until August 2020.

Dated: February 13, 2019.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2019–02674 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–874]

Certain Steel Nails From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Daejin Steel Co. (Daejin), Koram Inc. (Koram), and Korea Wire Co. Ltd. (Kowire) made sales of certain steel nails (steel nails) from the Republic of Korea (Korea) at less than normal value during the period of review (POR), July 1, 2016, through June 30, 2017.

DATES: Applicable February 19, 2019.

FOR FURTHER INFORMATION CONTACT: Maliha Khan (Daejin), Trisha Tran (Koram), or Robert Galantucci (Kowire), AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0895, (202) 482–4852, or (202) 482–2923, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 12, 2018, Commerce published the *Preliminary Results* of the 2016–2017 antidumping duty administrative review of steel nails from Korea.[1] Commerce conducted verification of Koram and Kowire from July 23, 2018 through August 2, 2018. We invited interested parties to

[13] *See Final Results.*

[1] *See Certain Steel Nails from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 32265 (July 12, 2018) and accompanying Preliminary Decision Memorandum (*Preliminary Results*).

comment on the *Preliminary Results* and the verification reports. On September 25, 2018, Daejin, Kowire and Mid Continent Steel & Wire, Inc. (the petitioner) submitted case briefs.[2] On October 1, 2018, the petitioner and Kowire submitted rebuttal briefs.[3] On October 26, 2018, Commerce postponed the final results of this review until December 12, 2018.[4] On December 10, 2018, Commerce postponed the deadline for the final results of this review until January 8, 2019.[5] As a result of the partial government shutdown, the deadline for the final results of this review was revised to February 19, 2019.[6]

Scope of the Order

The merchandise covered by this order is nails having a nominal shaft length not exceeding 12 inches.[7] Merchandise covered by the order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Nails subject to this order also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. For a complete description of the scope of the order, *see* the IDM.[8]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the IDM, which is hereby adopted by this notice. A list of the issues raised is attached to this notice as an Appendix. The IDM 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 Department of Commerce building. In addition, a complete version of the IDM can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed IDM and the electronic versions of the IDM are identical in content.

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties, we made certain revisions to the preliminary margin calculations only for Kowire and Koram. The IDM contains a description of these revisions.[9]

Final Results of the Administrative Review

We have determined the following weighted-average dumping margins to the firms listed below for the period July 1, 2016 through June 30, 2017:

Exporter\producer	Weighted-average dumping margin (percent)
Daejin Steel Co	3.02
Koram Inc	10.64
Korea Wire Co., Ltd	0.96

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protections (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. We will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).

For entries of subject merchandise during the POR produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. 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 administrative review for all shipments of subject merchandise 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 the respondents noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 11.80 percent, the all-others rate established in the investigation.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

[2] *See* Letter, ''Certain Steel Nails from Korea: Case Brief on Korea Wire Co., Ltd.,'' dated September 25, 2018 (Petitioner Case Brief—Kowire); Letter ''Steel Nails from the Republic of Korea—Case Brief,'' dated September 25, 2018 (Kowire Case Brief); Letter, ''Administrative Review of the Antidumping Duty Order on Certain Steel Nails from Korea—Case Brief of Daejin Steel Co.,'' dated September 25, 2018 (Daejin Case Brief).

[3] *See* Letter, ''Certain Steel Nails from Korea: Rebuttal Brief to Daejin Steel Co.'s Case Brief,'' dated October 1, 2018 (Petitioner Rebuttal—Daejin); Letter, ''Steel Nails from the Republic of Korea—Rebuttal Brief,'' dated October 1, 2018 (Kowire Rebuttal Brief).

[4] *See* Memorandum, ''Certain Steel Nails from the Republic of Korea: Extension of Deadline for the Final Results of Antidumping Duty Administrative Review; 2016–2017,'' dated October 26, 2018.

[5] *See* Memorandum, ''Certain Steel Nails from the Republic of Korea: Extension of Deadline for the Final Results of Antidumping Duty Administrative Review; 2016–2017,'' dated December 10, 2018.

[6] *See* Memorandum, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[7] The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

[8] *See* Memorandum, ''Issues and Decision Memorandum for Final Results of the 2016–2017 Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the Republic of Korea,'' (IDM) dated concurrently with, and hereby adopted by, this notice.

[9] *See also* Memorandum, ''Analysis Memorandum for the Final Determination of the Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea: Korea Wire Co. Ltd.,'' dated concurrently with this notice; Memorandum, ''Analysis Memorandum for the Final Determination of the Antidumping Duty Administrative Review of Certain Steel Nails from the Republic of Korea: Koram Inc.,'' dated concurrently with this notice.

[10] *See Certain Steel Nails from the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 80 FR 28955 (May 20, 2015).

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping 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). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: February 8, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final IDM

I. Summary
II. Background
III. Scope of the Order
IV. Changes Since the Preliminary Results
V. Discussion of the Issues

Daejin-Specific Issues

Comment 1: Scrap Offset
Comment 2: Cost Variations Not Due to Differences in Physical Characteristics
Comment 3: SG&A Expenses
Comment 4: Differential Pricing

Kowire-Specific Issues

Comment 5: Date of Sale
Comment 6: Relationship with Subcontractor A
Comment 7: Affiliated Party Transactions
VI. Recommendation

[FR Doc. 2019–02584 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–822]

Welded Line Pipe From the Republic of Turkey: Notice of Court Decision Not in Harmony With the Final Determination in the Less Than Fair Value Investigation and Notice of Amended Final Determination and Amended Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 19, 2018, the United States Court of International Trade (CIT or the Court) entered final judgment sustaining the final results of the second remand redetermination pertaining to the antidumping duty (AD) investigation of welded line pipe (WLP) from the Republic of Turkey (Turkey). The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with Commerce's final determination of the AD investigation of WLP from Turkey and that Commerce is amending the final determination and AD order with respect to the weighted-average dumping margins and AD cash deposit rates for Tosçelik Profil ve Sac Endustrisi, A.Ş. and Tosyali Dis Ticaret A.Ş. (collectively, Tosçelik), Çayirova Boru Sanayi ve Ticaret A.Ş. and Yücel Boru Ithalat-Ihracat ve Pazarlama A.S. (collectively, Çayirova), and the companies covered by the all-others rate.

DATES: Applicable December 29, 2018.

FOR FURTHER INFORMATION CONTACT: Alice Maldonado and David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4682 and (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 13, 2015, Commerce published its *Final Determination* in the AD investigation of WLP from Turkey.[1] On December 1, 2015, Commerce published the *Order* resulting from the investigation.[2] As reflected in Commerce's *Final Determination* and the *Order,* Commerce calculated weighted-average dumping margins of 6.66 percent for Tosçelik, 22.95 percent for Çayirova, and 7.10 percent for all others.[3]

Tosçelik and Çayirova (*i.e.,* the respondents) filed suit at the CIT to challenge various aspects of Commerce's final determination. On August 22, 2017, the CIT sustained in part, and remanded in part, Commerce's *Final Determination.* Specifically, the Court sustained Commerce's date of sale determination and granted Commerce's request for a voluntary remand to further explain or reconsider the calculation of the duty drawback adjustments for the respondents.[4] On March 1, 2018, Commerce issued the First Remand Redetermination, in which it provided further explanation regarding why Commerce limited the duty drawback adjustments in the *Final Determination* to information contained only on import certificates (also known as ''DIIBs'') that were closed during the period of investigation (POI).[5]

After considering Commerce's further explanation, on October 24, 2018, the CIT held that Commerce's limitation of the duty drawback adjustments to information contained only on DIIBs closed during the POI was not reasonable based on the specific record of this case (which contained verified information on DIIBs closed after the POI).[6] The Court remanded the case and directed Commerce to recalculate the duty drawback adjustments for Tosçelik and Çayirova to account for one additional DIIB for each of the respondents.[7]

On December 7, 2018, Commerce issued the Second Remand Redetermination in accordance with the CIT's order.[8] On remand, Commerce, recalculated the duty drawback adjustments for Çayirova and Tosçelik

[1] *See Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value,* 80 FR 61362 (October 13, 2015) (*Final Determination*) and accompanying Issues and Decision Memorandum (IDM).

[2] *See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056 (December 1, 2015) (*Order*).

[3] *See Final Determination,* 80 FR at 61364; *Order,* 80 FR at 75,057. The cash deposit rates reflect an adjustment for export subsidies for each respondent found in the final determination of the companion countervailing duty investigation of WLP from Turkey.

[4] *See Tosçelik Profil ve Sac Endustrisi, A.S.* v. *United States,* 256 F. Supp. 3d 1260 (CIT August 22, 2017).

[5] *See* Final Results of Redetermination Pursuant to Court Remand, Consol. Court No. 15–00339 (March 1, 2018) (First Remand Redetermination), *available at https://enforcement.trade.gov/remands/17-107.pdf.*

[6] *See Tosçelik Profil ve Sac Endustrisi, A.S.* v. *United States,* Consol. Court No. 15–00339, Slip Op. 18–148 (CIT October 24, 2018).

[7] *See id.*

[8] *See* Final Results of Second Redetermination Pursuant to Court Remand, Consol. Court No. 15–00339 (December 7, 2018) (Second Remand Redetermination).

to include information from DIIBs that were closed after the POI. As a result, the estimated weighted-average dumping margin for Çayirova becomes 12.52%; and for Tosçelik becomes 4.10%. The all-others rate becomes 4.33%.

On December 19, 2018, the CIT entered judgment sustaining Commerce's *Final Redetermination* with respect to the date of sale determination and sustaining the Second Remand Redetermination with respect to the duty drawback adjustments.[9] Thus, the effective date of this notice is December 29, 2018.

Timken Notice

In its decision in *Timken,*[10] as clarified by *Diamond Sawblades,*[11] the Court of Appeals for the Federal Circuit (Federal Circuit) held that, pursuant to section 516A of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision.[12] The CIT's December 19, 2018, judgment constitutes a final decision of that court that is not in harmony with Commerce's *Final Determination* and *Order.* Thus, this notice is published in fulfillment of the publication requirements of *Timken* and section 516A of the Act.

Amended Final Determination and Amended Order

Because there is now a final court decision, Commerce is amending its *Final Determination* and *Order* with respect to the weighted-average dumping margins and AD cash deposit rates for Çayirova, Tosçelik, and the companies covered by the all-others rate. The revised weighted-average dumping margins and cash deposit rates for these entities are as follows:

Exporter/producer	Weighted-average dumping margin (percent)	Cash deposit (percent)
Çayirova Boru Sanayi ve Ticaret A.S./Yücel Boru Ithalat-Ihracat ve Pazarlama A.S	12.52	11.66
Tosçelik Profil ve Sac Endustrisi A.S./Tosyali Dis Ticaret A.S	4.10	3.24
All Others	4.33	3.47

Note: The cash deposit rates listed above are adjusted to account for the applicable export subsidy rate of 0.86 percent found in the final determination of the companion countervailing duty investigation of this merchandise imported from Turkey.[13]

Cash Deposit Requirements

Because the above-referenced exporters/producers do not have superseding cash deposit rates, *i.e.,* there have been no final results published in subsequent administrative reviews, Commerce will instruct U.S. Customs and Border Protection (CBP) to collect the revised cash deposit amounts listed above for Çayirova, Tosçelik, and companies covered by the all others rate, effective, December 29, 2018.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c)(1) and (e), and 777(i)(1) of the Act.

Dated: February 12, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–02655 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See Tosçelik Profil ve Sac Endustrisi, A.S.* v. *United States,* Consol. Court No. 15–00339, Slip Op. 18–174 (CIT December 19, 2018).

[10] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[11] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[12] *See* sections 516A(c) and (e) of the Act.

[13] *See Order,* 80 FR at 75057–58.

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC) Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of an open meeting of a Federal Advisory Committee.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The meeting is scheduled for March 19, 2019, from 8:45 a.m. to 4:30 p.m. and March 20, 2019, from 8:45 a.m. to 2:45 p.m. Eastern Daylight Time (EDT). The deadline for members of the public to register or to submit written comments for dissemination prior to the meeting is 5:00 p.m. EDT on Monday, March 5, 2019. The deadline for members of the public to request auxiliary aids is 5:00 p.m. EDT on Monday, March 5, 2019.

ADDRESSES: The meeting will take place in the Research Library at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. To register and obtain call-in information; submit comments; or request auxiliary aids, please contact: Ms. Amy Kreps, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 28018, 1401 Constitution Avenue NW, Washington, DC 20230 or email: *amy.kreps@trade.gov*

FOR FURTHER INFORMATION CONTACT: Ms. Amy Kreps, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 28018, 1401 Constitution Avenue NW, Washington, DC 20230 (Phone: 202–482–3835; Fax: 202–482–5665; email: *amy.kreps@trade.gov*)

SUPPLEMENTARY INFORMATION: The meeting will take place on March 19, 2019, from 8:45 a.m. to 4:30 p.m. and on March 20, 2019, from 8:45 a.m. to 2:45 p.m. EDT. The general meeting is open to the public, and time will be permitted for public comment on March 20, 2019, from 2:30–2:45 p.m. EDT. Members of the public seeking to attend the meeting are required to register in advance. Those interested in attending must provide notification by Monday, March 5, at 5:00 p.m. EDT, via the contact information provided above. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–3835 no less than one week prior to the meeting. Requests

received after this date will be accepted, but it may not be possible to accommodate them.

Written comments concerning ETTAC affairs are welcome any time before or after the meeting. To be considered during the meeting, written comments must be received by Monday, March 5, 2019, at 5:00 p.m. EDT to ensure transmission to the members before the meeting. Minutes will be available within 30 days of this meeting.

Topic to be considered: During the March 19 & 20, 2019, meeting, the newly re-chartered ETTAC will discuss its priorities and objectives for recommendations and deliberate on subcommittee leadership as well as subcommittee topics. The agenda also includes providing committee members with introductions to agencies participating in the U.S. interagency Environmental Trade Working Group (ETWG). OEEI will make the final agenda available to the public one week prior to the meeting. Please email *amy.kreps@trade.gov* or contact 202–482–3835 for a copy.

Background: The ETTAC is mandated by Section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c), to advise the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, through the Secretary of Commerce, on the development and administration of programs to expand U.S. exports of environmental technologies, goods, services, and products. The ETTAC was most recently re-chartered until August 2020.

Dated: February 13, 2019.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2019–02675 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–069, C–570–070]

Rubber Bands From the People's Republic of China: Antidumping Duty and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing antidumping duty (AD) and countervailing duty (CVD) orders on rubber bands from the People's Republic of China (China).

DATES: Applicable February 19, 2019.

FOR FURTHER INFORMATION CONTACT: Stephanie Berger at (202) 482–2483 (AD) and Kristen Johnson at 202–482–4793 (CVD), AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(d) and 735(d) of the Tariff Act of 1930, as amended (the Act), on November 20, 2018, Commerce published its affirmative final determination of sales at less than fair value (LTFV) and its affirmative final determination that countervailable subsidies are being provided to producers and exporters of rubber bands from China.[1] On February 11, 2019, the ITC notified Commerce of its final affirmative determinations that an industry in the United States is materially injured by reason of LTFV imports and subsidized imports of rubber bands from China, within the meaning of sections 705(b)(1)(A)(i) and 735(b)(1)(A)(i) of the Act.[2] The ITC also notified Commerce of its negative findings concerning critical circumstances with regard to imports of this product from China.[3]

Scope of the Orders

The products covered by these orders are rubber bands from China. For a complete description of the scope of the orders, *see* the Appendix to this notice.

AD Order

On February 11, 2019, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of rubber bands from China that are sold in the United States at LTFV. Therefore, in accordance with section 735(c)(2) of the Act, we are issuing this AD order. Because the ITC determined that imports of rubber bands from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China entered, or withdrawn from warehouse, for consumption are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of rubber bands from China. Antidumping duties will be assessed on unliquidated entries of rubber bands from China entered, or withdrawn from warehouse, for consumption on or after September 6, 2018, the date of publication of the AD preliminary determination[4] and before January 4, 2019. Section 733(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Therefore, entries of subject merchandise from China made on or after January 4, 2019, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of antidumping duties due to Commerce's discontinuation of the suspension of liquidation.

Continuation of Suspension of Liquidation—AD

In accordance with section 736 of the Act, we will instruct CBP to reinstitute the suspension of liquidation on entries of rubber bands from China, effective on the date of publication in the **Federal Register** of the ITC's final affirmative injury determination. These instructions suspending liquidation will remain in effect until further notice.

We will also instruct CBP to require cash deposits equal to the amount as indicated below. Accordingly, effective on the date of publication in the **Federal Register** of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on the subject merchandise, a cash deposit

[1] *See Rubber Bands from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 58547 (November 20, 2018) (*AD China Rubber Bands Final*); and *Rubber Bands from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 83 FR 58538 (November 20, 2018) (*CVD China Rubber Bands Final*).

[2] *See* Letter to the Honorable Gary Taverman, Acting Assistance Secretary of Commerce for Enforcement and Compliance, from David S. Johanson, Chairman of the ITC, regarding ''Notification of ITC Final Determinations,'' dated January 7, 2019 (Filed in ACCESS on February 11, 2019) (ITC Notification); *see also Rubber Bands from China,* Investigation Nos. 701–TA–598 and 731–TA–1408 (Final), (USITC Publication 4863).

[3] *Id.*

[4] *See Less-Than-Fair-Value Investigation of Rubber Bands from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances,* 83 FR 45213 (September 6, 2018) (*AD China Rubber Bands Prelim*).

equal to the estimated weighted-average dumping margin listed below.

The estimated weighted-average dumping margin is as follows:

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (percent)
China-Wide Entity	China-Wide Entity	27.27	26.65

Critical Circumstances

With regard to the ITC's negative critical circumstances determination on imports of rubber bands from China, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated antidumping duties with respect to entries of rubber bands from China, entered, or withdrawn from warehouse, for consumption on or after June 8, 2018 (*i.e.,* 90 days prior to the date of publication of the *AD China Rubber Bands Prelim*), but before September 6, 2018 (*i.e.,* the date of publication of the *AD China Rubber Bands Prelim*).

CVD Order

On February 11, 2019, in accordance with section 705(d) of the Act, the ITC notified Commerce of its final determination that the industry in the United States producing rubber bands is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of rubber bands from China.[5] Therefore, in accordance with section 705(c)(2) of the Act, we are issuing this CVD order.

As a result of the ITC's final determination, in accordance with section 706(a) of the Act. Commerce will direct CBP to assess, upon further instruction by Commerce, countervailing duties on unliquidated entries of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after July 9, 2018, the date on which Commerce published the *CVD China Rubber Bands Prelim* in the **Federal Register**,[6] and before November 6, 2018, the effective date on which Commerce instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than 120 days. Therefore, entries of subject merchandise from China made on or after November 6, 2018, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not subject to the assessment of countervailing duties due to Commerce's discontinuation of the suspension of liquidation.

Suspension of Liquidation—CVD

In accordance with section 706 of the Act, Commerce will direct CBP to reinstitute the suspension of liquidation of subject merchandise from China, effective on the date of publication of the ITC's final affirmative injury determination in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of rubber bands in an amount based on the net countervailable subsidy rates for the subject merchandise. On or after the date of publication of the ITC's final injury determination in the **Federal Register**, Commerce will instruct CBP to require, at the same time as importers would normally deposit estimated duties on the subject merchandise, a cash deposit for each entry of subject merchandise equal to the subsidy rates listed below. The all-others rate applies to all producers or exporters not specifically listed below, as appropriate.

Company	Subsidy rate (percent)
Graceful Imp. & Exp. Co., Ltd	125.77
Moyoung Trading Co., Ltd	125.77
Ningbo Syloon Imp & Exp Co., Ltd	125.77
All-Others	125.77

Critical Circumstances

With regard to the ITC's negative critical circumstances determination on imports of rubber bands from China, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated countervailing duties with respect to entries of rubber bands from China, entered, or withdrawn from warehouse, for consumption on or after April 10, 2018 (*i.e.,* 90 days prior to the date of publication of the CVD *China Rubber Bands Prelim*), but before July 9, 2018 (*i.e.,* the date of publication of the *CVD China Rubber Bands Prelim*).[7]

Notification to Interested Parties

This notice constitutes the AD and CVD orders with respect to rubber bands from China pursuant to sections 706(a) and 736(a) of the Act. Interested parties can find a list of orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are published in accordance with sections 706(a) and 736(a) of the Act and 19 CFR 351.211(b).

Dated: February 13, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The scope of the orders covers bands made of vulcanized rubber, with a flat length, as actually measured end-to-end by the band lying flat, no less than ½ inch and no greater than 10 inches; with a width, which measures the dimension perpendicular to the length, actually of at least 3/64 inch and no greater than 2 inches; and a wall thickness actually from 0.020 inch to 0.125 inch. Vulcanized rubber has been chemically processed into a more durable material by the addition of sulfur or other equivalent curatives or accelerators. Subject products are included regardless of color or inclusion of printed material on the rubber band's surface, including but not limited to, rubber bands with printing on them, such as a product name, advertising, or slogan, and printed material (*e.g.,* a tag) fastened to the rubber band by an adhesive or another temporary type of connection. The scope includes vulcanized rubber bands which are contained or otherwise exist in various forms and packages, such as, without limitation,

[5] *See* ITC Notification.

[6] *See Rubber Bands from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination,* 83 FR 31729 (July 9, 2018) (*CVD China Rubber Bands Prelim*).

[7] *See Rubber Bands from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances, in Part, in the Countervailing Duty Investigation, and Amendment to the Scope of the Preliminary Determination in the Countervailing Duty Investigation,* 83 FR 45217 (September 6, 2018).

vulcanized rubber bands included within a desk accessory set or other type of set or package, and vulcanized rubber band balls. The scope excludes products that consist of an elastomer loop and durable tag all-in-one, and bands that are being used at the time of import to fasten an imported product.

Excluded from the scope of the orders are vulcanized rubber bands of various sizes with arrow shaped rubber protrusions from the outer diameter that exceeds at the anchor point a wall thickness of 0.125 inches and where the protrusion is used to loop around, secure and lock in place.

Excluded from the scope of the orders are yarn/fabric-covered vulcanized rubber hair bands, regardless of size.

Merchandise covered by the orders is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 4016.99.3510. Merchandise covered by the scope may also enter under HTSUS subheading 4016.99.6050. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

[FR Doc. 2019–02783 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–809]

Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Novolipetsk Steel (NLMK) did not make a *bona fide* sale during the period of review (POR) December 1, 2016, through November 30, 2017; therefore, we are preliminarily rescinding this administrative review. Interested parties are invited to comment on the preliminary results of this review.

DATES: Applicable February 19, 2019.

FOR FURTHER INFORMATION CONTACT: John McGowan or Joshua DeMoss, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3019 or (202) 482–3362, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the notice of initiation of this review on February 9, 2016.[1] Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), Commerce extended these preliminary results by 90 days until December 4, 2018.[2] Commerce then extended the preliminary results by an additional 30 days until January 3, 2019.[3]

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[4] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the preliminary results is now February 12, 2019.

Scope of the Order

The product covered by this administrative review is hot-rolled steel from Russia. The full text of the scope of the order is contained in the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum, which is hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Rescission of the Antidumping Administrative Review of NLMK

As discussed in the *Bona Fide* Sales Analysis Memorandum,[5] Commerce preliminarily finds that the sale made by (Novolipetsk Steel) NLMK serving as the basis for this review is not a *bona fide* sale. Commerce reached this conclusion based on the totality of the record information surrounding NLMK's reported sale, including the sales price and quantity, the limited number of sales (*i.e.,* one sale) that NLMK reported during the POR, and customer correspondence.

Because the non-*bona fide* sale was the only reported sale of subject merchandise during the POR, we find that NLMK had no reviewable transactions during this POR. Accordingly, we are preliminarily rescinding this administrative review.[6] Given that the factual information used in our *bona fides* analysis of NLMK's sale involves business proprietary information, *see* the *Bona Fide* Sales Analysis Memorandum for a full discussion of the basis for our preliminary determination.

Disclosure and Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of the preliminary results of review.[7] Rebuttals to case briefs may be filed no later than five days after the briefs are filed.[8] All rebuttal comments must be limited to comments raised in the case briefs.[9]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement & Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 6832 (February 9, 2016) (*Initiation Notice*).

[2] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled ''Certain Hot-Rolled Carbon Steel Flat Products from the Russian Federation: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2014/2015,'' dated August 17, 2016.

[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled ''Certain Hot-Rolled Carbon Steel Flat Products from the Russian Federation: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2014/2015,'' dated December 16, 2016.

[4] *See* memorandum to the Record from 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, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[5] *See* Memorandum to Abdelali Elouaradia, Acting Director of Office VI, from John C. McGowan and Joshua A. DeMoss, International Trade Compliance Analysts entitled: ''2016–2017 Antidumping Duty Administrative Review of Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation: Preliminary *Bona Fide* Sales Analysis for Novolipetsk Steel,'' dated February 12, 2019.

[6] *See* 19 CFR 351.213(d)(3).

[7] *See* 19 CFR 351.309(c).

[8] *See* 19 CFR 351.309(d)(1).

[9] *See* 19 CFR 351.309(d)(2).

notice.[10] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Oral argument presentations will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a date and time to be determined.[11] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 18022, and stamped with the date and time of receipt by 5 p.m. ET on the due date.[12]

Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs received, no later than 90 days after the date these preliminary results of review are issued pursuant to section 751(a)(2)(B) of the Act.

Assessment Rates

If Commerce proceeds to a final rescission of this administrative review, the assessment rate to which NLMK's shipments will be subject will not be affected by this review. If Commerce does not proceed to a final rescission of this administrative review, pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer-specific) assessment rates based on the final results of this review.

Cash Deposit Requirements

If Commerce proceeds to a final rescission of this administrative review, NLMK's cash deposit rate will continue to be the all-others rate of 184.56 percent. If Commerce issues final results for this administrative review, Commerce will instruct CBP to collect cash deposits, effective upon the publication of the final results, at the rates established therein.

[10] *See* 19 CFR 351.310(c).

[11] *See* 19 CFR 351.310(d).

[12] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 11, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Conclusion

[FR Doc. 2019–02586 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG628

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Railroad Dock Dolphin Installation Project, Skagway, Alaska

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

ACTION: Notice; Issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to White Pass & Yukon Route (WP&YR) to incidentally take, by Level A and Level B harassment, seven species of marine mammals during the Railroad Dock dolphin installation project in Skagway, Alaska.

DATES: This IHA is valid from February 15, 2019 through February 14, 2020.

FOR FURTHER INFORMATION CONTACT: Wendy Piniak, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the authorization, application, and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity.'' The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On August 21, 2018, NMFS received a request from WP&YR for an IHA to take marine mammals incidental to the

Railroad Dock dolphin installation project in Skagway, Alaska. WP&YR submitted a revised version of the application on November 9, 2018, which was deemed adequate and complete on November 15, 2018. WP&YR's request is for take of seven species of marine mammals by Level B harassment and Level A harassment incidental to impact pile driving, vibratory pile driving and removal, and down-the-hole drilling activities. Neither WP&YR nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. In-water activities (pile installation and extraction) associated with the project are scheduled to begin in February, 2019, and be completed April 30, 2019.

Description of Activity

WP&YR requested the authorization of take of small numbers of marine mammals incidental to pile driving/removal and down-the-hole drilling associated with the installation of two new 200-ton pile supported mooring dolphins in Skagway Harbor, Alaska. The new mooring dolphins will provide ample safe moorage when both Norwegian Breakaway and Royal Caribbean Quantum class cruise ship vessels are in port. The existing dolphin infrastructure does not allow for both cruise ships to be moored at the dock at the same time. The additional dolphins will allow for both ships to be docked simultaneously. To facilitate dual mooring, the project includes the installation of two 200-ton dolphins, each comprised of six 42-inch steel permanent piles 300 feet in length. WP&YR will also install and subsequently remove 14 36-inch template (temporary) piles (200 feet in length) at the two dolphin locations which are approximately 100 feet and 200 feet, respectively, south of the existing southernmost mooring dolphin at the WP&YR Railroad Dock. The template and permanent piles are comprised of two to three 100-feet long segments which will be spliced (*i.e.,* welded) together as they are installed. All temporary and permanent piles will require a combination of three pile installation methods: vibratory driving, impact driving, and down-the-hole drilling. Sounds produced by these activities may result in take, by Level A and Level B harassment, of marine mammals located in Taiya Inlet, Alaska.

In-water activities (pile installation and extraction) associated with the project are scheduled to begin in February, 2019, and be completed April 30, 2019. Pile installation and removal will occur over the course of the three months. WP&YR anticipates up to 10 hours of activity (vibratory driving, impact driving, and down-the-hole drilling) during daylight hours will occur per day.

A detailed description of the planned activities is provided in the **Federal Register** notice announcing the proposed IHA (83 FR 64541; December 17, 2018). Since that time no changes have been made to WP&YR's planned activities. Therefore, a detailed description is not provided here. Please refer to the proposed IHA **Federal Register** notice for a detailed description of the activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to WP&YR was published in the **Federal Register** on December 17, 2018 (83 FR 64541). That notice described, in detail, WP&YR's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, proposed amount and manner of take, and proposed mitigation, monitoring and reporting measures. On January 31, 2019, NMFS received a comment letter from the Marine Mammal Commission (Commission); the Commission's recommendations and our responses are provided here, and the comments have been posted online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* The Commission recommended that NMFS issue the IHA, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

Comment 1: The Commission expressed concern that the renewal process proposed in the **Federal Register** notice is inconsistent with the statutory requirements. The Commission recommended that NMFS refrain from implementing its proposed renewal process and instead use abbreviated **Federal Register** notices and reference existing documents to streamline the incidental harassment authorization process. The Commission further recommended that if NMFS did not pursue a more general route, NMFS should provide the Commission and the public with a legal analysis supporting its conclusion that the process is consistent with the requirements under section 101(a)(5)(D) of the MMPA.

Response 1: The notice of the proposed IHA expressly notifies the public that under certain, limited conditions an applicant could seek a renewal IHA for an additional year. The notice describes the conditions under which such a renewal request could be considered and expressly seeks public comment in the event such a renewal is sought. Additional reference to this solicitation of public comment has recently been added at the beginning of **Federal Register** notices that consider renewals. NMFS appreciates the streamlining achieved by the use of abbreviated **Federal Register** notices and intends to continue using them for proposed IHAs that include minor changes from previously issued IHAs, but which do not satisfy the renewal requirements. However, we believe our proposed method for issuing renewals meets statutory requirements and maximizes efficiency. Importantly, such renewals would be limited to where the activities are identical or nearly identical to those analyzed in the proposed IHA, monitoring does not indicate impacts that were not previously analyzed and authorized, and the mitigation and monitoring requirements remain the same, all of which allow the public to comment on the appropriateness and effects of a renewal at the same time the public provides comments on the initial IHA. NMFS has, however, modified the language for future proposed IHAs to clarify that all IHAs, including renewal IHAs, are valid for no more than one year and that the agency would consider only one renewal for a project at this time. In addition, notice of issuance or denial of a renewal IHA would be published in the **Federal Register**, as are all IHAs. Last, NMFS will publish on our website a description of the renewal process before any renewal is issued utilizing the new process.

Description of Marine Mammals in the Area of Specified Activities

A detailed description of the species likely to be affected by WP&YR's project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (83 FR 64541; December 17, 2018). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to the proposed IHA **Federal Register** notice for these descriptions; we provide a summary of marine mammals that may potentially be present in the project area here (Table 1). Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SAR; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-*

mammal-stock-assessments) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence in the Taiya Inlet and larger Lynn Canal and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2018). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Alaska SARs (*e.g.,* Muto *et al.* 2018). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2017 SARs (Muto *et al.* 2018) and draft 2018 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT DURING THE SPECIFIED ACTIVITY

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-, -, N	26,960 (0.05, 25,849, 2016)	801	138
Family Balaenidae:						
Humpback whale	*Megaptera novaeangliae*	Central North Pacific	-, -, Y	10,103 (0.3, 7,890, 2006)	83	25
Minke Whale	*Balaenoptera acutorostrata*	Alaska	-, -, N	N/A	UND	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae, Family Delphinidae:						
Killer whale	*Orcinus orca*	Alaska Resident	-, -, N	2,347 (N/A, 2,347, 2012) [4]	24	1
		Northern Resident	-, -, N	261 (N/A, 261, 2011) [4]	1.96	0
		Gulf of Alaska, Aleutian Islands, Bering Sea Transient.	-, -, N	587 (N/A, 587, 2012) [4]	5.87	1
		West Coast Transient	-, -, N	243 (N/A, 243, 2009) [4]	2.4	0
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Southeast Alaska	-, -, Y	975 (0.12–0.14, 897, 2012) [5]	8.9	34
Dall's porpoise	*Phocoenoides dalli*	Alaska	-, -, N	83,400 (0.097, N/A, 1991)	UND	38
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Western U.S	E, D, Y	54,267 (N/A, 54,267, 2017)	326	252
		Eastern U.S	T, D, Y	41,638 (N/A, 41,638, 2015)	2498	108
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina richardii*	Lynn Canal/Stephens Passage.	-, -, N	9,478 (N/A, 8,605, 2011)	155	50

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable (N/A).

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] N is based on counts of individual animals identified from photo-identification catalogs.

[5] In the SAR for harbor porpoise, NMFS identified population estimates and PBR for porpoises within inland southeast Alaska waters (these abundance estimates have not been corrected for g(0); therefore, they are likely conservative).

Habitat

No Biologically Important Areas (BIAs) or ESA-designated critical habitat overlap with the project area, however there is seasonally important foraging habitat for some species of marine mammal which overlap spatially and temporally with planned project activities. The annual eulachon run (which occurs for approximately three to four weeks during April through May) in Lynn Canal is important to all marine mammals (particularly Steller sea lions, and harbor seals, and humpback whales) for seasonal foraging and many species travel into Taiya Inlet to forage on this prey.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

Underwater noise from impact and vibratory pile driving and down-the-hole drilling activities associated with the planned Railroad Dock dolphin installation project have the potential to result in harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (83 FR 64541; December 17, 2018) included a discussion of the potential effects of such disturbances on marine mammals and their habitat, therefore that information is not repeated in detail here; please refer to the **Federal Register** notice (83 FR 64541; December 17, 2018) for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which informs both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will primarily be by Level B harassment, as use of the impact and vibratory hammers and down-the-hole drilling has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for low-frequency cetaceans, high-frequency cetaceans, and/or phocids because predicted auditory injury zones are larger than for mid-frequency cetaceans and otariids. Auditory injury is unlikely to occur for mid-frequency cetaceans and otariids. The planned mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable. As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.* 2007; Ellison *et al.* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 decibels (dB) re 1 micropascal (μPa) (root mean square (rms)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. WP&YR's planned activity includes the use of continuous (vibratory pile driving/removal and drilling) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (NMFS 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). WP&YR's planned activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving/removal and drilling) sources.

These thresholds are provided in Table 2. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT (PTS)

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{p,0\text{-pk,flat}}$: 219 dB; $L_{E,p,\ LF,24h}$: 183	$L_{E,p,\ LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	$L_{p,0\text{-pk,flat}}$: 230 dB; $L_{E,p,\ MF,24h}$: 185	$L_{E,p,\ MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	$L_{p,0\text{-pk,flat}}$: 202 dB; $L_{E,p,HF,24h}$: 155	$L_{E,p,\ HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	$L_{p,0\text{-pk.flat}}$: 218 dB; $L_{E,p,PW,24h}$: 185	$L_{E,p,PW,24h}$: 201 dB.

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT (PTS)—Continued

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Otariid Pinnipeds (OW) (Underwater)	$L_{p,0\text{-}pk,flat}$: 232 dB; $L_{E,p,OW,24h}$: 203	$L_{E,p,OW,24h}$: 219 dB.

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0\text{-}pk}$) has a reference value of 1 µPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1µPa^{2}s. In this table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO 2017). The subscript ''flat'' is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the planned project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving and removal and down-the-hole drilling). The maximum (underwater) ensonification area of 17.9 km^2 due to project activities is governed by the topography of Taiya Inlet (see Figure 6 in the application). The eastern shoreline of the inlet is acoustically shadowed due to land located just south of the project site. Similarly, Yakutania Point and Dyea Point will inhibit transmission of project sounds from reaching Nahku Bay and the upper inlet at the mouth of the Taiya River. Additionally, vessel traffic and other commercial and industrial activities in the project (and ensonified) area may contribute to elevated background noise levels which may mask sounds produced by the project.

In order to calculate distances to the Level A and Level B harassment thresholds for piles of various sizes being used in this project, NMFS used acoustic monitoring data from other pile driving projects in Alaska. Empirical data from recent sound source verification (SSV) studies in Anchorage and Kodiak, Alaska were used to estimate sound source levels (SSLs) for impact pile driving, vibratory pile driving/removal, and down-the-hole drilling installations of the 42-inch steel pipe permanent piles and the 36-inch steel pipe template piles (Austin *et al.* 2016; Denes *et al.* 2016). These Alaskan construction sites were generally assumed to best represent the environmental conditions found in Skagway and represent the nearest available source level data for 42-inch steel piles. Note that piles of differing sizes have different sound source levels.

Table 3 provides the sound source values used in calculating harassment isopleths for each source type. No data are currently available for 42-inch steel pipe piles. For impact and vibratory hammer source levels WP&YR used the median levels (sound exposure level single-strike ($SEL_{S\text{-}S}$) for impact and SPL rms for vibratory) measured 11 m from the pile by Austin *et al.* (2016) during installation of 48-inch piles at Port of Anchorage (see Table 3). These 48-inch pile impact and vibratory levels are conservatively used for both the 42-inch permanent piles and the 36-inch template piles. Few SSV and SSL data are available for down-the-hole drilling. WP&YR used the 90th percentile source levels measured 10 m from the pile by Denes *et al.* (2016) during drilling down the center of 30-inch piles in Kodiak (see Table 3)).

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Table 3. Source levels and anticipated daily durations for underwater sound calculations. Hours or strikes per day represents the maximum duration of any single activity.

Source		Source Type	SPL_{PK} (dB)	SPL_{RMS} (dB)	SEL_{S-S} (dB)	Hours or Strikes per Day
Template Piles	Vibratory Installation/ Removal	Non-impulsive, continuous	n/a	166.8	n/a	3 hours
	Impact Installation	Impulsive, intermittent	212.5	197.9	186.7	2,000 strikes
	Drilling Installation	Non-impulsive, continuous	n/a	171.0	n/a	6 hours
Permanent Piles	Vibratory Installation	Non-impulsive, continuous	n/a	166.8	n/a	8 hours
	Impact Installation	Impulsive, intermittent	212.5	197.9	186.7	2,000 strikes
	Drilling Installation	Non-impulsive, continuous	n/a	171.0	n/a	8 hours

* Impact and vibratory measurements were collected 11m from the source. Drilling measurements were collected 10m from the source.

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Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$TL = B * Log_{10} (R_1/R_2)$, where
TL = transmission loss in dB
B = transmission loss coefficient; for practical spreading equals 15
R_1 = the distance of the modeled SPL from the driven pile, and
R_2 = the distance from the driven pile of the initial measurement

A practical spreading value of fifteen is often used under conditions, such as at the WP&YR Railroad Dock, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile driving and drilling, NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance (or greater) the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet and the resulting isopleths are reported in Tables 4 and 5. As WP&YR will employ two continuous sound sources (vibratory pile driving and drilling) it is necessary to account for accumulation of sound caused by both activities during the full 10-hour work day when calculating Level A harassment isopleths. As drilling has the higher sound pressure level, the 171 dB re 1 µPa (rms) sound level was used to calculate the Level A harassment isopleths for both drilling and vibratory pile driving activities (Table 4). Therefore, the resulting Level A isopleth distance is precautionary as WP&YR does not intend to drill for 10 hours per day; some hours will be allocated to vibratory pile driving which has a lower source level. For impact pile driving, isopleths calculated using the SEL_{S-S} metric were used as it produces larger isopleths than the sound pressure level peak (SPL_{PK}) and takes into account the duration of each strike. Isopleths for Level B harassment associated with impact pile driving (160 dB) and vibratory pile driving/removal and drilling (120 dB) can be found in Table 5.

TABLE 4—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING HARASSMENT ISOPLETHS

Parameter	Impact pile driving	Vibratory pile driving and drilling
Spreadsheet Tab Used	E.1) Impact pile driving	A. 1) Drilling/Vibratory pile driving.
Source Level	186.7 dB SEL_{S-S}	171 dB SPL rms.
Weighting Factor Adjustment (kHz)	2	2.
Number of strikes per day	2,000	N/A.
Activity Duration (h) within 24-hourperiod	N/A	10 hours.
Propagation (xLogR)	15LogR	15LogR.
Distance of source level measurement (meters)	11	10.

TABLE 5—CALCULATED DISTANCES TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS DURING PILE INSTALLATION AND REMOVAL AND DRILLING

Source	Level A harassment zone (meters)					Level B harassment zone (meters)
	Low-frequency cetacean	Mid-frequency cetacean	High-frequency cetacean	Phocid pinniped	Otariid pinniped	Cetaceans & Pinnipeds
Drilling and Vibratory Installation	148	8.3	129.7	79.2	5.8	[1] 13,000
Impact Installation	3,077.2	109.4	3,665.4	1,646.8	119.9	3,698.8
Source	PTS Onset Isopleth—Peak (meters)					
Impact Installation	4.1	n/a	55.1	4.7	n/a	

[1] Based on maximum distance before landfall. Calculated distance was 25.1 km.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations, and how this information is brought together to produce a quantitative take estimate.

Density information is not available for marine mammals in the project area in Taiya Inlet. Potential exposures to impact and vibratory pile driving and down-the-hole drilling noise for each threshold for all marine mammals were estimated using published reports of group sizes and population estimates, and anecdotal observational reports from local commercial entities. For several species, it is not currently possible to identify all observed individuals to stock.

Level B Harassment Calculations

Unless otherwise noted, the estimation of takes by Level B harassment uses the following calculation: Level B harassment estimate = N (number of animals in the ensonified area) * Number of days of noise generating activities.

Humpback Whale

Humpback whales are the most commonly observed baleen whale in Southeast Alaska, particularly during spring and summer months. Humpback whales in Alaska, although not limited to these areas, return to specific feeding locations such as Frederick Sound, Chatham Strait, North Pass, Sitka Sound, Glacier Bay, Point Adolphus, and Prince William Sound, as well as other similar coastal areas (Wing and Krieger 1983). In Lynn Canal they have been observed in the spring and fall from Haines to Juneau, however scientific surveys have not documented the species within Taiya Inlet (Dahlheim *et al.* 2009).

Local observations indicate that humpback whales are not common in the project action area but, if they are sighted, are generally present during mid to late spring and vacate the area by July to follow large aggregations of forage fish in lower Lynn Canal. Local observers have reported humpback whales in Taiya Inlet, sometimes fairly close to the Skagway waterfront. Due to seasonal migration patterns, the low frequency of humpbacks in the area, and that no humpback whales have been reported during winter months it is anticipated that no humpback whales will be present in the project area in February; therefore, we predict no exposure to noise generated from the project in February. As it is unclear whether humpback whales occur in the inlet in March (for example, should the eulachon run begin very early), it is conservatively estimated that one whale might be found in the inlet during February for five days resulting in five exposures. On average, four to five individuals may occur near Skagway during the spring eulachon run in April and May, after which, only a few individuals are observed throughout the summer. In 2015, only one whale was observed (for several) weeks close to Skagway (K. Gross, personal communication reported in MOS 2016). Based on humpback whale occurrence in the project area and local observations, it is conservatively estimated that four individuals may be present in the action area each day during April, coinciding with 30 days of project activity (120 exposures). In total, NMFS authorized 125 exposures to humpback whales for the planned activity.

Minke Whale

Minke whales are rarely observed in the project area, and scientific surveys have not documented the species within Taiya Inlet (Dahlheim *et al.* 2009). A single minke whale was observed in the inlet in 2015 (K. Gross, Never Monday Charters, personal communication; R. Ford, Taiya Inlet Watershed Council, both personal communications reported in MOS 2016), and is the only known record of a minke whale in Taiya Inlet. However one minke whale was reported by local observers in the action area in 2015. Based on the available information it is very unlikely minke whales will be present in the inlet, however, minke whale presence is possible based on a single sighting and

presence of potential prey (eulachon) in the spring. Thus, we estimate a total of two potential exposures of minke whales.

Killer Whale

Although killer whale stocks' ranges include southeast Alaska, they have only been documented as far north as Lynn Canal; therefore, while possible, occurrence north of Lynn Canal into Taiya Inlet is rare. According to local observations, pods of resident killer whales are occasionally seen in Taiya Inlet. Local observations indicate killer whales are observed four or five times a year (between spring and fall) usually in a group of 15 to 20 whales. In 2015 a resident pod was only observed in Taiya Inlet twice, remaining for one to four days per visit (K. Gross, personal communication reported in MOS 2016). There is no evidence of transient whales occurring within Taiya Inlet. While the resident pods remain in Alaska year-round there are no reports of sightings during winter months (January-February) in Taiya Inlet so it is assumed no killer whales will be present in the project area in February. Based on local observations in the project area in the spring, it is assumed that a group of 20 whales may enter the project area once in each of March and April and remain within the inlet for 2.5 days each time, for a total of 100 potential exposures. This is an increase from the proposed IHA to account for the average duration of pod visits according to local observations.

Harbor Porpoise

Harbor porpoises are primarily found in coastal waters, and in the Gulf of Alaska and Southeast Alaska, they occur most frequently in waters less than 100 meters (Dahlheim *et al.* 2009). Dedicated research studies of harbor porpoise in the project area only occur as far north in Lynn Canal as Haines during the summer (Dahlheim *et al.* 2009; 2015), approximately 16 miles south of Skagway. Group sizes were, on average, between 1.37–1.59 animals (less than 2) (Dahlheim *et al.* 2009; 2015). In Lynn Canal, observations were less frequent, primarily in lower Lynn Canal from Chatham Strait to Juneau, though harbor porpoises have been observed as far north as Haines during the summer (Dahlheim *et al.* 2009; 2015).

Despite lack of observations during dedicated surveys, local charter captains indicate that harbor porpoises commonly occur in small groups of two or three in Taiya Inlet, although they are not encountered on a daily basis and are rarely seen in areas close to the waterfront (K. Gross, personal communication reported in MOS 2016). Therefore, it is conservatively estimated that one group of three individuals may be present in the inlet 75 percent of the days during each month for a total of 201 potential exposures.

Dall's Porpoise

Dall's porpoises are widely distributed across the entire North Pacific Ocean. Throughout most of the eastern North Pacific they are present during all months of the year, although there may be seasonal onshore-offshore movements along the west coast of the continental United States and winter movements of populations out of Prince William Sound and areas in the Gulf of Alaska and Bering Sea (Muto *et al.* 2018). Dahlheim *et al.* (2009) observed Dall's porpoise throughout Southeast Alaska, with concentrations of animals consistently found in Lynn Canal, Stephens Passage, Icy Strait, upper Chatham Strait, Frederick Sound, and Clarence Strait. Dahlheim *et al.* (2009), documented Dall's porpoise in Lynn Canal as far north as Haines, Alaska, about 15 miles south of Skagway.

Local observation indicate that three to six Dall's porpoises may be present in Taiya Inlet during the early spring and late fall. Observations have been occasional to sporadic and do not occur on a daily basis. The species has not been observed during winter months and has not been observed near the waterfront (K. Gross, personal communication reported in MOS 2016). The mean group size of Dall's porpoise in Southeast Alaska is estimated to be 3.7 individuals (Dahlheim *et al.* 2009). Therefore, it is estimated that a group of four Dall's porpoises will be present in the project area every other day in March and April, for a total of 122 potential exposures.

Steller Sea Lion

Several long-term Steller sea lion haulouts are located in Lynn Canal, however none occur in Taiya Inlet. The nearest long-term Steller sea lion haulout is located at Gran Point, south of Haines and 24 mi (38 km) south of the project area. Other year-round haulouts in Lynn Canal are present at Met Point, Benjamin Island, and Little Island, closer to Juneau (Fritz *et al.* 2015). Observations from local charter boat captains and watershed stewards indicate Steller sea lions can be abundant in the action area, particularly in April and May during the eulachon run, but are rarely observed in the project area during the winter (K. Gross, Never Monday Charters, personal communication; R. Ford, Taiya Inlet Watershed Council, personal communication reported in MOS 2016). This is consistent with the National Marine Mammal Laboratory database (Fritz *et al.* 2015), which has identified the largest number of Lynn Canal sea lions during the fall and winter months at Benjamin Island in the lower reaches of the canal. During surveys conducted in 2002 and 2003, Womble *et al.* (2005) observed a maximum of approximately 400 Steller sea lions in the water at the mouth of the Taiya River feeding on eulachon in 2003, but observed very few in the same area in 2002. Steller sea lions have also been observed in Lutak Inlet, a foraging site closer to both Taiya Point and Gran Point haulouts.

During the spring eulachon run, a seasonal haulout site is located on Taiya Point at the southern tip of Taiya Inlet, approximately 11 mi (18 km) from the project site. Twenty-five to 40 sea lions are estimated to use this haulout for about three weeks during spring run, during which they frequently are observed in the inlet (K. Gross, personal communication reported in MOS 2016). However, most animals leave the inlet shortly after the eulachon run and are rarely observed in the summer. Based on survey data and local observations in the project area, it is estimated that two animals may be present each day in February (56 exposures), 16 animals may be present on each day in March (half of the mean found on Taiya Rocks during the eulachon run, 496 exposures), and 40 animals may be present each day in April (1,200 exposures) for a total of 1,752 potential exposures.

Harbor Seal

No long-term haulout sites have been documented for harbor seals in Taiya Inlet; however, seasonal haulouts are present within six miles of the project area at Seal Cove and at the mouth of the Taiya River. Based on reports from local observers, a few resident harbor seals are expected to occur within Taiya Inlet during the winter months, but during the April and May eulachon run numbers can range from 20 to over 100 (K. Gross and R. Ford, personal communication reported in MOS 2016). Before and after the spawning run, much lower numbers of harbor seals are present.

Based on survey data and local observations in the project area it is assumed that 20 seals (the lower estimate in the range) occur within the project area each day in February through March (560 takes in February and 620 takes in March) and 100 seals (the higher estimate in the range) during

April (3,000 takes) for a total of 4,180 potential exposures.

Level A Harassment Calculations

WP&YR intends to avoid Level A harassment take by shutting down installation activities at approach of any marine mammal to the representative Level A harassment (PTS onset) ensonification zone up to a practical shutdown monitoring distance. As small/cryptic marine mammal species may enter the Level A harassment zone before shutdown mitigation procedures can be implemented, and some animals may occur between the maximum Level A harassment ensonification zone and the maximum shutdown safety zone, we conservatively estimate that 20 percent of the Level B harassment takes calculated above for humpback whales, harbor porpoises, Dall's porpoises, and harbor seals, have the potential to be takes by Level A harassment (Table 6). Minke whale occurrence in Taiya Inlet is rare. Because vessel-based PSOs are able to monitor the entire Level A harassment zone (whales entering the inlet), WP&YR did not request, and NMFS is not proposing, to authorize Level A harassment take of minke whales.

TABLE 6—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK, RESULTING FROM WP&YR PROJECT ACTIVITIES

Common name	Stock	Stock abundance [1]	Level A	Level B	Total take	Take as percentage of stock
Humpback whale	Central North Pacific	[2] 10,103	25	100	125	1.23
Minke Whale	Alaska	N/A	0	2	2	N/A
Killer whale	Alaska Resident	2,347	0	100	100	4.3
	Northern Resident	261				38.3
	Gulf of Alaska, Aleutian Islands, Bering Sea Transient.	587				17.0
	West Coast Transient	243				41.2
Harbor porpoise	Southeast Alaska	975	40	161	201	20.6
Dall's porpoise	Alaska	83,400	24	98	122	0.01
Steller sea lion	Western U.S.	54,267	0	[3] 35	35	0.06
	Eastern U.S.	41,638	0	1,717	1,717	4.1
Harbor seal	Lynn Canal/Stephens Passage.	9,478	836	3,344	4,180	44.1

[1] Stock or DPS size is N_{best} according to NMFS 2018 Draft Stock Assessment Reports.
[2] For ESA section 7 consultation purposes, 6.1 percent are designated to the Mexico DPS and the remaining are designated to the Hawaii DPS; therefore, we assigned 2 Level B takes to the Mexico DPS.
[3] Based on the percent of branded animals at Gran Point and in consultation with the Alaska Regional Office, we used a 2 percent distinction factor to determine the number of animals potentially from the western DPS.

There are a number of reasons why the estimates of potential incidents of take are likely to be conservative. Given the lack of density information, we use conservative estimates of marine mammal presence to calculate takes for each species. Additionally, in the context of stationary activities such as pile driving, and in areas where resident animals may be present, this number represents the number of instances of take that may occur to a small number of individuals, with a notably smaller number of animals being exposed more than once per individual. While pile driving or drilling can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time is actually spent pile driving or drilling. The potential effectiveness of mitigation measures in reducing the number of takes or exposure time is also not quantified in the take estimation process. For these reasons, these take estimates may be conservative, especially if each take is considered a separate individual animal, and especially for pinnipeds.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

In addition to the measures described later in this section, WP&YR will employ the following standard mitigation measures:

• Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;

• For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, etc.), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);

• Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted;

• For those marine mammals for which Level B harassment has not been authorized, in-water pile installation/removal and drilling will shut down immediately if such species are observed within or on a path towards the monitoring zone (*i.e.,* Level B harassment zone); and

• If take reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take.

The following measures will apply to WP&YR's mitigation requirements:

Establishment of Shutdown Zone for Level A Harassment—For all pile driving/removal and drilling activities, WP&YR will establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity will occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Conservative shutdown zones of 150 m for low- and high-frequency cetaceans, 80 m for phocid pinnipeds, and 10 m for mid-frequency cetaceans and otariid pinnipeds will be used during all drilling and vibratory pile driving/removal activities to prevent incidental Level A harassment exposure for these activities (Table 7). During impact pile driving, a 150 m zone will be established for all species except for low-frequency cetaceans for which a 2,000 m zone will be used. These shutdown zones will be used to prevent incidental Level A exposures from impact pile driving for mid-frequency cetaceans and otariid pinnipeds, and to reduce the potential for such take for other species. The placement of Protected Species Observers (PSOs) during all pile driving and drilling activities (described in detail in the *Monitoring and Reporting Section*) will ensure marine mammals in the shutdown zones are visible. The 150 m zone is the practical distance WP&YR anticipates phocid pinnipeds and high-frequency cetaceans can be effectively observed in the project area. The 2,000 m zone for low-frequency cetaceans is determined by the width of Taiya Inlet at Skagway Harbor. Observers will be present on vessels in the Taiya Inlet and able to observe large whales traveling north into the inlet and project area.

TABLE 7—MONITORING AND SHUTDOWN ZONES FOR EACH PROJECT ACTIVITY

Source	Monitoring zone (m)	Shutdown zone (m)
Drilling and Vibratory Installation/Removal	13,000	Low- and high- frequency cetaceans: 150. Phocid pinnipeds: 80. Mid-frequency cetaceans and otariid pinnipeds: 10.
Impact Installation	3,700	Low-frequency cetaceans: 2,000. All other species: 150.

Establishment of Monitoring Zones for Level B Harassment—WP&YR will establish monitoring zones to correlate with Level B monitoring zones which are areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory driving and drilling. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. The monitoring zones are described in Table 7. The monitoring zone for drilling and vibratory pile driving/removal activities is 13,000 m, corresponding to the maximum distance before landfall. The monitoring zone for impact pile driving will be 3,700 m. Placement of PSOs on vessels in the Taiya Inlet allow PSOs to observe marine mammals traveling north into the inlet and Skagway Harbor. Should PSOs determine the monitoring zone cannot be effectively observed in its entirety, Level B harassment exposures will be recorded and extrapolated based upon the number of observed take and the percentage of the Level B zone that was not visible.

Soft Start—The use of soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure will be conducted a total of three times before impact pile driving begins. Soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal or drilling of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and non-permitted species are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B monitoring zone. When a marine mammal permitted for Level B take is present in the Level B harassment zone, activities may begin

and Level B take will be recorded. As stated above, if the entire Level B zone is not visible at the start of construction, piling or drilling activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B and shutdown zone will commence.

Due to the depth of the water column and strong currents present at the project site, bubble curtains will not be implemented as they would not be effective in this environment.

Based on our evaluation of the applicant's measures, NMFS has determined that the planned mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as to ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Marine Mammal Visual Monitoring

Monitoring shall be conducted by NMFS-approved PSOs per the Marine Mammal Monitoring Plan dated January 18, 2019 available online at online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring will be conducted 30 minutes before, during, and 30 minutes after pile driving/removal and drilling activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving/removal and drilling activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

A total of five PSOs will be based on land and vessels. During all pile driving/removal and drilling activities observers will be stationed at the Railroad Dock, Yakutania Point, and Dyea Point. These stations will allow full monitoring of the impact hammer monitoring zone and the Level A shutdown zones. The vibratory and drilling monitoring zone will be monitored by the three land-based PSOs and two PSOs stationed on boats anchored near the shoreline, with each team (vessel operator and observer) stationed approximately 2 km apart in the inlet south of the project site (Figure 2 in the WP&YR Marine Mammal Mitigation and Monitoring Plan).

PSOs will scan the waters using binoculars, and/or spotting scopes, and will use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs will be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. WP&YR will adhere to the following observer qualifications:

(i) Independent observers (*i.e.,* not construction personnel) are required;

(ii) At least one observer must have prior experience working as an observer;

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience;

(iv) Where a team of three or more observers are required, one observer shall be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

(v) WP&YR shall submit observer CVs for approval by NMFS.

Additional standard observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

WP&YR will submit monthly marine mammal monitoring reports. A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal and drilling activities. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

• Date and time that monitored activity begins or ends;

• Construction activities occurring during each observation period;

• Weather parameters (*e.g.,* percent cover, visibility);

• Water conditions (*e.g.,* sea state, tide state);

• Species, numbers, and, if possible, sex and age class of marine mammals;

• Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;

• Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

• Locations of all marine mammal observations; and

• Other human activity in the area.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, WP&YR will immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report will include the following information:

• Description of the incident;

• Environmental conditions (*e.g.,* Beaufort sea state, visibility);

• Description of all marine mammal observations in the 24 hours preceding the incident;

• Species identification or description of the animal(s) involved;

• Fate of the animal(s); and

• Photographs or video footage of the animal(s) (if equipment is available).

Activities may not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with WP&YR to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. WP&YR will not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that WP&YR discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), WP&YR will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator. The report will include the same information identified in the paragraph above. Activities will be able to continue while NMFS reviews the circumstances of the incident. NMFS will work with WP&YR to determine whether modifications in the activities are appropriate.

In the event that WP&YR discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), WP&YR will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator, within 24 hours of the discovery. WP&YR will provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Acoustic Monitoring

WP&YR will conduct acoustic monitoring for the purposes of SSV in accordance with the Acoustic Monitoring Plan, dated January 28, 2019 available online at online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* WP&YR will collect acoustic data for at least one 42-inch permanent pile, using all three installation methods (impact pile driving, vibratory pile driving, and down-the-hole drilling) from at least two distances from the pile (one approximately 10 meters from the pile and at least one additional measurement in the far field). Equipment will record, and sound spectra in one-third octave bands will be reported, from 10 Hz to 20 kHz. The following data, at minimum, shall be collected during acoustic monitoring and reported:

• Hydrophone equipment and methods: recording device, sampling rate, distance from the pile where recordings were made; depth of recording device(s);

• Type of pile (42-inch), and segment of pile (1, 2, or 3), being driven and method of driving/removal and drilling during recordings; and

• Mean, median, and maximum (or 90th percentile), and range sound levels (dB re 1µPa): cumulative sound exposure level (SEL_{CUM}), peak sound pressure level (SPL_{PK}), root mean square sound pressure level (SPL_{RMS}), and single-strike sound exposure level (SEL_{S-S}) as appropriate for the sound source.

For more details please see WP&YR's acoustic monitoring plan, available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and

growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving/removal and drilling activities associated with the Railroad Dock installation project as outlined previously, have the potential to disturb or displace marine mammals in Taiya Inlet near Skagway. Specifically, the specified activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal and down-the-hole drilling. Potential takes could occur if individuals of these species are present in the ensonified zone when these activities are underway.

The takes from Level A and Level B harassment will be due to potential behavioral disturbance, TTS, and PTS (for select species). No mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. Level A harassment is only anticipated for humpback whales, Dall's porpoise, harbor porpoise, and harbor seal. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see *Mitigation* section).

As described previously, minke whales are considered rare in the project area and we authorize only nominal and precautionary take of two individuals. Therefore, we do not expect meaningful impacts to minke whales and find that the total minke whale take from each of the specified activities will have a negligible impact on this species.

For remaining species, we discuss the likely effects of the specified activities in greater detail. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; HDR, Inc. 2012; Lerma 2014; ABR 2016). Most likely, individuals will move away from the sound source and be temporarily displaced from the areas of pile driving and drilling, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in southeast Alaska, which have taken place with no known long-term adverse consequences from behavioral harassment. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to avoid the area while the activity is occurring. While vibratory driving and drilling associated with the planned project may produce sound at distances of many kilometers from the project site, thus intruding on some habitat, the project site itself is located in a busy harbor and the majority of sound fields produced by the specified activities are close to the harbor. Therefore, we expect that animals annoyed by project sound would avoid the area and use more-preferred habitats.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that humpback whales, harbor porpoises, Dall's porpoises, and harbor seals may sustain some limited Level A harassment in the form of auditory injury. However, animals in these locations that experience PTS would likely only receive slight PTS, *i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving, *i.e.,* the low-frequency region below 2 kHz, not severe hearing impairment or impairment in the regions of greatest hearing sensitivity. If hearing impairment occurs, it is most likely that the affected animal would lose only a small number of decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat. The project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- The Level A harassment exposures are anticipated to result only in slight PTS, within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment are likely to consist of temporary modifications in behavior that are not anticipated to result in fitness impacts to individuals;
- The specified activity and ensonification area is very small relative to the overall habitat ranges of all species and does not include habitat areas of special significance (BIAs or ESA-designated critical habitat); and
- The presumed efficacy of the mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact.

In addition, although affected humpback whales and Steller sea lions may be from a DPS that is listed under the ESA, it is unlikely that minor noise effects in a small, localized area of habitat would effect the stocks' ability to recover. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether

an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 6 demonstrates the number of animals that could be exposed to received noise levels that could cause Level A harassment and Level B harassment for the planned activities in the WP&YR project area. With the exception of the Northern Resident and West Coast Transient killer whale stocks and harbor seals, our analysis shows that less than 25 percent of each affected stock could be taken by harassment. The numbers of animals anticipated to be taken for these stocks would be considered small relative to the relevant stock's abundances even if each estimated taking occurred to a new individual—an extremely unlikely scenario.

Calculated takes do not assume multiple harassments of the same individual(s), resulting in larger estimates of take as a percentage of stock abundance than are likely given resident individuals. This is the case with the resident stocks of killer whale (Alaska and Northern Resident stocks and harbor seal (Lynn Canal/Stephens Passage stock).

When assuming the total take authorized would occur to a single stock and that these numbers represent individuals taken, rather than instances of take, the total authorized take for killer whales as compared to each potentially affected stock ranges from 4.3 percent to 41.2 percent of each stock abundance. In reality, it is highly unlikely that 100 individuals of any one killer whale stock will be harassed. Instead, as pods remain in the area over a period of days, it is assumed that take will occur on a smaller number of the same individuals from any stock, (20 individuals, or the estimated group size from one stock, or 40 individuals, if different pods from the same stock are taken in both March and April), which would result in smaller takes as a percentages of stocks (ranging from 0.9 percent to 8.2 percent if takes are from 20 whales from the same stock, or 1.7 percent to 16.5 percent if takes are from 40 whales from the same stock).

As reported, a small number of harbor seals, most of which reside in Taiya Inlet year-round, will be exposed to construction activities for three months. The total population estimate in the Lynn Canal/Stephens Passage stock is 9,478 animals over 1.37 million acres (5,500 km^2) of area in their range, which results in an estimated density of 36 animals within Taiya Inlet. The largest Level B harassment zone within the inlet occupies 17.9 km^2, which represents less than 0.4 percent of the total geographical area occupied by the stock. The great majority of these exposures will be to the same animals given their residency patterns.

Based on the analysis contained herein of the planned activity (including the planned mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

No relevant subsistence uses of the affected marine mammal stocks or species are implicated by this action in the project area. The planned project will occur near but not overlap with the subsistence area used by the villages of Hoonah and Angoon where harbor seals and Steller sea lions are available for subsistence harvest (Wolfe *et al.* 2013; N. Kovaces, Skagway Traditional Council, personal communication). Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action with respect to environmental consequences on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassments authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Regional Office, whenever we propose to authorize take for endangered or threatened species.

On February 11, 2019 NMFS Alaska Region issued a Biological Opinion to NMFS Office of Protected Resources on the issuance of this IHA. The Biological Opinion determined that the proposed action was not likely to jeopardize the continued existence of the humpback whale Mexico DPS and the Steller sea lion western DPS or adversely affect designated critical habitat.

Authorization

NMFS has issued an IHA to WP&YR for the incidental take of marine mammals due to in-water construction work associated with the Railroad Dock dolphin installation project in Skagway, Alaska from February 15, 2019 through February 14, 2020, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: February 13, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–02685 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open public meeting.

SUMMARY: The Hydrographic Services Review Panel (HSRP) will hold a meeting that will be open to the public and public comments are requested in advance and/or during the meeting. Information about the HSRP meeting, agenda, presentations, webinar registration, and other background documents will be posted online at: *https://www.nauticalcharts.noaa.gov/hsrp/hsrp.htm* and *https://www.nauticalcharts.noaa.gov/hsrp/meetings.htm.*

Dated: The meeting is planned for two and a half days during March 5–7, 2019. The dates, agenda, and times are subject

to change. For updates, please check online at: *https://www.nauticalcharts.noaa.gov/hsrp/hsrp.htm.*

Location: The meeting venue will be in downtown Washington, DC, and the venue will be posted online in February at: *https://www.nauticalcharts.noaa.gov/hsrp/hsrp.htm.* Please email your name, organization and email address by February 25, 2019, to inform the guest list to: *Virginia.Dentler@noaa.gov* and *Lynne.Mersfelder@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Lynne Mersfelder-Lewis, HSRP program manager, National Ocean Service, Office of Coast Survey, NOAA (N/CS), 1315 East-West Highway, SSMC3 #6413, Silver Spring, Maryland 20910; telephone: 240–533–0064; email: *Lynne.Mersfelder@noaa.gov.*

SUPPLEMENTARY INFORMATION: While the meeting is open to the public, please email your name, organization and email address by February 25, 2019, to be added to inform the guest list to: *Virginia.Dentler@noaa.gov* and *Lynne.Mersfelder@noaa.gov.*

Seating will be available on a first-come, first-served basis, and public comment is encouraged. There are public comment periods scheduled each day and noted in the agenda. Each individual or group making verbal comments will be limited to a total time of five (5) minutes and will be recorded. For those not onsite, comments can be submitted in writing via the webinar chat function or via email in writing. Individuals who would like to submit written statements in advance, during or after the meeting should email their comments to *Lynne.Mersfelder@noaa.gov.* The HSRP will provide webinar capability. Pre-registration is required to access the webinar: *https://attendee.gotowebinar.com/register/2994768801559733251.*

The Hydrographic Services Review Panel (HSRP) is a Federal Advisory Committee established to advise the Under Secretary of Commerce for Oceans and Atmosphere, the NOAA Administrator, on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, as amended, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice. The charter and other information are located online at: *https://www.nauticalcharts.noaa.gov/hsrp/CharterBylawsHSIAStatute.htm.* Past recommendations and issue papers are at: *https://www.nauticalcharts.noaa.gov/hsrp/recommendations.htm.* Past HSRP public meeting summary reports, agendas, presentations, transcripts, webinars, and other information is available online at: *https://www.nauticalcharts.noaa.gov/hsrp/meetings.htm.*

Matters To Be Considered: The panel is convening on issues relevant to NOAA's navigation services, focusing on national issues such as stakeholder use of navigation services data, sea level rise and inundation, and legislative priorities. Navigation services include the data, products, and services provided by the NOAA programs and activities that undertake geodetic observations, gravity modeling, shoreline mapping, bathymetric mapping, hydrographic surveying, nautical charting, tide and water level observations, current observations, and marine modeling. This suite of NOAA products and services support safe and efficient navigation, resilient coasts and communities, and the nationwide positioning information infrastructure to support America's commerce. The Panel will hear from state and federal agencies, non-federal organizations and associations, regional and national stakeholders and partners about their missions and use of NOAA's navigation services, the value these services bring, and what improvements could be made. Other administrative matters may be considered. The agenda and speakers are subject to change.

Special Accommodations: This meeting is physically accessible to people with disabilities. Please direct requests for sign language interpretation or other auxiliary aids to *Lynne.Mersfelder@noaa.gov* by February 11, 2019.

Shepherd M. Smith,

Rear Admiral, Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2019–02571 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG748

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Applications for 10 permit renewals and five new permits.

SUMMARY: Notice is hereby given that NMFS has received 15 scientific research permit application requests relating to Pacific salmon and steelhead, rockfish, eulachon, and green sturgeon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The applications may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.*

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on March 21, 2019.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by email to*nmfs.wcr-apps@noaa.gov* (include the permit number in the subject line of the fax or email).

FOR FURTHER INFORMATION CONTACT: Rob Clapp, Portland, OR (ph.: 503–231–2314), Fax: 503–230–5441, email: *Robert.Clapp@noaa.gov*). Permit application instructions are available from the address above, or online at *https://apps.nmfs.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened Lower Columbia River (LCR); threatened Puget Sound (PS); threatened Snake River (SR) spring/summer-run; threatened Snake River (SR) fall-run; endangered Upper Columbia River (UCR) spring-run; threatened Upper Willamette River (UWR); threatened Central Valley (CV) spring-run; endangered Sacramento River (SacR) winter-run; threatened California Coastal (CC).

Steelhead (*O. mykiss*): Threatened LCR; threatened Middle Columbia River (MCR); threatened PS; threatened SR basin; threatened UCR; threatened UWR.

Chum salmon (*O. keta*): Threatened Hood Canal Summer-run (HCS); threatened Columbia River (CR).

Coho salmon (*O. kisutch*): Threatened LCR; threatened Oregon Coast (OC) coho; threatened Southern Oregon/Northern California Coast (SONCC); endangered Central California Coast (CCC).

Sockeye salmon (*O. nerka*): Threatened Ozette Lake (OL); endangered SR.

Eulachon (*Thaleichthys pacificus*): Threatened southern (S).

Green sturgeon (*Acipenser medirostris*): Threatened southern (S).

Rockfish (*Sebastes spp.*): Endangered Puget Sound/Georgia Basin (PS/GB) bocaccio (*Sebastes paucispinis*); threatened PS/GB yelloweye rockfish (*S. ruberrimus*).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see *ADDRESSES*). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1410–12R

The Northwest Fisheries Science Center (NWFSC) is seeking to renew for five years a research permit that currently allows them to take juvenile and adult CVS, LCR, PS, SacR winter-run, SR fall-run, SR spr/sum, UCR, and UWR Chinook salmon; CR chum salmon; LCR, OC, and SONCC coho salmon; SR sockeye salmon; LCR, MCR, SR, UCR, and UWR steelhead while conducting a study of the Columbia River plume and the surrounding ocean environment off the Oregon and Washington coasts. The NWFSC research may also cause them to take S eulachon, a species for which there are currently no ESA take prohibitions. The purposes of the research are to (1) determine the abundance, distribution, growth, and condition of juvenile Columbia River salmonids in the plume and characterize the area's physical and biological features as they relate to salmonid survival; (2) determine the impact that predators and food supply have on survival among juvenile Columbia River Chinook and coho salmon as they migrate through the Columbia River estuary and plume; and (3) synthesize the early ocean ecology of juvenile Columbia River salmonids, test mechanisms that control salmonid growth and survival, and produce ecological indices that forecast salmonid survival. The research would benefit the affected species by (1) providing data that would improve understanding of how the ocean and Columbia River plume conditions affect juvenile salmonids, (2) helping predict how changing ocean conditions would affect salmonid growth and survival, and (3) guiding better management actions in relation to river, plume, and ocean conditions for more effective salmon management. This study would work in conjunction with another NWFSC study (permit 22369) by capturing salmonids using a different capture method at deeper locations. The NWFSC proposes to capture fish using a surface trawl which can cause lethal crushing and descaling injuries to juvenile salmonids and eulachon. Juvenile salmonids would be identified to species, measured for length, and frozen for further analysis (*i.e.* weight, growth, genetics, diet (stomach contents), parasites, pathogens, and physiological condition). Adult salmonids would be held in an aerated live well, identified to species, measured for length, checked for tags and marks, and released. Eulachon would either be returned to the capture location or retained for further scientific research activities at NWFSC. The researchers do not intend to kill any listed adult salmonids, but some may die as an inadvertent result of the research.

Permit 1484–7R

The Washington Department of Natural Resources (WDNR) is seeking to renew for five years a permit that currently authorizes them to take juvenile CR chum salmon, LCR Chinook salmon, LCR coho salmon, and LCR and MCR steelhead in WDNR-managed forests in Washington State. The purpose of the study is to survey stream reaches above natural barriers to determine if fish are present. This information is needed to determine appropriate widths of riparian buffers to leave intact during timber harvest. This study would benefit listed species by documenting the need for increased riparian buffers, which better protect aquatic and riparian habitat where fish are present. In addition, data on the distribution of fish gained from this study would be used to inform land management decisions and better protect listed species.

The WDNR proposes to capture juvenile fish using single-pass backpack electrofishing. The researchers would turn off the electricity as soon as a fish is seen. Fish would be identified with or without netting; if fish are netted they would be held in the water only long enough to identify them and then released at the site of capture. The WDNR does not intend to kill any of the fish being captured, but a small number may die as an unintended consequence of the proposed activities.

Permit 1523–4R

The National Council of Air and Stream Improvements (NCASI) is seeking to renew for five years a permit that currently authorizes them to take juvenile and adult UWR Chinook salmon in the McKenzie and Willamette rivers (Oregon). The purpose of the study is to describe how water quality and biological communities, including periphyton, macroinvertebrates, and resident fish, change as a result of exposure to paper and pulp mill discharges. The research would benefit listed species by describing the relative effects of anthropogenic versus natural stressors on the aquatic ecosystems in which listed species occur. The Oregon Plan, a guidance document for recovering endangered and threatened salmonids in Oregon, states that such comparative analyses are key elements needed to document existing conditions, track changes, and determine the impact of programs and actions.

The NCASI proposes to capture non-listed, resident fish in river edge habitat that is less than 2 m deep using a backpack or boat electrofisher. At each site the researchers would electrofish in a downstream direction for approximately 11 to 17 minutes, capture fish in nets, and place them in an aerated live well. If listed fish are observed, the researchers would turn off electricity immediately and count the fish, but not net them. If any listed fish are inadvertently netted, they would be released immediately. The NCASI would conduct surveys during spring and fall and would coordinate with the Oregon Department of Fish and Wildlife to avoid periods when salmon and steelhead are migrating in survey reaches. The researchers would discontinue sampling at a site on any date that a listed species is observed. While most of the fish would be unharmed, a small number of juvenile UWR Chinook may die as an unintended consequence of the proposed activities.

Permit 14046–4R

The King County Department of Natural Resources and Parks (KCDNRP)

is seeking to renew for five years a research permit that currently allows them to take juvenile PS Chinook salmon and PS steelhead. Sampling sites would be in four Puget Sound (Washington) sub-basins—Snoqualmie, Lake Washington, Duwamish, and Puyallup—and intertidal nearshore areas in the Puget Sound (King County, Washington). The purposes of the study are to (1) evaluate the effectiveness of restoration actions through biological monitoring, (2) understand how juvenile salmonids use specific riverine habitats in order to prioritize restoration projects and guide project design, (3) assess salmonid habitat status and trends in small streams with varying degrees of land use while monitoring current stream conditions, and (4) assess contaminant levels in various freshwater fish. The research would benefit the affected species by determining how restoration and recovery actions are contributing to listed species recovery, providing information on the extent of juvenile salmonid rearing in off-channel areas, guiding future restoration projects based upon monitoring results, providing information on habitat use by yearling fall-run Chinook salmon, and contributing to our knowledge of Chinook salmon life histories. The KCDNRP proposes to capture fish using beach seines, fyke nets, gill nets, hook and line, minnow traps, and backpack and boat-operated electrofishing. Most of the captured fish would be anaesthetized, identified to species, allowed to recover, and released. A subset of the Chinook salmon would also be tagged (acoustic, PIT, and elastomer), dyed (Bismark Brown), gastric lavaged, and have scales collected. The researchers do not intend to kill any listed fish, but some may die as an inadvertent result of the research.

Permit 15207–4R

The Amnis Opes Institute (AOI) is seeking to renew for five years a research permit that currently allows them to take juvenile and adult LCR, PS, SR fall-run, SR spr/sum, UCR, and UWR Chinook salmon; CR and HCS chum salmon; LCR, OC, and SONCC coho salmon; SR sockeye salmon; LCR, MCR, PS, SR, UCR, and UWR steelhead throughout Idaho, Oregon, and Washington States. The purpose of the study is to develop baseline data of the physical and chemical habitat for rivers and streams throughout the United States. Research transects would be randomly determined and would take place on alternating sides of the sampled rivers and streams for a distance of 40 times the mean wetted channel width. The researchers would stop every five channel widths to process the fish. This research would benefit the affected species by characterizing the biological condition of rivers and thereby provide data that supports Clean Water Act implementation. The AOI proposes to capture fish using raft-mounted and backpack electrofishing equipment; stunned fish would be placed in a live well with a soft mesh dip-net. Fish would be identified to species, measured to length, searched for abnormalities, and returned to the water when recovered. ESA-listed species would be processed and released first. If adult salmonids are observed, electrofishing activities would immediately cease and the researchers would move to another location before resuming electrofishing activities. The researchers do not intend to kill any listed fish, but some may die as an inadvertent result of the research.

Permit 16329–3R

The Oregon Department of Environmental Quality (DEQ) is seeking to renew a permit that currently authorizes them take juvenile and adult CR chum salmon; LCR, UWR, UCR spring-run, SR fall-run, and SR spring/summer-run Chinook salmon; LCR, OC, and SONCC coho salmon; and LCR, UWR, MCR, UCR, and SR Basin steelhead in all Oregon State waters. The purpose of the research is to assess environmental impairment from pollutants and describe the effectiveness of management activities in protecting and restoring aquatic ecosystems. The scientific research permit would authorize take of listed species for four DEQ programs: (1) Biomonitoring Program, (2) Oregon Toxics Monitoring Program, (3) Mixing Zone Surveys, and (4) Spill Impact and Cleanup Effectiveness Evaluations. Together, these programs are used to assess watershed and aquatic community health, determine the presence and effects of contaminants, and gauge the effectiveness of waste treatment and spill cleanup procedures. The information gathered would help the DEQ fulfill its mission to assess, restore, enhance, and maintain the quality of Oregon's waters, as directed by state and Federal laws. The research would benefit listed species by providing information on watershed health and contaminants—information that would be used to inform efforts to protect and restore salmonid habitat.

The DEQ proposes to capture fish from spring through fall using backpack and boat electrofishing, seining, and angling. After capturing the fish, the researchers would quickly transfer them to buckets of aerated water, weigh and measure some of them, and release them near the site of their capture within 20 minutes. No drugs or anesthesia would be used. The researchers propose to intentionally kill small numbers of non-listed, resident fish. The researchers would not intentionally kill any ESA-listed fish, but a small number may die as an unintended result of the research activities.

Permit 18260–2R

The Confederated Tribes of Warm Springs (CTWS) is seeking to renew for five years a permit that currently authorizes them to take juvenile and adult LCR Chinook salmon, LCR coho salmon, and LCR and MCR steelhead. The purpose of the study is to describe abundance, habitat associations, spawning, distribution, migration patterns, harvest rates, and limiting factors for Pacific lamprey in Fifteen Mile Creek and Hood River and their tributaries (Oregon). The research would provide important basic ecological information about Pacific lamprey, which is not ESA-listed, but which is an important indicator species for characterizing watershed health. Although researchers are targeting juvenile and adult Pacific lamprey for capture, other species may be taken during sampling activities. The research would benefit listed species by improving understanding of watershed condition and helping managers prioritize habitat restoration projects in the Fifteen Mile Creek and Hood River basins.

The CTWS proposes to collect fish from March through October using backpack electrofishing and hand, dip, fyke, and hoop nets. During electrofishing surveys, the researchers would use ''lamprey settings'' (*i.e.,* very low voltage). The researchers would set hoop (0.8 m diameter with 1.9 cm mesh) and fyke (2.5 m high by 2.75 m wide with 1.9 cm mesh size) nets facing downstream in low velocity areas. They will modify the fyke net to deter adult steelhead from entering the hoop net by tying twine across the first throat of the net to create an effective mesh size across the opening of 7.5 cm. This modification has effectively deterred steelhead from entering fyke nets set in previous fieldwork. The researchers propose to measure and PIT or radio tag adult lamprey before releasing them. The researchers would immediately release any salmonids that are captured or briefly hold them in buckets of water before releasing them if they require time to recover from being captured. If salmonids are observed during

electrofishing, the researchers would immediately turn off the electricity and allow fish to swim away. The CTWS does not propose to kill any fish, but a small number may die as an unintended result of the research activities.

Permit 18331–2R

The Wild Fish Conservancy (WFC) is seeking to renew for five years a research permit that currently allows them to take juvenile PS Chinook salmon and PS steelhead in selected stream channels and floodplain areas throughout the Kitsap and Snoqualmie sub-basins of Washington State. The purpose of the study is to classify existing channels by water type and thereby validate and update county, city, and Washington Department of Natural Resources stream classifications and hydrological maps. This research would benefit the affected species by filling data gaps regarding fish passage impediments (tidegates, culverts, etc.) and providing fish species composition and distribution—information needed to identify, prioritize, and implement restoration projects. The WFC proposes to capture fish using backpack electrofishing. Fish would be identified to species, tissue sampled (caudal fin clip—steelhead only), and released. Once fish presence is established, either through visual observation or electrofishing, electrofishing would be discontinued. Surveyors would then proceed upstream until a change in habitat parameters is encountered and electrofishing would recommence. The researchers do not intend to kill any listed fish, but some may die as an inadvertent result of the research.

Permit 20047–2R

The University of Washington (UW) is seeking to renew for five years a research permit that currently allows them to take juvenile PS Chinook salmon, PS steelhead, HCS chum salmon, and PS/GB bocaccio throughout the Puget Sound, Hood Canal, and Willapa Bay (Washington State). The UW research may also cause them to take adult S eulachon and juvenile PS/GB yelloweye rockfish—species for which there are currently no ESA take prohibitions. The purpose of the study is to directly compare fish communities in seagrass-vegetated habitats and unvegetated tideflats at five intertidal sites where native eelgrass is found naturally interspersed with bare areas. The research would benefit the affected species by evaluating their response to eelgrass habitats on Washington state tideflats and thus help inform planning decisions regarding preserving, restoring, and monitoring selected aquatic sites. The UW researchers propose to capture fish using a beach seine. Captured fish would be identified to species, counted, measured to length (first 10 individuals of each species), and released. The researchers do not intend to kill any listed fish, but some may die as an inadvertent result of the research.

Permit 20104–2R

The Pacific Shellfish Institute (PSI) is seeking to renew for five years a research permit that currently allows them to take juvenile PS Chinook salmon, PS steelhead, and subadult S green sturgeon in Samish Bay (Whatcom/Skagit counties, WA) and Willapa Bay (Pacific County, WA). The PSI research may also cause them to take juvenile S eulachon—a species for which there are currently no ESA take prohibitions. The purposes of the study are to (1) measure and quantify the effect of shellfish culture and burrowing shrimp on seagrass and its function as habitat for fish and invertebrates; (2) determine the distribution of, and spatial relationship between, existing shellfish culture, burrowing shrimp, and seagrass in several Pacific Northwest estuaries; and (3) synthesize data and parameterize production functions for higher trophic level species of interest (*i.e.,* English sole, crab, salmon) across habitat types. The research would benefit the affected species by (1) increasing knowledge at a landscape scale regarding the influence aquaculture may have on estuarine habitats and (2) improving environmentally and economically sustainable shellfish farming practices that minimize impacts on listed species. The PSI proposes to observe/harass fish using modified fyke net/camera deployments and capture fish using Breder traps. The modified fyke net/camera deployments would be left open-ended with four wings (hourglass shape) with two cameras to identify species; no fish would be handled. For the Breder traps, fish would be identified to species, counted, measured, and released. The researchers do not intend to kill any listed fish, but some may die as an inadvertent result of the research.

Permit 22003

The KCDNRP is seeking a five-year research permit that would allow them to annually take juvenile and adult PS Chinook salmon, PS steelhead, and PS/GB bocaccio and adult S green sturgeon in the marine waters and shorelines of King County (Washington state). The KCDNRP research may also cause them to take juvenile and adult S eulachon and PS/GB yelloweye rockfish—species for which there are currently no ESA take prohibitions. The purpose of the study is to capture English sole (*Parophrys vetulus*), brown rockfish (*Sebastes auriculatus*), copper rockfish (*Sebastes caurinus*), quillback rockfish (*Sebastes maliger*), and various forage fish to monitor tissue levels of toxic chemical contaminants. This research would benefit the affected species by (1) understanding the types and concentrations of chemicals in fish, (2) understanding the impact chemical exposures have on marine fish health, (3) filling data gaps to help managers make informed management decisions, and (4) developing a long-term program to evaluate changes in chemical body burdens in fish over time as environmental improvements are made (stormwater discharges reduced, contaminated sediments remediated, etc.). The KCDNRP proposes to capture fish using bottom trawls, beach seines, cast nets, and hook and line (sabiki rigs). Captured ESA-listed fish would be identified to species and released. Listed rockfish would be released via rapid submergence to their capture depth to reduce adverse effects from barotrauma. Targeted species (and incidental mortalities) would be sacrificed, stored on ice, and analyzed for contaminants. The researchers do not intend to kill any listed fish, but some may die as an inadvertent result of the research.

Permit 22152

The Merrill & Ring (MR) timberland company is seeking a five-year research permit that would allow them to annually take juvenile OL sockeye salmon in the Lake Ozette watershed (Clallam County, WA). The purpose of the study is to determine potential fish presence downstream of potential road-related barriers in order to document potential natural barriers, other physical characteristics, and fish presence/absence. This research would benefit the affected species by correctly typing streams, applying appropriate forest buffers to streams, and identifying potential fish barriers to replace with fish-passable culverts. The researchers propose to capture fish using backpack electrofishing equipment. Captured fish would be identified to species and released. In most cases, the stream survey would terminate when one fish is located. The researchers do not intend to kill any listed fish, but some may die as an inadvertent result of the research.

Permit 22369

The NWFSC is seeking a five-year research permit that would allow them

to annually take adult S green sturgeon and juvenile and adult CC, CVS, LCR, PS, SacR winter-run, SR fall-run, SR spr/sum, and UCR Chinook salmon; CR and HCS chum salmon; CCC, LCR, OC, and SONCC coho salmon; OL and SR sockeye salmon; and LCR, MCR, PS, SR, and UCR steelhead while conducting a study in the Columbia River plume and surrounding ocean environment off of the Oregon and Washington coasts. The NWFSC research may also cause them to take S eulachon, a species for which there are currently no ESA take prohibitions. The purposes of the study are to (1) determine the ocean distribution and behaviors of smolt and sub-adult salmonids including Chinook and coho salmon and steelhead; (2) understand the degree to which fish from different origins use near-shore habitats; (3) synthesize the early ocean ecology of juvenile Columbia River salmon, test mechanisms that control salmonid growth and survival, and produce ecological indices that forecast juvenile salmonid survival; and (4) use simulation models, statistical analyses of climate, ocean and biological time series data, and indices to produce improved river and salmon management. The research would benefit the affected species by improving knowledge of salmonid spatial distribution and behavior during the marine portion of their life cycle. This study would work in conjunction with another NWFSC study (permit 1410–12R) by capturing salmonids using different capture methods at shallower locations and by tracking salmonids through acoustic and satellite tags. The NWFSC proposes to capture fish using microtrolling, purse seines, beach seines, and Kodiak trawls. Non-target species (eulachon and green sturgeon) would be handled with a knotless rubber net, identified to species, and released. All salmonid adults and a subset of the juveniles would be placed in an aerated holding tank, identified to species, measured for length, and anesthetized using AQUI–S. Once anesthetized, the fish would be weighed, fin clipped, sampled for scales, and have either an acoustic tag surgically implanted or satellite pop-up tag attached via a dorsal muscle tether. The remaining juvenile salmonids would be held in an aerated holding tank, identified to species, and euthanized using an overdose of AQUI–S. Blood samples would be taken, and the fish would be frozen for further analysis (*e.g.,* diet, caudal fin clip for genetics, otoliths removed, scales taken, and dorsal muscle sample for stable isotopes).

Permit 22417

The Puyallup Tribe of Indians (PTI) is seeking a five-year permit that would allow them to annually take juvenile PS Chinook salmon and PS steelhead in the Puyallup and White rivers (Pierce County, WA). The PTI research may also cause them to take adult S eulachon, a species for which there are currently no ESA take prohibitions. The purpose of the study is to estimate abundance, collect biometric and run timing data, and aide in productivity analyses of ESA-listed salmonids. The research would benefit the affected species by evaluating trends and statuses of individual populations that are critical for monitoring species recovery and evaluating the success of current and future habitat recovery in the watersheds. The PTI proposes to use rotary screw traps in the Puyallup and White rivers (one in each river) to capture fish. Captured fish would be anesthetized with MS–222, measured for length, tissue sampled (scales and anal fin clip), PIT-tagged, and released after recovery. The researchers do not intend to kill any listed fish, but some may die as an inadvertent result of the research.

Permit 22482

The NWFSC is seeking a new, five-year permit that would allow them to take juvenile LCR, SR fall-run, UCR spring-run, and UWR Chinook salmon; CR chum salmon; LCR coho salmon; SR sockeye salmon; and LCR, MCR, SR Basin, UCR, and UWR steelhead. The purpose of the study is to measure contaminant levels in resident sculpin in the lower Willamette River (Oregon) near a Superfund site with high levels of pollutants. The target species for sampling, prickly sculpin, is benthic-feeding and has a small home range, thus contaminant analysis of its tissues reflects environmental conditions at a localized area. Listed salmonids could be unintentionally captured during sampling activities. The study results would support an ongoing Natural Resource Damage Assessment, the purpose of which is to document and quantify injuries to natural resources resulting from exposure to hazardous substances. The proposed research study would benefit listed species that occur in the project area by improving understanding of the extent of contamination and informing habitat restoration activities.

The researchers propose to collect fish between river miles 2 and 11 of the Willamette River, and at appropriate reference sites nearby in the Lower Willamette River. The researchers would conduct sampling from August through October. The researchers would use vinyl-coated wire shrimp traps with 1.0 cm x 0.5 cm openings and baited with canned meat and bait scent. Any listed salmonids that are unintentionally captured would be transferred to buckets of aerated water, identified, counted, checked for fin clips, passive integrated transponder, and coded wire tags, and then gently released near the site of capture.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: February 12, 2019.

Catherine G. Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–02641 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG780

North Pacific Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice; correction.

SUMMARY: The North Pacific Fishery Management Council (Council) published a document on February 11, 2019, announcing the agenda for upcoming meetings of the Council and its advisory committees. The announcement omitted an item from the agenda.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; telephone: (907) 271–2809.

Correction

In the **Federal Register** of February 11, 2019, in FR Doc. 2019–01886, in the section entitled Agenda, add the following to the list of items for the Council Plenary Session: ''29) BSAI Trawl Catcher Vessel Pacific Cod Mothership Adjustments—Final Action.'' Additionally, the sentence that

reads ''The Advisory Panel will address Council agenda items (12) through (28)'' should be removed and replaced with ''The Advisory Panel will address Council agenda items (10), and (12) through (29).''

Dated: February 13, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–02669 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG723

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Scoping Process

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS); notice of initiation of scoping process; notice of public scoping meetings; request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council announces its intent to prepare, in cooperation with NMFS, an amendment to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. An environmental impact statement may be necessary for the amendment to analyze the impacts of potential management measures in accordance with the National Environmental Policy Act. The Council has initiated this amendment to review and consider modifications to both the permitting system for *Illex* squid and the fishery management plan goals and objectives. This notice announces a public process for determining the scope of issues to be addressed, and for identifying the significant issues related to this action. This notice alerts the interested public of the scoping process, the potential development of a draft environmental impact statement, and to provide for public participation in that process.

DATES: Written comments must be received on or before 11:59 p.m., EST, on April 12, 2019. Public scoping meetings will be held during this comment period. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations.

ADDRESSES: Written comments may be sent by any of the following methods:

- *Email* to the following address: *nmfs.gar.illexpermitandgoals@noaa.gov.* Include ''*Illex* Permits and FMP Goals Amendment Scoping Comments'' in the subject line;
- *Mail* or hand deliver to Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, Delaware 19901. Mark the outside of the envelope ''*Illex* Permits and FMP Goals Amendment Scoping Comments''; or
- *Fax* to (302) 674–5399.

Comments may also be provided at the April 2019 Council meeting. See **SUPPLEMENTARY INFORMATION** for the meeting date, time, and location.

The scoping document may be obtained from the Mid-Atlantic Fishery Management Council office at the previously provided address, by request to the Council by telephone (302) 674–2331, or at *http://www.mafmc.org/msb/.*

FOR FURTHER INFORMATION CONTACT: Dr. Christopher M. Moore, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901; telephone (302) 674–2331.

SUPPLEMENTARY INFORMATION:

Background

The Council initiated this action to review and consider modifications to both the permitting system for *Illex* squid and the goals and objectives of the entire Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). In June 2017, the Council considered, but did not adopt, revisions to *Illex* squid permits as part of Amendment 20 to the FMP (December 14, 2018; 83 FR 64257). Since then, effort has increased and the fishery has been closed in both 2017 and 2018 after fully harvesting available *Illex* squid quota. Given recent fishery performance, the Council is evaluating if permitted access to the *Illex* fishery should be modified based on recent and historical participation. Existing FMP goals and objectives have not been revised since they were originally established in 1983. The Council is seeking input whether these goals and objectives are still appropriate for managing the Atlantic mackerel, squid, and butterfish fisheries or if they should be modified. More details may be found in the Scoping Document (see **ADDRESSES** for how to obtain scoping document) and on the Atlantic Mackerel, Squid, and Butterfish page of the Council's website at *http://www.mafmc.org/msb/.*

The scoping period is an important opportunity for members of the public to raise concerns related to the scope of issues that will be considered in the amendment. The Council needs public input to identify management issues, develop effective alternatives, and identify possible impacts to be considered. Public comments early in the amendment development process will help the Council address issues of public concern in a thorough and appropriate manner. Comments can be made during the scoping hearings or as described above (see **ADDRESSES**).

After this initial phase of information gathering, if the Council decides to proceed with the amendment the Council will evaluate potential management alternatives. The Council will then develop a draft amendment, incorporating the identified management alternatives, for public review. The Council will also prepare draft environmental analyses, as required by the National Environmental Policy Act, and provide those analyses for review and comment by the public as appropriate. Finally, the Council will choose preferred management measures for submission with the appropriate environmental analyses to the Secretary of Commerce to publish a proposed and then final rule, both of which have additional comment periods. While there are many opportunities for public comment in the process, this initial scoping comment opportunity is particularly important for assisting the Council in establishing the overall focus and direction of the amendment.

Scoping Hearings

Although the Council did not ultimately revise *Illex* squid permits as part of Amendment 20 to the FMP, the public provided scoping comments during the development of that action in response to a Notice of Intent published in the **Federal Register** on March 26, 2015 (80 FR 15991), which the Council considered as part of that action. To solicit further public comment on *Illex* squid permits and potential updates to the FMP objectives, the Council accepted additional comments at the following four meetings:

Date	Address
Monday, February 4, 2019, at 6:00 p.m	Corless Auditorium, University of Rhode Island Bay Campus, 215 South Ferry Road, Narragansett, RI 02882, 401–874–6440.
Tuesday, February 5, 2019, at 5:30 p.m	Gurney's Inn, 290 Old Montauk Road, Montauk, NY 11954, 631–668–2345.
Wednesday, February 6, 2019, at 5:30 p.m	Congress Hall Hotel, 200 Congress Place, Cape May, NJ 08204, 609–884–8421.
Thursday, February 7, 2019, at 6:00 p.m	Internet webinar: *http://mafmc.adobeconnect.com/msb-scoping-2019/*, Webinar help: 302–397–1131, With a listening station at the new Virginia Marine Resources Commission location:, 380 Fenwick Road, Ft. Monroe, VA 23651, 757–247–2200.

Due to the late 2018/early 2019 government shutdown, prior notice of these meetings was not published in the **Federal Register** and NMFS was not able to publish this Notice of Intent before the above hearings. To facilitate comments within the comment period for this notice, an additional internet webinar scoping hearing will be conducted on Wednesday, March 13, 2019, at 7:00 p.m. via this link: *http://mafmc.adobeconnect.com/msb-scoping-2019/.* The Council will also accept additional in-person scoping comments provided at its April 9–11, 2019, meeting at the Icona Golden Inn, 7849 Dune Drive, Avalon, NJ 08202 (telephone number: 609–368–5155). The date and time for the scoping hearing during the April Council meeting will be published in a future separate **Federal Register** notice specific to that meeting. When further developing this action, the Council will consider all relevant public comments received during previously scheduled 2019 hearings even though they occurred prior to the official comment period defined in this Notice of Intent.

Special Accommodations

The scoping hearings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders (302–674–2331, ext 251) at least 5 days prior to the meeting date.

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

Dated: February 13, 2019.

Karen H. Abrams,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–02697 Filed 2–15–19; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, February 20, 2019; 10:00 a.m.*

PLACE: Hearing Room 420, Bethesda Towers, 4330 East-West Highway, Bethesda, MD 20814.

STATUS: Commission Meeting—Closed to the Public.

MATTER TO BE CONSIDERED: Compliance Matters: Staff will brief the Commission on the status of two compliance matters.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Secretary, Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, (301) 504–7479.

* For Compliance Matter No. 1, the Commission determined by recorded vote (4–0–1) that Agency business requires calling the meeting without seven calendar days advance public notice. For Compliance Matter No. 2, the Commission unanimously determined by recorded vote that Agency business requires calling the meeting without seven calendar days advance public notice.

Dated: February 14, 2019.

Alberta E. Mills,

Secretary.

[FR Doc. 2019–02809 Filed 2–14–19; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0015]

Agency Information Collection Activities; Comment Request; William D. Ford Federal Direct Loan Program (Direct Loan Program) Promissory Notes

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 22, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0015. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the

burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: William D. Ford Federal Direct Loan Program (Direct Loan Program) Promissory Notes.

OMB Control Number: 1845–0007.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households .

Total Estimated Number of Annual Responses: 9,862,685.

Total Estimated Number of Annual Burden Hours: 4,021,534.

Abstract: The Department is requesting that three separate ICR packages be combined into a single ICR using OMB Control Number 1845–0007. The three separate ICR packages cover: The Direct Subsidized Loan and Direct Unsubsidized Loan Master Promissory Note, 1845–0007; the Direct PLUS Loan Master Promissory Note and Direct PLUS Loan Endorser Addendum, 1845–0068; and the Direct Consolidation Loan Application and Promissory Note and Related Forms, 1845–0053. We are streamlining all of the forms by eliminating duplicative and obsolete information, reordering items to present information in a more logical order, using plain language to present information more clearly, adding information about the new cancer treatment deferment, updating information about the borrower defense discharge provisions to show changes made through the November 1, 2016 regulation. For the PLUS master promissory note (MPN) we are revising the information and instruction section to clarify who qualifies as a ''parent''. The promissory notes serve as the means by which an individual applies for and agrees to repay a Federal Direct Loan. It also informs the borrower of the terms and conditions of the Direct Loan and includes a statement of borrower's rights and responsibilities. Instructions explain how to complete the applications. The additional forms for the Direct Consolidation Loan allows the borrower to list all loans that they wish to include that would not fit on the application, and add other loans within the allowed time frame once the Consolidation Loan is made. The LVC for the Consolidation Loan serves as the means by which the Department obtains information needed to pay off the holders of the loans being consolidated

Dated: February 13, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–02665 Filed 2–15–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0014]

Agency Information Collection Activities; Comment Request; Student Assistance General Provisions—Financial Assistance for Students With Intellectual Disabilities

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 22, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0014. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Assistance General Provisions—Financial Assistance for Students with Intellectual Disabilities.

OMB Control Number: 1845–0099.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 443.

Total Estimated Number of Annual Burden Hours: 137.

Abstract: As provided by the Higher Education Act of 1965, as amended, (HEA) these regulations allow students with intellectual disabilities, who enroll in an eligible comprehensive transition program to receive Title IV, HEA program assistance under the Federal Pell Grant, the Federal Supplemental Educational Opportunity Grant (FSEOG), and the Federal Work Study (FWS) programs.

This request is for an extension of the current record-keeping requirements contained in the regulations at 34 CFR 668.232 and 668.233, related to the administrative requirement of the financial assistance for students with intellectual disabilities program.

Dated: February 13, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–02666 Filed 2–15–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), U.S. Department of Energy (DOE).

ACTION: Notice.

SUMMARY: EIA submitted an information collection request for extension as required by the Paperwork Reduction Act of 1995. EIA requests a three-year extension with changes to the information collection EIA–882T, ''Generic Clearance for Questionnaire Testing and Research.'' This collection allows EIA to conduct field testing of pilot surveys, cognitive interviews, respondent debriefings, usability interviews, field tests, focus groups, pretesting of questionnaires and evaluate the quality of the data collected on EIA survey forms.

DATES: Comments on this information collection must be received no later than March 21, 2019. If you anticipate any difficulties in submitting your comments by the deadline, contact the DOE Desk Officer at (202) 395–0710.

ADDRESSES: Written comments should be sent to: DOE Desk Officer: Brandon DeBruhl, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503. *Brandon_F_DeBruhl@omb.eop.gov*.

and to

Jacob Bournazian, U.S. Energy Information Administration, 1000 Independence Avenue SW EI–21, Washington, DC 20585. *jacob.bournazian@eia.gov*.

FOR FURTHER INFORMATION CONTACT: Jacob Bournazian, (202) 586–5562, email at *jacob.bournazian@eia.gov*.

SUPPLEMENTARY INFORMATION:

This information collection request contains

(1) *OMB No.:* 1905–0186;

(2) *Information Collection Request Title:* Generic Clearance for Questionnaire Testing and Research;

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:* The EIA–882T Information Collection Request provides EIA with the necessary cognitive research tools to utilize qualitative and quantitative methodologies to assess the ability of companies to report accurate information on survey instruments and validate the quality of the data collected on EIA forms. This clearance expands the available cognitive methods to include qualitative studies and pre-testing/field testing for conducting cognitive research. EIA uses qualitative studies for exploratory investigations in order to decide on the appropriate data collection mode, interview contact approach, or any other issue when little is known about a problem or the best approach to implement a data collection program. EIA conducts pretests when developing new questions or new survey questionnaires to see how respondents answer questions, interpret terminology, and identify potential data quality problems. Through this clearance, EIA will conduct pretest surveys, pilot surveys, respondent debriefings, cognitive interviews, usability interviews, and focus group discussions. By applying these research methodologies, EIA is able to improve the quality of data collected to measure market activity, assess supply conditions in energy markets, reduce or minimize respondent burden, increase agency efficiency, and improve responsiveness to the public. This collection authority also improves EIA's ability to collect and publish relevant and timely information that meets the data needs of EIA's customers.

(5) *Annual Estimated Number of Respondents:* 1,800;

(6) *Annual Estimated Number of Total Responses:* 1,800;

(7) *Annual Estimated Number of Burden Hours:* 2,220;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $164,324.

The cost of the burden hours is estimated to be $164,324. EIA estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours.

Statutory Authority: 15 U.S.C. 772(b) and 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on February 13, 2019.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2019–02648 Filed 2–15–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: EIA requests a three-year extension, with changes, of the Petroleum Marketing Program as required under the Paperwork Reduction Act of 1995. EIA's petroleum marketing survey program collects volumetric and price information needed for determining the supply of and demand for crude oil and refined petroleum products.

DATES: EIA must receive all comments on this proposed information collection no later than April 22, 2019. If you anticipate any difficulties in submitting your comments by the deadline, contact the person listed in the **ADDRESSES** section of this notice as soon as possible.

ADDRESSES: Send your comments to Tammy Heppner, U.S. Energy Information Administration, Mail Stop EI–25, 1000 Independence Avenue SW, Washington, DC 20585. Submission by email *tammy.heppner@eia.gov* is recommended.

FOR FURTHER INFORMATION CONTACT: Tammy Heppner (202) 586–4748, email: *tammy.heppner@eia.gov.* The forms and instructions are available on EIA's website at *http://www.eia.gov/survey/notice/marketing2019.php.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.* 1905–0174

(2) *Information Collection Request Title:* Petroleum Marketing Program;

(3) *Type of Request:* Renewal with changes;

(4) *Purpose:* These surveys collect volume and price information on crude oil and refined petroleum products. These data are published by EIA on its website, at *http://www.eia.gov.* The Petroleum Marketing Program consists of the following surveys: EIA–14 *Refiners' Monthly Cost Report;*

EIA–182 *Domestic Crude Oil First Purchase Report;*

EIA–782A *Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report;* EIA–782C *Monthly Report of Prime Supplier Sales of Petroleum Products Sold For Local Consumption;*

EIA–821 *Annual Fuel Oil and Kerosene Sales Report;*

EIA–856 *Monthly Foreign Crude Oil Acquisition Report;*

EIA–863 *Petroleum Product Sales Identification Survey;*

EIA–877 *Winter Heating Fuels Telephone Survey;*

EIA–878 *Motor Gasoline Price Survey;*

EIA–888 *On-Highway Diesel Fuel Price Survey.*

(4a) *Proposed Changes to Information Collection:* EIA proposes to protect the

information collected on Form EIA–877 *Winter Heating Fuels Telephone Survey* under the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA). CIPSEA provides legal authority for the principal federal statistical agencies to protect the identifiability of information submitted under a pledge of confidentiality and collected for statistical purposes only. It provides strong protection that the reported information will be held in confidence and used only for statistical purposes. By limiting the use to statistical purposes, the EIA–877 survey data will not be used against such respondents in any nonstatistical government action (*e.g.,* administrative, regulatory, or law enforcement) or for any other nonstatistical purpose. EIA proposes to protect information reported on Form EIA–877 under CIPSEA 5 U.S.C. Section 552 (b)(3) using the following confidentiality pledge:

''The information you provide on Form EIA–877 will be used for statistical purposes only and is confidential by law. Per the Federal Cybersecurity Enhancement Act of 2015, Federal information systems are protected from malicious activities through cybersecurity screening of transmitted data. Every EIA employee, as well as every agent, is subject to a jail term, a fine, or both if he or she makes public any identifiable information you reported.''

(5) *Annual Estimated Number of Respondents:* 11,372:

EIA–14 has 69 respondents;
EIA–182 has 106 respondents;
EIA–782A has 100 respondents;
EIA–782C has 202 respondents;
EIA–821 has 2,900 respondents;
EIA–856 has 42 respondents;
EIA–863 has 4,250 respondents;
EIA–877 has 2,300 respondents;
EIA–878 has 1,000 respondents;
EIA–888 has 403 respondents.

(6) *Annual Estimated Number of Total Responses:* 146,134;

(7) *Annual Estimated Number of Burden Hours:* 50,755;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $3,756,885 (50,755 annual burden hours multiplied by $74.02 per hour). EIA estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours since the information is maintained during normal course of business.

Comments are invited on whether or not: (a) The proposed collection of information is necessary for the proper performance of agency functions, including whether the information will have a practical utility; (b) EIA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate; (c) EIA can improve the quality, utility, and clarity of the information it will collect; and (d) EIA can minimize the burden of the collection of information on respondents, such as automated collection techniques or other forms of information technology.

Statutory Authority: 15 U.S.C. 772(b) and 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on February 13, 2019.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration, U. S. Energy Information Administration.

[FR Doc. 2019–02649 Filed 2–15–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19–116–001.
Applicants: DTE Midstream Appalachia, LLC.
Description: Compliance filing Compliance Filing—Non-Redacted Transportation Service Agreement to be effective 12/18/2018.
Filed Date: 2/11/19.
Accession Number: 20190211–5176.
Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: RP19–647–000.
Applicants: Trunkline Gas Company, LLC.
Description: § 4(d) Rate Filing: Housekeeping Filing on 2–11–19 to be effective 3/14/2019.
Filed Date: 2/11/19.
Accession Number: 20190211–5033.
Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: RP19–648–000.
Applicants: Trunkline Gas Company, LLC.
Description: § 4(d) Rate Filing: Housekeeping Filing—Orig. Vol. 1–A on 2–11–19 to be effective 3/14/2019.
Filed Date: 2/11/19.
Accession Number: 20190211–5034.
Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: RP19–649–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: § 4(d) Rate Filing: Housekeeping Filing on 2–11–19 to be effective 3/14/2019.
Filed Date: 2/11/19.
Accession Number: 20190211–5035.
Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: RP19–650–000.
Applicants: Southwest Gas Storage Company.
Description: § 4(d) Rate Filing: Housekeeping Filing on 2–11–19 to be effective 2/11/2019.
Filed Date: 2/11/19.
Accession Number: 20190211–5036.
Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: RP19–651–000.
Applicants: Viking Gas Transmission Company.
Description: § 4(d) Rate Filing: Gas Quality to be effective 3/14/2019.
Filed Date: 2/11/19.
Accession Number: 20190211–5093.
Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: RP19–652–000.
Applicants: Great Lakes Gas Transmission Limited Partnership.
Description: § 4(d) Rate Filing: FSA Pressure Commitment & TCPlus Cleanup to be effective 3/13/2019.
Filed Date: 2/11/19.
Accession Number: 20190211–5177.
Comments Due: 5 p.m. ET 2/25/19.

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: February 12, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–02637 Filed 2–15–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–1003–000]

Crystal Lake Wind Energy II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Crystal Lake Wind Energy II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 4, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 12, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–02636 Filed 2–15–19; 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: EC19–54–000

Applicants: FPL Energy New York, LLC, FPL ENERGY ROCKAWAY PEAKING FACILITIES, LLC, Bayswater Peaking Facility, LLC, Jamaica Bay Peaking Facility, LLC, MPH Rockaway Peakers, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of FPL Energy New York, LLC, et al.

Filed Date: 2/8/19.

Accession Number: 20190208–5181.

Comments Due: 5 p.m. ET 3/1/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3285–002; ER10–3181 003;ER17–177 001.

Applicants: UGI Utilities Inc., UGI Development Company, UGI Energy Services, LLC.

Description: Errata to October 31, 2018 Notice of Non-Material Change in Status of the UGI MBR Companies.

Filed Date: 2/11/19.

Accession Number: 20190211–5197.

Comments Due: 5 p.m. ET 3/4/19.

Docket Numbers: ER11–2774–003.

Applicants: Virginia Electric and Power Company, Dominion Energy Generation Marketing, Inc., Dominion Energy Nuclear Connecticut, Inc., NedPower Mount Storm, LLC, Fowler Ridge Wind Farm LLC, Dominion Bridgeport Fuel Cell, LLC, South Carolina Electric & Gas Company.

Description: Notice of Non-Material Change in Status of Dominion Resources Services, Inc., on behalf of Virginia Electric and Power Company, *et al.*

Filed Date: 2/8/19.

Accession Number: 20190208–5175.

Comments Due: 5 p.m. ET 3/1/19.

Docket Numbers: ER12–203–003.

Applicants: Virginia Electric and Power Company, Dominion Energy Generation Marketing, Inc., Dominion Energy Nuclear Connecticut, Inc., NedPower Mount Storm, LLC, Fowler Ridge Wind Farm LLC, Dominion Bridgeport Fuel Cell, LLC, South Carolina Electric & Gas Company.

Description: Notice of Non-Material Change in Status of Dominion Resources Services, Inc., on behalf of Virginia Electric and Power Company, et al.

Filed Date: 2/8/19.

Accession Number: 20190208–5174.

Comments Due: 5 p.m. ET 3/1/19.

Docket Numbers: ER19–1030–000.

Applicants: Masspower, LLC.

Description: § 205(d) Rate Filing: Notice of succession to be effective 2/12/2019.

Filed Date: 2/11/19.

Accession Number: 20190211–5158.

Comments Due: 5 p.m. ET 3/4/19.

Docket Numbers: ER19–1031–000.

Applicants: South Shore Energy, LLC, Dairyland Power Cooperative.

Description: Request for Expedited One-Time Limited Waiver of South Shore Energy, LLC, et al.

Filed Date: 2/8/19.

Accession Number: 20190208–5160.

Comments Due: 5 p.m. ET 3/1/19.

Docket Numbers: ER19–1032–000.

Applicants: Central Maine Power Company.

Description: Notice of Cancellation of Tariff Schedule W–1 of Central Maine Power Company.

Filed Date: 2/8/19.

Accession Number: 20190208–5163.

Comments Due: 5 p.m. ET 3/1/19.

Docket Numbers: ER19–1033–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–02–12_SA 1710 Certificate of Concurrence AEP-Duke Energy IA to be effective 12/12/2018.

Filed Date: 2/12/19.

Accession Number: 20190212–5029.

Comments Due: 5 p.m. ET 3/5/19.

Docket Numbers: ER19–1034–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–02–12_Termination of SA 3101 GIA and SA 3102 MPFCA to be effective 3/3/2019.

Filed Date: 2/12/19.

Accession Number: 20190212–5031.

Comments Due: 5 p.m. ET 3/5/19.

Docket Numbers: ER19–1035–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–02–12_SA 3045 Ida Grove-MEC 1st Rev GIA (J412) to be effective 1/29/2019.

Filed Date: 2/12/19.

Accession Number: 20190212–5032.
Comments Due: 5 p.m. ET 3/5/19.

Take notice that the Commission received the following electric reliability filings.

Docket Numbers: RD18–3–000.
Applicants: North American Electric Reliability Corporation, Western Electricity Coordinating Council.
Description: Amendment to the Joint Petition of the North American Electric Reliability Corporation and Western Electricity Coordinating Council for the Approval of Retirement of Regional Reliability Standard PRC–004–WECC–2.
Filed Date: 2/11/19.
Accession Number: 20190211–5190.
Comments Due: 5 p.m. ET 3/4/19.

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: February 12, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–02635 Filed 2–15–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0031; FRL–9984–15–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Agricultural Worker Protection Standard Training, Notification, and Recordkeeping (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA): ''Agricultural Worker Protection Standard Training, Notification, and Recordkeeping'' (EPA ICR Number 2491.04 and OMB Control Number 2070–0190). This is a request to renew the approval of an existing ICR, which is currently approved. EPA did not receive any comments in response to the previously provided public review opportunity issued in the **Federal Register** on May 30, 2018. With this submission, EPA is providing an additional 30 days for public review.

DATES: Comments must be received on or before March 21, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2018–0031, to: (1) EPA online using *http://www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Ryne Yarger, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 605–1193; email address: *yarger.ryne@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket: Supporting documents, including the ICR that explains in detail the information collection activities and the related burden and cost estimates that are summarized in this document, are available in the docket for this ICR. The docket can be viewed online at *http://www.regulations.gov* or in person at the EPA Docket Center, West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

ICR status: Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. Under PRA, 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR estimates the recordkeeping and third-party response burden of paperwork activities that covers the information collection requirements contained in the Worker Protection Standard (WPS) regulations at 40 CFR part 170. These requirements were updated in a 2015 Final Rule (80 FR 67495, November 2, 2015) that amended 40 CFR part 170.

Prior to the regulatory update, the WPS regulations already had provisions for training and notification of pesticide-related information for workers who enter pesticide-treated areas after pesticide application to perform crop-related tasks, as well as for handlers who mix, load, and apply pesticides. Agricultural employers and commercial pesticide handling establishments are responsible for providing required training, notifications and information to their employees to ensure worker and handler safety. The changes to the regulation in 2015 improved protections and included revisions to many of the provisions as well as the addition of new requirements. The WPS regulation now includes expanded and more frequent training for workers and handlers, improved posting of pesticide-treated areas, additional information for workers before they enter a pesticide-treated area while a restricted entry interval is in effect, access to more general and application-specific information about pesticides used on the establishment, and recordkeeping of training to improve enforceability and compliance.

Respondents/Affected Entities: Agricultural employers on agricultural establishments, including employers in farms as well as in nursery, forestry, and greenhouse establishments.

Respondent's obligation to respond: Mandatory (40 CFR 170).

Estimated total number of potential respondents: Approximately 985,000 agricultural establishments/employers and approximately 1,995,000 agricultural workers/handlers.

Frequency of response: Annually or on occasion, depending on the activity.

Total estimated annual burden: 10,448,160 hours. Burden is defined at 5 CFR 1320.3(b).

Total estimated annual costs: $433,264,055, includes no annualized capital investment or maintenance and operational costs.

Changes in the estimates: There is no change in the number of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. There is an increase of 3,220 respondents, which is the result of a correction to the Agency's previously reported bottom-line annual estimates. Although the full burden analysis for the currently approved ICR properly accounted for burden imposed on these respondents, these respondents were inadvertently omitted from the total number of respondents reported to OMB. This change is an adjustment.

Courtney Kerwin,

Director, Collection Strategies Division.

[FR Doc. 2019–02583 Filed 2–15–19; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2019–6002]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. Financial institutions interested in becoming an Approved Finance Provider (AFP) with EXIM must complete this application in order to obtain approval to make loans under EXIM insurance policies and/or enter into one or more Master Guarantee Agreements (MGA) with EXIM.

DATES: Comments must be received on or before April 22, 2019 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 10–06) or by email to *Mia.Johnson@exim.gov,* or by mail to Mia L. Johnson, Export-Import Bank, 811 Vermont Ave. NW, Washington, DC 20571.

The information collection tool can be reviewed at: *http://exim.gov/sites/default/files/pub/pending/eib10_06.pdf.*

SUPPLEMENTARY INFORMATION: An AFP may participate in the Medium-Term Insurance, Bank Letter of Credit, and Financial Institution Buyer Credit programs as an insured lender, while AFPs approved for an MGA may apply for multiple loan or lease transactions to be guaranteed by EXIM.

EXIM uses the information provided in the form and the supplemental information required to be submitted with the form to determine whether the lender qualifies to participate in its lender insurance and guarantee programs. The details are necessary to evaluate whether the lender has the capital to fund potential transactions, proper due diligence procedures, and the monitoring capacity to carry out transactions.

Title and Form Number: EIB 10–06 Application for Approved Finance Provider.

OMB Number: 3048–0032.

Type of Review: Renew.

Need and Use: The information collected will allow EXIM to determine compliance and content for transaction requests submitted to the Export-Import Bank under its insurance, guarantee, and direct loan programs.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 50.

Estimated Time per Respondent: 30 minutes.

Annual Burden Hours: 25 hours.

Frequency of Reporting of Use: On occasion.

Government Expenses:

Reviewing time per year: 25 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $1,062.50 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $1,275.

Bassam Doughman,

IT Specialist.

[FR Doc. 2019–02089 Filed 2–15–19; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 15, 2019.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Citizens Bank Group, Inc., St. James, Minnesota;* to acquire voting shares of The Nicollet County Bank of Saint Peter, St. Peter, Minnesota.

Board of Governors of the Federal Reserve System, February 13, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–02638 Filed 2–15–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Solicitation for Nominations for Members of the U.S. Preventive Services Task Force

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Solicits nominations for new members of the USPSTF.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) invites nominations of individuals qualified to serve as members of the U.S. Preventive Services Task Force (USPSTF).

DATES: Nominations must be received in writing or electronically by May 15th of a given year to be considered for appointment to begin in January of the following year.

Arrangement for Public Inspection

Nominations and applications are kept on file at the Center for Evidence and Practice Improvement, AHRQ, and are available for review during business hours. AHRQ does not reply to individual nominations, but considers all nominations in selecting members. Information regarded as private and personal, such as a nominee's social security number, home and email addresses, home telephone and fax numbers, or names of family members will not be disclosed to the public in accord with the Freedom of Information Act. 5 U.S.C. 552(b)(6); 45 CFR 5.31(f).

Nomination Submissions

Nominations must be submitted in writing or electronically, and should include:

1. The applicant's current curriculum vitae and contact information, including mailing address, email address, and telephone number; and

2. A letter explaining how this individual meets the qualification requirements and how he or she would contribute to the USPSTF. The letter should also attest to the nominee's willingness to serve as a member of the USPSTF.

AHRQ will later ask people under serious consideration for USPSTF membership to provide detailed information that will permit evaluation of possible significant conflicts of interest. Such information will concern matters such as financial holdings, consultancies, non-financial scientific interests, and research grants or contracts.

To obtain a diversity of perspectives, AHRQ particularly encourages nominations of women, members of minority populations, and persons with disabilities. Interested individuals can nominate themselves. Organizations and individuals may nominate one or more people qualified for membership on the USPSTF at any time. Individuals nominated prior to May 15, 2018, who continue to have interest in serving on the USPSTF should be re-nominated.

Qualification Requirements

To qualify for the USPSTF and support its mission, an applicant or nominee should, at a minimum, demonstrate knowledge, expertise and national leadership in the following areas:

1. The critical evaluation of research published in peer-reviewed literature and in the methods of evidence review;

2. Clinical prevention, health promotion and primary health care; and

3. Implementation of evidence-based recommendations in clinical practice including at the clinician-patient level, practice level, and health-system level.

Additionally, the Task Force benefits from members with expertise in the following areas:

- Public health
- Health equity and the reduction of health disparities
- Application of science to health policy
- Behavioral medicine
- Communication of scientific findings to multiple audiences including health care professionals, policy makers and the general public

Candidates with experience and skills in any of these areas should highlight them in their nomination materials.

Applicants must have no substantial conflicts of interest, whether financial, professional, or intellectual, that would impair the scientific integrity of the work of the USPSTF and must be willing to complete regular conflict of interest disclosures.

Applicants must have the ability to work collaboratively with a team of diverse professionals who support the mission of the USPSTF. Applicants must have adequate time to contribute substantively to the work products of the USPSTF.

ADDRESSES: Submit your responses either in writing or electronically to: Lydia Hill, ATTN: USPSTF Nominations, Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, 5600 Fishers Lane, Mailstop: 06E53A, Rockville, Maryland 20857, *USPSTFmembernominations@ahrq.hhs.gov*.

Nominee Selection

Nominated individuals will be selected for the USPSTF on the basis of how well they meet the required qualifications and the current expertise needs of the USPSTF. It is anticipated that new members will be invited to serve on the USPSTF beginning in January, 2020. All nominated individuals will be considered; however, strongest consideration will be given to individuals with demonstrated training and expertise in the areas of Family Medicine and Internal Medicine. AHRQ will retain and may consider for future vacancies nominations received this year and not selected during this cycle.

Some USPSTF members without primary health care clinical experience may be selected based on their expertise in methodological issues such as meta-analysis, analytic modeling or clinical epidemiology. For individuals with clinical expertise in primary health care, additional qualifications in methodology would enhance their candidacy.

FOR FURTHER INFORMATION CONTACT: Lydia Hill at *USPSTFmembernominations@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

Under Title IX of the Public Health Service Act, AHRQ is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. 42 U.S.C. 299(b). AHRQ accomplishes these goals through scientific research and promotion of improvements in clinical practice, including clinical prevention of diseases and other health conditions. See 42 U.S.C. 299(b).

The USPSTF, an independent body of experts in prevention and evidence-based medicine, works to improve the health of all Americans by making evidence-based recommendations about the effectiveness of clinical preventive services and health promotion. The recommendations made by the USPSTF address clinical preventive services for adults and children, and include screening tests, counseling services, and preventive medications.

The USPSTF was first established in 1984 under the auspices of the U.S. Public Health Service. Currently, the USPSTF is convened by the Director of AHRQ, and AHRQ provides ongoing scientific, administrative, and dissemination support for the USPSTF's operation. USPSTF members serve four year terms. New members are selected each year to replace those members who are completing their appointments.

The USPSTF is charged with rigorously evaluating the effectiveness, appropriateness and cost-effectiveness of clinical preventive services and formulating or updating recommendations regarding the appropriate provision of preventive services. See 42 U.S.C. 299b–4(a)(1). Current USPSTF recommendations and associated evidence reviews are available on the internet (*www.uspreventiveservicestaskforce.org*).

USPSTF members currently meet three times a year for two days in the Washington, DC area. A significant portion of the USPSTF's work occurs between meetings during conference calls and via email discussions. Member duties include prioritizing topics, designing research plans, reviewing and commenting on systematic evidence reviews of evidence, discussing and making recommendations on preventive

services, reviewing stakeholder comments, drafting final recommendation documents, and participating in workgroups on specific topics and methods. Members can expect to receive frequent emails, can expect to participate in multiple conference calls each month, and can expect to have periodic interaction with stakeholders. AHRQ estimates that members devote approximately 200 hours a year outside of in-person meetings to their USPSTF duties. The members are all volunteers and do not receive any compensation beyond support for travel to in person meetings.

Francis D. Chesley, Jr.,

Acting Deputy Director.

[FR Doc. 2019–02643 Filed 2–15–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From Healthcare Improvement, Inc. PSO

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of delisting.

SUMMARY: The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) authorizes AHRQ, on behalf of the Secretary of HHS, to list as a patient safety organization (PSO) an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ has accepted a notification of voluntary relinquishment from the Healthcare Improvement, Inc. PSO, PSO number P0123, of its status as a PSO, and has delisted the PSO accordingly.

DATES: The delisting was applicable at 12:00 Midnight ET (2400) on December 31, 2018.

ADDRESSES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. Both directories can be accessed electronically at the following HHS website: *http://www.pso.ahrq.gov/listed.*

FOR FURTHER INFORMATION CONTACT: Cathryn Bach, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, MS 06N100B, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act, 42 U.S.C. 299b–21 to 299b–26, and the related Patient Safety Rule, 42 CFR part 3, published in the **Federal Register** on November 21, 2008, 73 FR 70732–70814, establish a framework by which individuals and entities that meet the definition of provider in the Patient Safety Rule may voluntarily report information to PSOs listed by AHRQ, on a privileged and confidential basis, for the aggregation and analysis of patient safety events.

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

AHRQ has accepted a notification from Healthcare Improvement, Inc. PSO, a component entity of Inspirien Insurance Company, to voluntarily relinquish its status as a PSO. Accordingly, Healthcare Improvement, Inc. PSO, P0123, was delisted effective at 12:00 Midnight ET (2400) on December 31, 2018.

Healthcare Improvement, Inc. PSO has patient safety work product (PSWP) in its possession. The PSO will meet the requirements of section 3.108(c)(2)(i) of the Patient Safety Rule regarding notification to providers that have reported to the PSO and of section 3.108(c)(2)(ii) regarding disposition of PSWP consistent with section 3.108(b)(3). According to section 3.108(b)(3) of the Patient Safety Rule, the PSO has 90 days from the effective date of delisting and revocation to complete the disposition of PSWP that is currently in the PSO's possession.

More information on PSOs can be obtained through AHRQ's PSO website at *http://www.pso.ahrq.gov.*

Francis D. Chesley, Jr.,

Acting Deputy Director.

[FR Doc. 2019–02642 Filed 2–15–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9112–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—October Through December 2018

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

ACTION: Notice.

SUMMARY: This quarterly notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from October through December 2018, relating to the Medicare and Medicaid programs and other programs administered by CMS.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning each of the addenda published in this notice.

Addenda	Contact	Phone Number
I CMS Manual Instructions	Ismael Torres	(410) 786-1864
II Regulation Documents Published in the **Federal Register**	Terri Plumb	(410) 786-4481
III CMS Rulings	Tiffany Lafferty	(410)786-7548
IV Medicare National Coverage Determinations	Wanda Belle, MPA	(410) 786-7491
V FDA-Approved Category B IDEs	John Manlove	(410) 786-6877
VI Collections of Information	William Parham	(410) 786-4669
VII Medicare –Approved Carotid Stent Facilities	Sarah Fulton, MHS	(410) 786-2749
VIII American College of Cardiology-National Cardiovascular Data Registry Sites	Sarah Fulton, MHS	(410) 786-2749
IX Medicare's Active Coverage-Related Guidance Documents	JoAnna Baldwin, MS	(410) 786-7205
X One-time Notices Regarding National Coverage Provisions	JoAnna Baldwin, MS	(410) 786-7205
XI National Oncologic Positron Emission Tomography Registry Sites	Stuart Caplan, RN, MAS	(410) 786-8564
XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities	David Dolan	(410) 786-3365
XIII Medicare-Approved Lung Volume Reduction Surgery Facilities	Sarah Fulton, MHS	(410) 786-2749
XIV Medicare-Approved Bariatric Surgery Facilities	Sarah Fulton, MHS	(410) 786-2749
XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials	Stuart Caplan, RN, MAS	(410) 786-8564
All Other Information	Annette Brewer	(410) 786-6580

I. Background

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) Furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, state governments, state Medicaid agencies, state survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners (NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides only the specific updates that have occurred in the 3 month period along with a hyperlink to the full listing that is available on the CMS website or the appropriate data registries that are used as our resources. This is the most current up-to-date information and will be available earlier than we publish our quarterly notice. We believe the website list provides more timely access for beneficiaries, providers, and suppliers. We also believe the website offers a more convenient tool for the public to find the full list of qualified providers for these specific services and offers more flexibility and ≥real time≥ accessibility. In addition, many of the websites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the website. These listservs avoid the need to check the website, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a website proves to be difficult, the contact person listed can provide information.

III. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at *http://www.cms.gov/manuals.*

Dated: January 17, 2019.

Kathleen Cantwell,

Director, Office of Strategic Operations and Regulatory Affairs.

BILLING CODE 4120–01–P

Publication Dates for the Previous Four Quarterly Notices

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: January 26, 2018 (83 FR 3716), May 4, 2018 (83 FR 19769), August 13, 2018 (83 FR 40043) and November 2, 2018 (83 FR 55174). We are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the website to access this information and a contact person for questions or additional information.

Addendum I: Medicare and Medicaid Manual Instructions (October through December 2018)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: http://cms.gov/manuals.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at http://www.gpo.gov/libraries/

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the manual for Home Health Rural Add-on Payments Based on County of Residence, use (CMS-Pub. 100-04) Transmittal No. 4190.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual. For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our website at www.cms.gov/Manuals.

Transmittal Number	Manual/Subject/Publication Number
	Medicare General Information (CMS-Pub. 100-01)
118	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
119	Update to Medicare Deductible, Coinsurance and Premium Rates for 2019
120	Internet Only Manual Updates to Pub. 100-01, 100-02 and 100-04 to Correct Errors and Omissions (SNF) (2018 Q4)
121	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
122	Updated Instructions for the Change Request Implementation Report (CRIR) and Technical Direction Letter (TDL) Compliance Report (TCR)
	Medicare Benefit Policy (CMS-Pub. 100-02)
247	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
248	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
249	Internet Only Manual Updates to Pub. 100-01, 100-02 and 100-04 to Correct Errors and Omissions (SNF) (2018 Q4) Medicare SNF PPS Overview

	Three-Day Prior Hospitalization Daily Skilled Services Defined Services Furnished Under Arrangements With Providers
250	Implementation of Changes in the End-Stage Renal Disease (ESRD) Prospective Payment System (PPS) and Payment for Dialysis Furnished for ESRD PPS Case-Mix Adjustments Acute Kidney Injury (AKI) in ESRD Facilities for Calendar Year (CY) 2019
251	Revision of Definition of the Physician Supervision of Diagnostic Procedures, Clarification of DSMT Telehealth Services, and Establishing a Modifier for Expanding the Use of Telehealth for Individuals with Stroke
252	Revision of Definition of the Physician Supervision of Diagnostic Procedures, Clarification of DSMT Telehealth Services, and Establishing a Modifier for Expanding the Use of Telehealth for Individuals with Stroke
253	Updates to the Inpatient Psychiatric Facility Benefit Policy Manual Background Statutory Requirements Affected Medicare Providers Conditions for Payment Under the IPF Prospective Payment System Admission Requirements Medical Records Requirements Data Psychiatric Evaluation Certification and Recertification Requirements Certification Recertification Delayed/Lapsed Certification and Recertification Treatment Plan Individualized Treatment or Diagnostic Plan Services Expected to Improve the Condition or for Purpose of Diagnosis Recording Progress Discharge Planning and Discharge Summary Director of Inpatient Psychiatric Services; Medical Staff Nursing Services Social Services Benefit Limits in Psychiatric Hospitals Benefits Exhaust
254	Implementation of Changes in the End-Stage Renal Disease (ESRD) Prospective Payment System (PPS) and Payment for Dialysis Furnished for Acute Kidney Injury (AKI) in ESRD Facilities for Calendar Year (CY) 2019
Medicare National Coverage Determination (CMS-Pub. 100-03)	
208	Magnetic Resonance Imaging (MRI)
209	National Coverage Determination (NCD) 20.4 Implantable Cardiac Implantable Cardioverter Defibrillators (ICD)
210	National Coverage Determination (NCD90.2): Next Generation Sequencing (NGS)
211	National Coverage Determination (NCD) 20.4 Implantable Cardiac Defibrillators (ICDs)

Medicare Claims Processing (CMS-Pub. 100-04)	
4143	2019 Annual Update of Healthcare Common Procedure Coding System (HCPCS) Codes for Skilled Nursing Facility (SNF) Consolidated Billing (CB) Update
4144	Fiscal Year (FY) 2019 Inpatient Prospective Payment System (IPPS) and Long Term Care Hospital (LTCH) PPS Changes
4145	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instructions
4146	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instructions
4147	Magnetic Resonance Imaging (MRI) Magnetic Resonance Imaging (MRI) Procedures Payment Requirements Medicare Summary Notices (MSN), Claim Adjustment Reason Codes (CARCs), and Remittance Advice Remark Codes (RARCs)
4148	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instructions
4149	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4150	Update to Bone Mass Measurements (BMM) Code 77085 Deductible and Coinsurance Payment Methodology and HCPCS Coding Table of Preventive and Screening Services
4151	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4152	Redesign of Hospice Periods – Additional Requirements Notice of Election (NOE) Notice of Termination/Revocation (NOTR) Change of Provider/Transfer Notice Cancellation of an Election Change of Ownership Notice Hospice Election Periods and Benefit Periods in Medicare Data Required on the Institutional Claim to A/B MAC (HHH)
4153	Incomplete Colonoscopies Billed with Modifier 53 for Critical Access Hospital (CAH) Method II Providers
4154	Incomplete Colonoscopies (Codes 44388, 45378, G0105 and G0121)
4155	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instructions
4156	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4157	Hospital and Critical Access Hospital (CAH) Swing-Bed Manual Revisions and Shared Systems Changes Swing-Bed Services 100.2/Payment for CRNA or AA Services Addendum A - Provider Specific File Payment for CRNA Pass-Through Services Payment for CRNA Services (Method II CAH only Types of Facilities Subject to the Consolidated Billing Requirement for SNFs
4158	Issued to a specific audience, not posted to Internet/Intranet due to

	Confidentiality of Instructions
4159	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4160	Modifications to the National Coordination of Benefits Agreement (COBA) Crossover Process Coordination of Benefits Agreement (COBA) Detailed Error Report Notification Process Coordination of Benefits Agreement (COBA) Eligibility File Claims Recovery Process
4161	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4162	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4163	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4164	Instructions for Retrieving the 2019 Pricing and Healthcare Common Procedure Coding System (HCPCS) Data Files through CMS' Mainframe Telecommunications Systems
4165	Calendar Year (CY) 2019 Participation Enrollment and Medicare Participating Physicians and Suppliers Directory (MEDPARD) Procedure
4166	Revisions to Medicare Claims Processing Manual Reference to Burn Medicare Severity-Diagnostic Related Groups (MS-DRGs) for Transfer Policy
4167	Remittance Advice Remark Code (RARC), Claims Adjustment Reason Code (CARC), Medicare Remit Easy Print (MREP) and PC Print Update
4168	Implement Operating Rules - Phase III Electronic Remittance Advice (ERA) Electronic Funds Transfer (EFT): Committee on Operating Rules for Information Exchange (CORE) 360 Uniform Use of Claim Adjustment Reason Codes (CARC), Remittance Advice Remark Codes (RARC) and Claim Adjustment Group Code (CAGC) Rule – Update from Council for Affordable Quality Healthcare (CAQH) CORE
4169	New Waived Tests
4170	Quarterly Update of HCPCS Codes Used for Home Health Consolidated Billing Enforcement
4171	Instructions for Downloading the Medicare ZIP Code Files for April 2019
4172	Ambulance Inflation Factor for Calendar Year 2019 and Productivity Adjustment
4173	Revision of Definition of the Physician Supervision of Diagnostic Procedures, Clarification of DSMT Telehealth Services, and Establishing a Modifier for Expanding the Use of Telehealth for Individuals with Stroke
4174	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4175	Quarterly Update to the National Correct Coding Initiative (NCCI) Procedure-to-Procedure (PTP) Edits, Version 25.0 Effective January 1, 2019
4176	Summary of Policies in the Calendar Year (CY) 2019 Medicare Physician Fee Schedule (MPFS) Final Rule, Telehealth Originating Site Facility Fee Payment Amount and Telehealth Services List, CT Modifier Reduction List, and Preventive Services List
4177	File Conversions Related to the Spanish Translation of the Healthcare Common Procedure Coding System (HCPCS) Descriptions
4178	Annual Update to the Per-Beneficiary Therapy Amounts
4179	Combined Common Edits/Enhancements Modules (CCEM) Code Set Update
4180	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
4181	Calendar Year (CY) 2019 Update for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule
4182	Calendar Year (CY) 2019 Annual Update for Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment
4183	Claim Status Category and Claim Status Codes Update
4184	New Physician Specialty Code for Undersea and Hyperbaric Medicine
4185	January 2019 Integrated Outpatient Code Editor (I/OCE) Specifications Version 20.0
4186	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
4187	Ensuring Only the Active Billing Hospice Can Submit a Revocation
4188	Medicare Claims Processing Manual Chapter 23 - Fee Schedule Administration and Coding Requirements
4189	Updates to Immunosuppressive Guidance
4190	Home Health Rural Add-on Payments Based on County of Residence
4191	January 2019 Update of the Ambulatory Surgical Center (ASC) Payment System
Medicare Secondary Payer (CMS-Pub. 100-05)	
	None
Medicare Financial Management (CMS-Pub. 100-06)	
307	Notice of New Interest Rate for Medicare Overpayments and Underpayments -1st Qtr Notification for FY 2019
308	The Fiscal Year 2019 Updates for the Centers for Medicare & Medicaid Services (CMS) Internet Only Manual (IOM) Publication (Pub.) 100-06, Medicare Financial Management Manual, Chapter 7 - Internal Control Requirements
309	New Physician Specialty Code for Undersea and Hyperbaric Medicine
Medicare State Operations Manual (CMS-Pub. 100-07)	
185	Revisions to the State Operations Manual (SOM) Chapter 7 Survey Frequency: 15-Month Survey Interval and 12-Month State-wide Average Setting the Mandatory 3-Month and 6-Month Sanction Time Frames Mandatory Immediate Imposition of Federal Remedies Criteria for Mandatory Immediate Imposition of Federal Remedies Prior to the Facility's Correction of Deficiencies Effective Dates for Immediate Imposition of Federal Remedies Responsibilities of the State Survey Agency and the CMS Regional Office (RO) when there is an Immediate Imposition of Federal Remedies

Medicare Program Integrity (CMS-Pub. 100-08)	
829	Glossary of Acronyms LCD Definition and Statutory Authority for LCDs LCD Process General LCD Process Overview Requests Informal Meetings New LCD Requests New LCD Request Requirements Proposed LCD Proposed Decision and Posting of LCD Summary Sheet Public Comment Contractor Advisory Committee (CAC Open Meeting Final Determination Response to Public Comment Notice Period Reconsideration Request Web site Requirements for the LCD Reconsideration Process Valid LCD Reconsideration Request Requirements Process Requirements Challenge of an LCD LCD Content General Requirements Consultation Consultation Summary CAC Recommendations Evidentiary Content Reasonable and Necessary Provision in an LCD Public Comment Final Decision Record
830	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
831	Update to Exhibit 16 - Model Payment Suspension Letters in Publication (Pub.) 100-08
832	Modification to Chapter 6, Section 6.3 (Medical Review of Certification and Recertification of Residents in SNFs) of Publication (Pub.) 100-08 Medical Review of Certification and Recertification of Residents in SNFs
833	Templates in Medical Review Progress Notes and Templates
834	Order Requirements When Prescribing Practitioner is Also the Supplier and is Permitted to Furnish Specific Items of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)
835	One-on-One Education
836	Medical Review of Diagnostic Laboratory Tests Medical Review of Diagnostic Tests Medical Review of Diagnostic Laboratory Tests
837	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
838	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
839	New Instructions for Home Health Agency Misuse of Requests for Anticipated Payments (RAPs) Home Health Agency Misuse of Requests for Anticipated Payments RAP Monitoring Education and Additional Monitoring Corrective Action Plans Notification to the HHA CAP Submission CAP Acceptance and Monitoring CAP Closeout RAP Suppression Notice of RAP Suppression Monitoring During RAP Suppression Result of Initial RAP Suppression Monitoring Period Reinstatement of RAP Authorization Continuation of RAP Suppression Coordination and Referral to the UPIC
840	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
841	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
842	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
843	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
844	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
845	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
846	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
847	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
848	Update to Chapter 4, Section 4.18.1.4 and Exhibit 16 in Publication (Pub.) 100-08
849	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
850	Medical Review of Diagnostic Laboratory Tests
851	Updates to Chapter 4 of Publication (Pub.) 100-08
852	Update to Chapter 12 (The Comprehensive Error Rate Testing (CERT) Program) of Publication (Pub.) 100-08 (Medicare Program Integrity Manual)
Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)	
40	Medicare Contractor Beneficiary and Provider Communications Manual IOM Pub. 100-09 Chapter 5 Correct Coding Initiative
Medicare Quality Improvement Organization (CMS- Pub. 100-10)	
	None

Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14)	
	None
Medicaid Program Integrity Disease Network Organizations (CMS Pub 100-15)	
	None
Medicare Managed Care (CMS-Pub. 100-16)	
	None
Medicare Business Partners Systems Security (CMS-Pub. 100-17)	
	None
Demonstrations (CMS-Pub. 100-19)	
208	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
209	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
210	Next Generation Accountable Care Organization (ACO) Model 2019 Benefit Enhancement
211	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
212	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
213	Next Generation Accountable Care Organization (NGACO) Model Post Discharge Home Visit HCPCS
214	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
215	Next Generation Accountable Care Organization (NGACO) Model Post Discharge Home Visit HCPCS
216	Next Generation Accountable Care Organization (NGACO) Model Post Discharge Home Visit HCPCS
One Time Notification (CMS-Pub. 100-20)	
2144	User CR: FISS to Add Location/Statuses to the 6H File Fix
2145	Shared System Enhancement 2018: Implementation of the Medicare Summary Notice (MSN) Zip Code Analyzer Tool
2146	Update to Common Working File (CWF) Benefit Period Logic for Occurrence Code 22 on Skilled Nursing Facility (SNF) and Swing Bed Inpatient Claims
2147	Update to the Long Description for Spanish Records on The Procedure Descriptor Master File for all Adds and Updates That Were Not Loaded with Change Request (CR) 10286
2148	Claim Based Incentive Programs - Non-Assigned Claim Update
2149	Analysis to Implement the Skilled Nursing Facility (SNF) Patient Driven Payment Model (PDPM)
2150	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instructions
2151	Updating Calendar Year (CY) 2019 Medicare Diabetes Prevention Program (MDPP) Payment Rates
2152	Procedures for Shared Systems to Handle Foreign (non US) Addresses
2153	Medicare Cost Report E-Filing (MCReF)
2154	Shared System Enhancement 2018: Streamline National Provider Identifier (NPI) Processing in the VIPS Medicare System (VMS)
2155	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instructions
2156	Update to Common Working File (CWF) Edit of Medicare Advantage (MA) Enrollees' Inpatient Claims from Approved Teaching Hospitals Billed with Indirect Medical Education (IME) or Coverage with Evidence Development (CED
2157	Systems Changes to Address Acute Kidney Injury (AKI) Claims and Outlier Payments
2158	Shared System Enhancement 2018: Establish Beneficiary Data Streaming (BDS) Log Files
2159	Shared System Enhancement 2018: Remove Remaining Obsolete Access Restriction by Granular User Services (ARGUS) Processing
2160	Shared System Enhancement 2018: Eliminate action code logic
2161	Correct the CWF Handling of Beneficiaries with 14+ MSP Occurrences for HETS Shared System Enhancement 2018: Remove Default Automated Development System (ADS) and Field ADS Questions
2162	Modify Common Working File (CWF) Editing to Apply Code G0476 to Female Beneficiaries Only
2163	Shared System Enhancement 2018 ViPS Medicare Systems (VMS): Streamline the use of Assembler Language Code (ALC) Modules
2164	Shared System Enhancement 2018: Enhance Common Working File (CWF) Data Extract Process
2165	Fiscal Intermediary Shared System (FISS) AGILE Development and Implementation of Application Programming Interface (API) for Medicare Administrative Contractors (MACs)
2166	Shared System Enhancement 2018: Enhance Common Working File (CWF) Internal Testing Facility (ITF) Response Records
2167	Decommissioning of the Client Letter Application within VIPS Medicare System (VMS)
2168	Provider Enrollment Chain and Ownership System (PECOS) Data Source Change
2169	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
2170	Analysis of the Combined Common Edits/Enhancements Module (CCEM) and Intelligent Data Stream (IDS) Reporting Software to Ensure Effective Operation Under Java Version 8
2171	Analysis to Implement Changes to Regulations Allowing Inpatient Prospective Payment System (IPPS)-Excluded Hospitals to Operate IPPS-Excluded Units
2172	Shared System Enhancement 2018: Remove Obsolete VIPS Medicare System (VMS) logic Related to the ViPS Medicare Automated Parameter (VMAP) Carrier Parameter Table
2173	Shared System Enhancement 2018: Renovate 2029 Serial Date Processing – Analysis Only
2174	Correction to Common Working File (CWF) Informational Unsolicited Response (IUR) 7272 for Intervening Stay
2175	Shared System Enhancement 2018: Establish a HMBI Query/Response Log
2176	Revision of Skilled Nursing Facility (SNF) Consolidated Billing (CB) Edits for Ambulance Services Rendered to Beneficiaries in a Part A SNF Stay

2177	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instructions
2178	Removal of the Provider Requirement for Reporting on an Institutional Claim a Value Code (VC) 05 - Professional Component-Split Implementation
2179	User Change Request (CR): ViPS Medicare System (VMS) Changes to Edit Dispensing and Supply Fee Codes Allowed when Related Drug Codes are Denied in Batch
2180	FISS Integrated Outpatient Code Editor (IOCE) Claim and Return Buffer Interface Changes Related to new Contractor Line Level Bypass Updates
2181	User CR: ViPS Medicare System (VMS) Changes to Bypass Claim Edit 0192 on an Adjustment Claim when Payment was Suppressed on the Previous Adjustment
2182	User Change Request (CR): Multi-Carrier System (MCS) - Analysis to Enhance the Maximum Claim Counter Process for Edits and Audits
2183	Shared System Enhancement 2018: Move Authorized Reason Code Override Processing to FSSBSTUF
2184	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
2185	User Change Request (CR): Multi-Carrier System (MCS) - Enhance System Control Facility (SCF) to Add Fraud Prevention System (FPS) Criteria
2186	Redesign of Flu Vaccines in Fiscal Intermediary Shared System (FISS) Shared System Enhancement 2018: Analysis to Minimize Data for Medicare Beneficiary Database (MBD) Extract
2187	Shared System Enhancement 2018: Rewrite Fiscal Intermediary Shared System (FISS) module FSSB6001, Common Working File (CWF) Unsolicited Response Function
2188	Fiscal Intermediary Standard System (FISS) Prepayment Review Report
2189	User CR: Update FISS Utility to Retain Original Claim Receipt Date
2190	Shared System Enhancement 2018: Improve Organization of the International Code of Diseases, Tenth Revision (ICD-10) File during Creation
2191	Multi-Carrier System (MCS) Prepayment Review File
2192	Implementation of Healthcare Common Procedure Coding System (HCPCS) Code J3591 and Additional Changes for End Stage Renal Disease (ESRD) Claims
2193	Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Update
2194	Medicare Cost Report E-Filing (MCReF)
2195	Analysis to Discuss and Resolve the Challenges Around the Design of (Pre-/Post-Pay) Electronic Medical Documentation Requests (eMDR) via the Electronic Submission of Medical Documentation (esMD) System
2196	Analysis to Create a Standard Coded List of Document Types to be used by Review Contractors (RC) for Requesting Documentation in Pre-Pay and Post-Pay Additional Documentation Request (ADR) Letters (and/or Electronic Medical Documentation Requests (eMDR) via the Electronic Submission of Medical Documentation (esMD) System)
2197	ViPS Medicare System (VMS) Prepayment Review File
2198	Enhancing the Verification Process of Common Working File (CWF) Part A Provider Inquiries
2199	Appeon PowerBuilder Upgrade Analysis Only
2200	International Classification of Diseases, Tenth Revision (ICD-10) and Other Coding Revisions to National Coverage Determinations (NCDs)
2202	International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determination (NCDs)
2203	User CR: FISS to Add Location/Statuses to the 6H File Fix
2204	Update to the Long Description for Spanish Records on The Procedure Descriptor Master File for all Adds and Updates That Were Not Loaded with Change Request (CR) 10286
2205	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
2206	Implementation of a Bundled Payment for Multi-Component Durable Medical Equipment (DME)
2207	Targeted Probe and Educate
2208	Implementing the Insertion of a Sheet of Paper Promoting the Electronic Medicare Summary Notices (eMSNs) into Mailed Medicare Summary Notices (MSNs)
2209	Implementing the Insertion of a Sheet of Paper Promoting the Electronic Medicare Summary Notices (eMSNs) into Mailed Medicare Summary Notices (MSNs)
2210	Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Update
2211	Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Update
2212	New CWF Edit for Part A Outpatient Medicare Advantage (MA), Health Maintenance Organization (HMO)
2213	Implementing the Revised Patient's Request for Medical Payment Form CMS-1490S, Version 01/18
2214	Transitioning the Pricing, Data Analysis and Coding (PDAC) to the New Contractor
2215	Analysis of the Combined Common Edits/Enhancements Module (CCEM) and MSSQL and Oracle Relational Data Base Management Systems
2216	Clarification of Part B Recovery Audit Contractor (RAC) Appeals Case File Sharing Process
2217	Multi-Carrier System (MCS) Prepayment Review File
Medicare Quality Reporting Incentive Programs (CMS-Pub. 100-22)	
80	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
81	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
Information Security Acceptable Risk Safeguards (CMS-Pub. 100-25)	
	None

Addendum II: Regulation Documents Published in the Federal Register (October through December 2018)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal**

Register, contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at http://www.gpoaccess.gov/fr/index.html. The following website http://www.archives.gov/federal-register/ provides information on how to access electronic editions, printed editions, and reference copies.

This information is available on our website at: http://www.cms.gov/quarterlyproviderupdates/downloads/Regs-3Q18QPU.pdf

For questions or additional information, contact Terri Plumb (410-786-4481).

Addendum III: CMS Rulings (October through December 2018)

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters.

The rulings can be accessed at http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings. For questions or additional information, contact Tiffany Lafferty (410-786-7548).

Addendum IV: Medicare National Coverage Determinations (October through December 2018)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS website. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. There were no national coverage determinations (NCDs), or reconsiderations of completed NCDs published in the 3-month period. This information is available at: www.cms.gov/medicare-coverage-database/. For questions or additional information, contact Wanda Belle, MPA (410-786-7491).

Title	NCDM Section	Transmittal Number	Issue Date	Effective Date
Supervised Exercise Therapy (SET) for Symptomatic Peripheral Artery	NCD 20.35	211	12/13/2018	02/15/2018
National Coverage Determination (NCD90.2): Next Generation Sequencing (NGS)	NCD 90.2	210	11/30/2018	03/16/2018

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (October through December 2018)

(Inclusion of this addenda is under discussion internally.)

Addendum VI: Approval Numbers for Collections of Information (October through December 2018)

All approval numbers are available to the public at Reginfo.gov. Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain. For questions or additional information, contact William Parham (410-786-4669).

Addendum VII: Medicare-Approved Carotid Stent Facilities, (October through December 2018)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that

carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available at: http://www.cms.gov/MedicareApprovedFacilitie/CASF/list.asp#TopOfPage For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Facility	Provider Number	Effective Date	State
The following facilities are new listings for this quarter.			
Northside Hospital - Forsyth 1200 Northside Forsyth Drive Cummings, GA 30041	110005	10/15/2018	GA
Northside Hospital - Cherokee 450 Northside Cherokee Boulevard Canton, GA 30115	110008	10/15/2018	GA
Blessing Hospital 1005 Broadway Quincy, IL 62301	1760571699	11/30/2018	IL
New York-Presbyterian/Weill Cornell Medical Center (NYP/WC) 525 East 68th Street New York, NY 10021	330101	05/05/2005	NY
The following facilities have editorial changes (in bold).			
New York-Presbyterian/Columbia University Medical Center 622 West 168th Street New York, NY 10032	330101	05/05/2005	NY
The following facility has been removed.			
Tennova Healthcare – Physicians Regional Medical Center 900 E. Oak Hill Avenue Knoxville, TN 37917	440120	10/11/2005	TN

Addendum VIII: American College of Cardiology's National Cardiovascular Data Registry Sites (October through December 2018)

The initial data collection requirement through the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) has served to develop and improve the evidence base for the use of ICDs in certain Medicare beneficiaries. The data collection requirement ended with the posting of the final decision memo for Implantable Cardioverter Defibrillators on February 15, 2018.

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum IX: Active CMS Coverage-Related Guidance Documents (October through December 2018)

CMS issued a guidance document on November 20, 2014 titled "Guidance for the Public, Industry, and CMS Staff: Coverage with Evidence Development Document". Although CMS has several policy vehicles relating to evidence development activities including the investigational device exemption (IDE), the clinical trial policy, national coverage determinations and local coverage determinations, this guidance document is principally intended to help the public understand CMS's implementation of coverage with evidence development (CED) through the national coverage determination process. The document is available at http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=27. There are no additional Active CMS Coverage-Related Guidance Documents for the 3-month period. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

Addendum X: List of Special One-Time Notices Regarding National Coverage Provisions (October through December 2018)

There were no special one-time notices regarding national coverage provisions published in the 3-month period. This information is available at www.cms.hhs.gov/coverage. For questions or additional information, contact JoAnna Baldwin, MS (410-786 7205).

Addendum XI: National Oncologic PET Registry (NOPR) (October through December 2018)

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were

performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry. There were no additions, deletions, or editorial changes to the listing of National Oncologic Positron Emission Tomography Registry (NOPR) in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/NOPR/list.asp#TopOfPage. For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564).

Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (October through December 2018)

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates to the list of Medicare-approved facilities that meet our standards that have occurred in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/VAD/list.asp#TopOfPage. For questions or additional information, contact David Dolan, JD, (410-786-3365).

Facility	Provider Number	Date of Initial Certification	Date of Recertification	State
The following facilities are new listings for this quarter.				
George Washington University Hospital 900 23rd Street, NW Washington, DC 20037	090001	09/12/2018		DC
Other information: Joint Commission ID # 6310				
Jersey Shore University Medical Center 1945 Route 33 Neptune City, NJ 07753 Other information: DNV Certificate #: 277447-2018-VAD	310073	10/16/2018		NJ
Rochester General Hospital 1425 Portland Avenue Rochester, NY 14621 DNV GL Certificate #: 278376-2018-VAD	330125	10/29/2018		NY
The following facilities have editorial changes (in bold).				
PeaceHealth St. Joseph Medical Center **2901 Squalicum Pakrway** **Bellingham, WA 98225** **Other information: Joint Commission ID #9574** **Joint Commission Withdrawal Date: 2018-10-01**	500030	09/17/2014	10/18/2016	WA
Froedtert Memorial Lutheran Hospital 9200 West Wisconsin Avenue Milwaukee, WI 53226 Other information: Joint Commission ID #7718 Previous Re-certification Dates: 2014-07-08; 2016-08-09	520177	08/01/2012	**08/08/2018**	WI
FROM: South Broward Hospital District DBA Memorial Regional Hospital **TO: Memorial Regional Hospital** 3501 Johnson Street Hollywood, FL 33021 Other Information:	100038	08/20/2014	**08/15/2018**	FL

Facility	Provider Number	Date of Initial Certification	Date of Recertification	State
Joint Commission 6811 Previous Re-certification Dates: 2016-08-11				
FROM: University Hospitals and Health System **TO: University of Mississippi Medical Center** 2500 North State Street Jackson, MS 39216 Other information: Joint Commission ID #8064	250001	08/17/2016	**08/08/2018**	MS
Advocate Christ Medical Center. 4440 W. 95th Street Oak Lawn, IL 60505 DNV Certificate #: 277350-2018-VAD	140208	09/28/2005	**10/01/2018**	IL
Sharp Memorial Hospital 7901 Frost Street San Diego, CA 92123 Other information: Joint Commission ID #3910 Previous Re-certification Dates: 2008-07-18; 2010-06-29; 2012-08-14; 2014-09-09; 2016-08-09	050100	12/01/2003	**08/15/2018**	CA
Scripps Memorial Hospital – La Jolla 9888 Genesee Avenue La Jolla, CA 92037 Other information: Joint Commission ID #9880 VAD Previous Re-certification Dates: 2014-09-09; 2016-10-08	050324	11/16/2012	**10/24/2018**	DC
Maimonides Medical Center 4802 Tenth Avenue Brooklyn, NY 11219 Other information: Joint Commission ID #5734	330194	08/24/2012	**10/11/2018**	NY
VAD Previous Re-certification Dates: 2014-07-29; 2016-09-13				
Kaiser Sunnyside Medical Center 10180 SE Sunnyside Road Clackamas, OR 97015 Other information: Joint Commission ID #4858	380091	09/14/2016	**09/19/2018**	OR
University of Maryland Medical Center 22 S Greene Street Baltimore, MD 21201 Other information: Joint Commission ID #6264 VAD Previous Re-certification Dates: 2008-09-16; 2010-08-25; 2012-08-15; 2014-08-19; 2016-09-20	210002	11/12/2003	**09/26/2018**	MD
FROM: Indiana University Health, Inc. (Methodist Hospital) **TO: Indiana University Health Methodist Hospital** 1701 N. Senate Boulevard Indianapolis, IN 46206 Other information: Joint Commission ID #188549 VAD Previous Re-certification Dates: 2008-10-06; 2010-08-17; 2012-08-17; 2014-08-19; 2016-10-04	340002	09/28/2016	**09/19/2018**	IN

Facility	Provider Number	Date of Initial Certification	Date of Recertification	State
FROM: North Shore University Health System TO: North Shore University Hospital 300 Community Drive Manhasset, NY 11030 Other information: Joint Commission ID #2091 **Previous Re-certification Dates: 2008-03-27; 2010-03-18; 2012-03-07; 2014-02-04; 2016-03-15**	330106	09/28/2016	**09/19/2018**	NY
Maine Medical Center 22 Bramhall Street Portland, ME 04102 Other information: Joint Commission ID #5445 VAD Previous Re-certification Dates: 2016-09-28	200009	02/03/2009	**10/03/2018**	ME
Mercy Hospital Springfield 1235 East Cherokee Springfield, MO 65804 **Other information: Joint Commission ID #4234** **Joint Commission Withdrawal Date: 2018-12-06**	260065	02/11/2015	04/04/2017	MO

Addendum XIII: Lung Volume Reduction Surgery (LVRS) (October through December 2018)

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commision on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. There were no editorial updates to the listing of facilities for lung volume reduction surgery published in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/LVRS/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XIV: Medicare-Approved Bariatric Surgery Facilities (October through December 2018)

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

There were no additions, deletions, or editorial changes to Medicare-approved facilities that meet CMS' minimum facility standards for bariatric surgery that have been certified by ACS and/or ASMBS in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/BSF/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

This information is available on our website at www.cms.gov/MedicareApprovedFacilitie/PETDT/list.asp#TopOfPage. For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564).

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (October through December 2018)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the 3-month period.

[FR Doc. 2019–02672 Filed 2–15–19; 8:45 am]

BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3364–FN]

Application From the Joint Commission (TJC) for Continued Approval of Its Psychiatric Hospital Accreditation Program

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

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the Joint Commission for continued recognition as a national accrediting organization for psychiatric hospitals that wish to participate in the Medicare or Medicaid programs.

DATES: The approval announced in this final notice is effective February 25, 2019 through February 25, 2023.

FOR FURTHER INFORMATION CONTACT: Mary Ellen Palowitch (410) 786–4496, Monda Shaver (410) 786–3410, Tara Lemons (410) 786–3030.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a psychiatric hospital provided certain requirements are met. Section 1861(f) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a psychiatric hospital. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 482 subparts A, B, C and E specify the minimum conditions that a psychiatric hospital must meet to participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for psychiatric hospitals.

Generally, to enter into an agreement, a psychiatric hospital must first be certified by a State Survey Agency as complying with the conditions or requirements set forth in part 482 subpart A, B, C and E of our regulations. Thereafter, the psychiatric hospital is subject to regular surveys by a State Survey Agency to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we may treat the provider entity as having met those conditions, that is, we may ''deem'' the provider entity as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary of the Department of Health and Human Services as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program may be deemed to meet the Medicare conditions. A national accrediting organization applying for approval of its accreditation program under part 488, subpart A, must provide the Centers for Medicare & Medicaid Services (CMS) with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.5. The regulations at § 488.5(e)(2)(i) require accrediting organizations to reapply for continued approval of its accreditation program every 6 years or sooner as determined by CMS.

The Joint Commission's current term of approval for their psychiatric hospital accreditation program expires February 25, 2019.

II. Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS-approval of an accreditation program is conducted in a timely manner. The Act provides us 210 days after the date of receipt of a complete application, with any documentation necessary to make the determination, to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice

On August 15, 2018, we published a proposed notice in the **Federal Register** (83 FR 40514), announcing the Joint Commission's (TJC's) request for continued approval of its Medicare psychiatric hospital accreditation

program. In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.5, we conducted a review of TJC's Medicare psychiatric hospital accreditation renewal application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An onsite administrative review of TJC's: (1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its psychiatric hospital surveyors; (4) ability to investigate and respond appropriately to complaints against accredited psychiatric hospitals; and, (5) survey review and decision-making process for accreditation.
- A comparison of TJC's Medicare hospital accreditation program standards to our current Medicare hospital Conditions of Participation (CoPs) and psychiatric hospital special conditions.
- A documentation review of TJC's psychiatric hospital's survey process to:

++ Determine the composition of the survey team, surveyor qualifications, and TJC's ability to provide continuing surveyor training.

++ Compare TJC's processes to those CMS require of state survey agencies, including periodic resurvey and the ability to investigate and respond appropriately to complaints against accredited psychiatric hospitals.

++ Evaluate TJC's procedures for monitoring psychiatric hospitals it has found to be out of compliance with TJC's program requirements. (This pertains only to monitoring procedures when TJC identifies non-compliance. If noncompliance is identified by a state survey agency through a validation survey, the state survey agency monitors corrections as specified at § 488.9(c)).

++ Assess TJC's ability to report deficiencies to the surveyed hospital and respond to the psychiatric hospital's plan of correction in a timely manner.

++ Establish TJC's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ Determine the adequacy of TJC's staff and other resources.

++ Confirm TJC's ability to provide adequate funding for performing required surveys.

++ Confirm TJC's policies with respect to surveys being unannounced.

++ Obtain TJC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the August 15, 2018 proposed notice also solicited public comments regarding whether TJC's requirements met or exceeded the Medicare CoPs for psychiatric hospitals. We received no comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between TJC's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared TJC's psychiatric hospital accreditation program requirements and survey process with the Medicare CoPs at part 482 and the survey and certification process requirements of parts 488 and 489. Our review and evaluation of TJC's psychiatric hospital application, which were conducted as described in section III of this final notice, yielded the following areas where, as of the date of this notice, TJC has revised its standards and certification processes in order to meet the requirements at:

- Section 482.12(a)(10), to address that consultation will occur directly with the individual assigned the responsibility for the organization and conduct of the hospital's medical staff, or his/her designee and the timeframe for which direct consultation must occur.
- Section 482.41(b)(3), to provide information related to our rule stating that Life Safety Code provisions do not apply in a State where CMS finds that a fire and safety code imposed by State law adequately protects patients in hospitals.
- Section 482.41(b)(5), to address cooperation with local firefighting authorities.
- Section 482.41(b)(7), to address installing alcohol-based hand rub dispensers in a manner that adequately protects against inappropriate access.
- Section 482.41(e), to address the omission of a standard to correspond to references and documents in this CMS requirement.
- Section 482.42(b)(1), to address and clarify that ''make certain'' is defined as ''must.''
- Section 482.42(b)(2), to address and clarify that ''make certain'' is defined as ''must.''
- Section 482.43(b)(2), to address who may develop or supervise the development of the discharge evaluation.
- Section 482.43(c)(1), to address who must develop or supervise the development of a discharge plan if the discharge planning evaluation indicates a need for a discharge plan.
- Section 482.51(a)(3), to address that a qualified registered nurse is immediately available to respond to emergencies.
- Section 482.51(b)(3), to address and include the required equipment that must be available to the operating room suites.
- Section § 488.5(a)(4)(i), to ensure that all surveys are unannounced.
- Section § 488.5(a)(4)(ii), to ensure that its surveyors are provided clear instruction for assessing only the applicable CoPs for the psychiatric hospital accreditation program.
- Section 488.5(a)(4)(iv), to ensure that TJC psychiatric hospital surveyors document findings of noncompliance with accreditation standards at the comparable Medicare CoP; and to ensure that all findings of observed noncompliance noted on surveyor worksheets are clearly and accurately reflected in the final survey deficiency report.
- Section 488.5(a)(4)(v), to ensure that a minimum sample of patient records are reviewed for all elements required by the regulations.
- Sections 488.5(a)(11)(ii), to ensure that data submitted to CMS is timely, complete and accurate.
- Section 488.5(a)(12), to ensure that TJC has a clearly defined complaint investigation process that is comparable to CMS; to ensure that the process for protecting complainant anonymity does not impede the required complaint investigation; to ensure that complaints are investigated, based on the submitted allegations, irrespective of receiving a ''waiver of anonymity'' from the complainant; to ensure that complaints are reviewed and investigated within the comparable timelines established by CMS; and to ensure that all complaints that would result in condition-level non-compliance, based on allegations described therein, are required to be investigated through an onsite survey.
- Section 488.5(a)(19)(ii), to ensure that TJC proposed survey process and crosswalked standards will not be implemented without prior written notice of approval from CMS.
- Section 488.26, to ensure TJC's survey process meets or exceeds the Medicare program requirements; and to ensure that surveyors assess all required facility locations and services during the survey process.
- Section 489.13, to ensure that the granting of accreditation and recommendations to CMS for Medicare participation occurs only after the

facility has demonstrated full compliance with all requirements.

B. Term of Approval

Based on our review and observations described in section III of this final notice, we approve TJC as a national accreditation organization for psychiatric hospitals that request participation in the Medicare program, effective February 25, 2019 through February 25, 2023.

To verify TJC's continued compliance with the provisions of this final notice, CMS expects to conduct a follow-up corporate on-site visit and survey observation within 18 months of the publication date of this notice.

V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: February 7, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–02673 Filed 2–15–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; ACF's Generic Clearance for Grant Reviewer Recruitment Forms (OMB #0970–0477)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF), Office of Planning, Research, and Evaluation (OPRE) is proposing an extension of a currently approved generic clearance (OMB no. 0970–0477) for Grant Reviewer Recruitment (GRR) forms. The GRR forms will be used to select reviewers who will participate in the grant review process for the purpose of selecting successful applications.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Under this generic approval, ACF conducts and proposes to continue to conduct more than one information collection that is very similar, voluntary, low-burden and uncontroversial. The purpose is to select qualified reviewers for the grant peer review process based on professional qualifications using data entered by candidates and the uploaded writing sample and/or curriculum vitae and/or resume. The grant review process is in accordance with the U.S. Department of Health and Human Services' (DHHS) Grants Policy Directive (GPD) 2.04 ''Awarding Grants'', the DHHS Awarding Agency Grants Administration Manual (AAGAM), Chapter 2.04.104C ''Objective Review of Grant Applications'', and the Public Health Service (PHS) Act, Sections 799(f) and 806(e).

Respondents: Individuals who may apply to review ACF grant applications.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Grant Reviewer Recruitment Form	3,000	1	.5	1,500

Estimated Total Annual Burden Hours: 1,500.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–02624 Filed 2–15–19; 8:45 am]

BILLING CODE 4184–79–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Strengthening Relationship Education and Marriage Services (STREAMS) Evaluation (OMB#0970–0481)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Family Assistance (OFA) within the Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services has issued grants to organizations to provide healthy marriage and relationship education (HMRE) services. Under a previously approved data collection activity (OMB#0970–0481), the Office of Planning, Research, and Evaluation (OPRE) within ACF is conducting the Strengthening Relationship Education and Marriage Services (STREAMS) evaluation with five HMRE grantees. The purpose of STREAMS is to measure the effectiveness and quality of HMRE programs designed to strengthen intimate relationships. This data collection request is for an extension of

previously approved data collection instruments and for two additional data collection instruments.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Description: The STREAMS evaluation includes two components, an impact study and a process study. The evaluation will examine HMRE programs for youth in high school, adult couples, and adult individuals.

1. Impact Study. The goal of the impact study is to provide rigorous estimates of the effectiveness of program services and interventions to improve program implementation. The impact study uses an experimental design. Eligible program applicants are randomly assigned to either a program group that is offered program services or a control group that is not. STREAMS collects baseline information from eligible program applicants prior to random assignment and administers a follow-up survey to participants 12 months after random assignment.

2. Process study. The goal of the process study is to support the interpretation of impact findings and document program operations to support future replication. STREAMS conducts semi-structured interviews with program staff and selected community stakeholders, conducts focus groups with program participants, administers a survey to program staff, and collects data on adherence to program curricula through an add on to an existing program MIS (nFORM, OMB no. 0970–0460).

This data collection request is for an extension of previously approved data collection instruments for the impact study and for two additional data collection instruments associated with the impact study. The two additional instruments will allow for longer-term follow-up in two of the five evaluation sites. (1) The second follow-up survey for youth will be administered approximately 24 to 36 months after random assignment to study participants in the STREAMS site serving youth. (2) The second follow-up survey for adults will be administered approximately 30 months after random assignment to study participants in one of the STREAMS evaluation sites serving adults.

Respondents: Study participants.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Previously Approved Burden that Remains					
Introductory script, grantee staff	8	8	25	0.08	16
Introductory script, program applicants	600	200	1	0.08	16
Add-on to nFORM to conduct random assignment	8	8	25	0.08	16
Follow-up survey for youth	690	230	1	0.5	115
Baseline survey for adults	600	200	1	0.5	100
Follow-up survey for adults	2,300	767	1	0.75	575
Current Request for Approval					
Second follow-up survey for youth	1,500	500	1	0.5	250
Second follow-up survey for adults	800	267	1	0.75	200

Estimated Total Annual Burden Hours: 1,288.

Authority: 42 U.S.C. 603; Sec. 811 (b) Healthy Marriage Promotion and Promoting Responsible Fatherhood Grants of the Claims Resolution Act of 2010, Pub. L. 111–291, 124 Stat. 3064.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–02693 Filed 2–15–19; 8:45 am]

BILLING CODE 4184–73–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–6154]

Evaluation of Devices Used With Regenerative Medicine Advanced Therapies; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Evaluation of Devices Used with Regenerative Medicine Advanced Therapies; Guidance for Industry.'' The guidance document provides manufacturers, applicants, and sponsors engaged in the development of regenerative medicine therapies, with our current thinking regarding evaluation of devices used in the recovery, isolation or delivery of regenerative advanced therapies, which FDA generally refers to as ''regenerative medicine advanced therapies'' or ''RMATs.'' Specifically, the guidance addresses how FDA intends to simplify and streamline its application of regulatory requirements for combination device and cell or tissue products; what, if any, intended uses or specific attributes would result in a device used

with a regenerative therapy product to be classified as a class III device; the factors to consider in determining whether a device may be labeled for use with a specific RMAT or class of RMATs; when a device may be limited to a specific intended use with only one particular type of cell; and application of the least burdensome approach to demonstrate how a device may be used with more than one cell type. The issuance of this guidance fulfills the statutory requirement set forth in a certain section of the 21st Century Cures Act (Cures Act). The guidance announced in this notice finalizes the draft guidance of the same title dated November 2017.

DATES: The announcement of the guidance is published in the **Federal Register** on February 19, 2019.

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

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2017–D–6154 for ''Evaluation of Devices Used with Regenerative Medicine Advanced Therapies; Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

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

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Tami Belouin, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Evaluation of Devices Used with Regenerative Medicine Advanced Therapies; Guidance for Industry.'' The guidance provides manufacturers, applicants and sponsors engaged in the development of regenerative medicine therapies, with our current thinking regarding evaluation of devices used in the recovery, isolation or delivery of regenerative advanced therapies, which FDA generally refers to as ''RMATs.'' Specifically, the guidance addresses how FDA intends to simplify and streamline its application of regulatory requirements for combination device and cell or tissue products; what, if any, intended uses or specific attributes would result in a device used with a regenerative therapy product to be classified as a class III device; the factors to consider in determining whether a device may be labeled for use with a specific RMAT or class of RMATs; when a device may be limited to a specific intended use with only one particular type of cell; and application of the least burdensome approach to demonstrate how a device may be used with more than one cell type.

The issuance of the final guidance fulfills the statutory requirement set forth in section 3034(b) of the Cures Act (Pub. L. 114–255) and sets forth information about a wide range of concepts related to the regulation of devices used in the recovery, isolation, and delivery of RMATs. As our experience with these products grows, we may consider issuing guidance on more specific topics related to these

devices to provide additional recommendations to stakeholders.

In the **Federal Register** of November 17, 2017 (82 FR 54349), FDA announced the availability of the draft guidance of the same title dated November 2017. FDA considered comments received on the draft guidance. FDA revised the guidance as appropriate in response to the comments and made editorial changes to improve clarity. The guidance announced in this notice finalizes the draft guidance dated November 2017.

Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a document entitled ''Expedited Programs for Regenerative Medicine Therapies for Serious Conditions; Guidance for Industry.''

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Evaluation of Devices Used with Regenerative Medicine Advanced Therapies.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807 have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 814 have been approved under OMB control numbers 0910–0231 and 0910–0332; the collections of information in 21 CFR part 1271 have been approved under OMB control number 0910–0543; and the collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: February 13, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02692 Filed 2–15–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–4711]

Nonbinding Feedback After Certain Food and Drug Administration Inspections of Device Establishments; 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 ''Nonbinding Feedback After Certain FDA Inspections of Device Establishments.'' The FDA Reauthorization Act of 2017 (FDARA) mandated that FDA issue draft guidance specifying how FDA provides nonbinding feedback to the owner, operator, or agent in charge of a device establishment after an inspection of such establishment within 45 days of FDA's receipt of a request for such feedback if the request meets certain statutory criteria. This draft guidance describes FDA's proposed approach for providing nonbinding feedback, including the procedures for requesting nonbinding feedback and FDA's review of requests for nonbinding feedback. 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 April 22, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance. Submit either electronic or written comments on the collection of information by April 22, 2019.

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–4711 for ''Nonbinding Feedback After Certain FDA Inspections of Device Establishments.'' 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 ''Nonbinding Feedback After Certain FDA Inspections of Device Establishments'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Mary Wen, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1529, Silver Spring, MD 20993–0002, 240–402–4913; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

In 2017, FDARA was enacted. Section 702 of FDARA included a requirement for FDA to issue draft guidance specifying how FDA provides nonbinding feedback to the owner, operator, or agent in charge of a device establishment after an inspection of such establishment within 45 days of FDA's receipt of a request for such feedback if the request meets certain statutory criteria. The draft guidance, ''Nonbinding Feedback After Certain FDA Inspections of Device Establishments,'' describes the Agency's proposed approach to providing such nonbinding feedback. The draft guidance also identifies a standardized method for communicating and submitting requests for nonbinding feedback and describes how FDA evaluates and responds to such requests.

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 nonbinding feedback after certain FDA inspections of device establishments. 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 ''Nonbinding Feedback After Certain FDA Inspections of Device Establishments'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 17047 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995 (PRA)

Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Requests for Nonbinding Feedback After Certain FDA Inspections of Device Establishments

OMB Control Number 0910–NEW

The draft guidance document, ''Nonbinding Feedback After Certain FDA Inspections of Device Establishments,'' explains how the owner, operator, or agent in charge of a device establishment may submit a request for nonbinding feedback to FDA regarding actions the firm has proposed to take to address certain kinds of inspectional observations that have been documented on an FDA Inspectional Observations Form (Form FDA 483) and issued to the firm upon completion of an inspection of the firm's establishment. The draft guidance also identifies a standardized method for communicating and submitting requests for nonbinding feedback and describes how FDA evaluates and responds to such requests.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Requests for nonbinding feedback after certain FDA inspections of device establishments	220	1	220	500	110,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimate that 220 respondents per year will request nonbinding feedback as described in the draft guidance is based on recent inspectional data. Based on the recommendations in the guidance and our experience with similar information collections, we believe it will take approximately 500 hours to complete a request for nonbinding feedback. Therefore, we estimate the burden of this information collection to be 110,000 hours.

Dated: February 12, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02620 Filed 2–15–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–6159]

Expedited Programs for Regenerative Medicine Therapies for Serious Conditions; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Expedited Programs for Regenerative Medicine Therapies for Serious Conditions; Guidance for Industry.'' The guidance document provides sponsors engaged in the development of regenerative medicine therapies for serious or life-threatening diseases or conditions with FDA's recommendations on the expedited development and review of these therapies. The guidance describes the expedited programs available to sponsors of regenerative medicine therapies for serious or life-threatening diseases or conditions, including those products designated as regenerative advanced therapies (which FDA refers to as ''regenerative medicine advanced therapy'' (RMAT) designation). The guidance also describes considerations in the clinical development of regenerative medicine therapies and opportunities for sponsors of regenerative medicine therapies to interact with the Center of Biologics Evaluation and Research (CBER) review staff.

The guidance announced in this notice finalizes the draft guidance of the same title dated November 2017.

DATES: The announcement of the guidance is published in the **Federal Register** on February 19, 2019.

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

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2017–D–6159 for ''Expedited Programs for Regenerative Medicine Therapies for Serious Conditions; Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

Docket: For access to the docket to read background documents or the

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

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

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Tami Belouin, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Expedited Programs for Regenerative Medicine Therapies for Serious Conditions; Guidance for Industry.'' The guidance describes the expedited programs available to sponsors of regenerative medicine therapies for serious or life-threatening diseases or conditions (referred to in the guidance as serious conditions), including those products designated as RMATs; provides information about the provisions in the 21st Century Cures Act (Cures Act) (Pub. L. 114–225) regarding the use of the accelerated approval pathway for regenerative medicine therapies that have been granted designation as an RMAT; describes how CBER will encourage flexibility in clinical trial design to facilitate the development of data to demonstrate the safety and effectiveness of regenerative medicine therapies that are being developed to address unmet needs in patients with serious conditions; and describes the opportunities for sponsors of regenerative medicine therapies to interact with CBER review staff.

In the **Federal Register** of November 17, 2017 (82 FR 54385), FDA announced the availability of the draft guidance of the same title dated November 2017. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. In addition, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated November 2017.

Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a document entitled ''Evaluation of Devices Used with Regenerative Medicine Advanced Therapies; Guidance for Industry.''

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Expedited Programs for Regenerative Medicine Therapies for Serious Conditions.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information regarding formal meetings described in the draft guidance, ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products,'' have been approved under OMB control number 0910–0429; the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338; the collections of information for expedited programs in ''Guidance for Industry: Expedited Programs for Serious Conditions—Drugs and Biologics,'' have been approved under OMB control number 0910–0765; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: February 13, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02691 Filed 2–15–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–0065]

Competitive Generic Therapies; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Competitive Generic Therapies.'' On August 18, 2017, the FDA Reauthorization Act of 2017 (FDARA), which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act), was signed into law. Under FDARA, a section was added to the FD&C Act that established a new process to designate, and expedite the development and review of, certain drugs intended for submission or submitted in an abbreviated new drug application (ANDA) and for which there is ''inadequate generic competition.'' This draft guidance provides a description of the process that applicants should follow to request designation of a drug as a competitive generic therapy (CGT) and the criteria for designating a drug as a CGT. This draft guidance also includes information on the actions FDA may take to expedite the development and review of an ANDA for a drug designated as a CGT. This draft guidance also provides information on how FDA implements the statutory provisions providing for a 180-day exclusivity period for certain first approved applicants that submit ANDAs for drugs designated as CGTs.

DATES: Submit either electronic or written comments on the draft guidance by April 22, 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–2019–D–0065 for ''Competitive Generic Therapies.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

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

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Susan Levine, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1674, Silver Spring, MD 20993–0002, 240–402–7936.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Competitive Generic Therapies.'' On August 18, 2017, FDARA (Pub. L. 115–52) was signed into law. As part of FDARA, the Generic Drug User Fee Amendments were reauthorized (Title III) to continue timely access to high-quality affordable generic medicines. FDARA also created other enhancements associated with generic drugs. Specifically, section 803 of FDARA amended the FD&C Act to add section 506H (21 U.S.C. 356h), which established a new process to designate, and expedite the development and review of, certain drugs intended for submission or submitted in an ANDA and for which there is ''inadequate generic competition.''

FDA recognizes that various factors may influence a generic drug applicant's decision to develop a certain drug. For instance, some drugs may not attract a high level of interest from generic drug applicants if there is a limited market for the products and/or if the products are more difficult to develop. Nevertheless, these drugs can play an important role in diagnosing, treating, and preventing various types of diseases or conditions, and incentivizing generic competition for these products can help ensure patients have access to the medicines they need. The provisions associated with CGTs are intended to incentivize effective development, efficient review, and timely market entry for drugs for which there is inadequate generic competition.

This guidance provides a description of the process that applicants should follow to request designation of a drug as a CGT and the criteria for designating a drug as a CGT. This guidance also includes information on the actions FDA may take to expedite the development and review of ANDAs for drugs designated as CGT. These actions may help to clarify the regulatory expectations for a particular drug, assist applicants in developing a more complete submission, and ultimately promote a more efficient and effective ANDA review process and help reduce the number of review cycles necessary to obtain ANDA approval.

This guidance also provides information on how FDA implements the statutory provisions providing for a 180-day exclusivity period for certain first approved applicants that submit ANDAs for CGTs. FDARA created a new type of 180-day exclusivity, different from 180-day patent challenge exclusivity, for the first approved applicant of a drug with a CGT designation for which there were no unexpired patents or exclusivities listed in the Orange Book at the time of original submission of the ANDA. This new 180-exclusivity under FDARA (''CGT exclusivity'') is intended to incentivize competition for drugs that are not protected by patent or exclusivity and for which there is inadequate generic competition.

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 ''Competitive Generic Therapies.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 314.94, including the submission of ANDAs and designations such as CGT product development, have been approved under OMB control number 0910–0001 (including 0910–0338 for Form FDA 356h). The collections of information associated with product development meetings, presubmission meetings, and mid-review cycle meetings between applicants and FDA have been approved under OMB control number 0910–0797.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: February 12, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02598 Filed 2–15–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1093]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Additive Petitions and Investigational Food Additive Exemptions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 21, 2019.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0546. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Additive Petitions and Investigational Food Additive Exemptions—21 CFR 570.17, 571.1, and 571.6

OMB Control Number 0910–0546—Extension

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 348(a)) provides that a food additive shall be deemed to be unsafe unless its use is permitted by a regulation which prescribes the condition(s) under which it may safely be used, or unless it is exempted by regulation for investigational use. Section 409(b) of the FD&C Act (21 U.S.C. 348(b)) specifies the information that must be submitted by a petitioner to establish the safety of a food additive and to secure the issuance of a regulation permitting its use.

To implement the provisions of § 409 of the FD&C Act, we issued procedural regulations under 21 CFR part 571. These procedural regulations are designed to specify more thoroughly the information that must be submitted to meet the requirement set down in broader terms by the FD&C Act. The regulations add no substantive requirements to those indicated in the FD&C Act, but attempt to explain these requirements and provide a standard format for submission to speed processing of the petition. Labeling requirements for food additives intended for animal consumption are also set forth in various regulations contained in 21 CFR parts 501, 573, and 579. The labeling regulations are considered by FDA to be cross-referenced to § 571.1, which is the subject of this same OMB clearance for food additive petitions.

Regarding the investigational use of food additives, § 409(j) of the FD&C Act (§ 409(j)) (21 U.S.C. 348(j)) provides that any food additive, or any food bearing or containing such an additive, may be exempted from the requirements of this section if intended solely for investigational use by qualified experts. Investigational use of a food additive is typically to address the safety and/or intended physical or technical effect of the additive.

To implement the provisions of § 409(j), we issued regulations under 21 CFR 570.17. These regulations are designed to specify more thoroughly the information that must be submitted to meet the requirement set down in broad terms by the FD&C Act. Labeling requirements for investigational food additives are also set forth in various regulations contained in 21 CFR 501. The labeling regulations are considered by FDA to be cross-referenced to § 570.17, which is the subject of this same OMB clearance for investigational food additive files.

The information collected is necessary to protect the public health. We use the information submitted by food manufacturers or food additive manufacturers to ascertain whether the data establish the identity of the substance, justify its intended effect in/on the food, and establish that its intended use in/on food is safe.

Description of Respondents: Respondents to this collection of information are food manufacturers or food additive manufacturers.

In the **Federal Register** of August 3, 2018 (83 FR 38149), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Food Additive Petitions:					
571.1(c) Moderate Category	12	1	12	3,000	36,000
571.1(c) Complex Category	12	1	12	10,000	120,000
571.6 Amendment of Petition	2	1	2	1,300	2,600
Investigational Food Additive Files:					
570.17 Moderate Category	4	1	4	1,500	6,000
570.17 Complex Category	5	1	5	5,000	25,000
Total Hours					189,600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We base our estimate of the total annual responses on submissions received during fiscal years 2016 and 2017. We base our estimate of the hours per response upon our experience with the petition and filing processes.

§ 571.1(c) Moderate Category: For a food additive petition without complex chemistry, manufacturing, efficacy or safety issues, the estimated time requirement per petition is approximately 3,000 hours. We estimate that, annually, 12 respondents will each submit 1 such petition, for a total of 36,000 hours.

§ 571.1(c) Complex Category: For a food additive petition with complex chemistry, manufacturing, efficacy and/or safety issues, the estimated time requirement per petition is approximately 10,000 hours. We estimate that, annually, 12 respondents will each submit 1 such petition, for a total of 120,000 hours.

§ 571.6: For a food additive petition amendment, the estimated time requirement per petition is approximately 1,300 hours. We estimate that, annually, two respondents will each submit one such amendment, for a total of 2,600 hours.

§ 570.17 Moderate Category: For an investigational food additive file without complex chemistry, manufacturing, efficacy, or safety issues, the estimated time requirement per file is approximately 1,500 hours. We estimate that, annually, four respondents will each submit one such file, for a total of 6,000 hours.

§ 570.17 Complex Category: For an investigational food additive file with complex chemistry, manufacturing, efficacy, and/or safety issues, the estimated time requirement per file is approximately 5,000 hours. We estimate that, annually, five respondents will each submit one such file, for a total of 25,000 hours.

The burden for this information collected has not changed since the last OMB approval.

Dated: February 12, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02596 Filed 2–15–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Infant Mortality

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Secretary's Advisory Committee on Infant Mortality (ACIM) has scheduled a public meeting. Information about ACIM and the agenda for this meeting can be found on the ACIM website at *https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.*

DATES: April 8, 2019, from 9:00 a.m. to 5:00 p.m. Eastern Time (ET) and April 9, 2019, from 9:00 a.m. to 3:30 p.m. ET.

ADDRESSES: This meeting will be held remotely via webinar. Instructions on how to access the meeting via webcast will be provided upon registration and on the committee's website at *https://www.hrsa.gov/advisory-committees/Infant-Mortality/index.html.*

FOR FURTHER INFORMATION CONTACT: David S. de la Cruz, Ph.D., MPH, Designated Federal Official (DFO), Maternal and Child Health Bureau (MCHB), HRSA, 5600 Fishers Lane, Room 18N–25, Rockville, Maryland 20857; 301–443–0543; or *dcruz@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACIM was established under provisions of Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended. ACIM is governed by provisions of the Federal Advisory Committee Act (Pub. L. 92–463). ACIM provides advice and recommendations to the Secretary of HHS regarding HHS programs and activities that focus on reducing infant mortality, improving the health status of infants and pregnant women, and factors affecting the continuum of care with respect to maternal and child health care. ACIM also focuses on: (1) Outcomes before, during, and following pregnancy and childbirth; (2) strategies to coordinate a myriad of federal, state, local, and private programs, and efforts that are designed to deal with the health and social problems impacting infant mortality; and (3) the implementation of the federal *Healthy Start Initiative: Eliminating Disparities in Perinatal Health.*

During the April 2019 meeting, ACIM will discuss updates from HRSA, MCHB, and other federal agencies pertinent to the work of the ACIM; the scope of work and priorities of the ACIM; feedback from ACIM members; and continue the discussion around how health equity is related to infant mortality. Agenda items are subject to change as priorities dictate; please refer to the ACIM website for any updated information concerning the meeting. Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to to ACIM should be sent to David S. de la Cruz, DFO, using the contact information above at least three business days prior to the meeting. Individuals who plan to attend and need special assistance or another reasonable accommodation should notify David S. de la Cruz at the address and phone number listed above

at least 10 business days prior to the meeting.

Amy P. McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2019–02623 Filed 2–15–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Security & Strategic Information; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (HHS) is being amended at Part A, Chapter AB, Office of the Secretary, which was last amended at 82 FR 205, dated October 25, 2017. This notice changes the name of the Office of Security and Strategic Information to the Office of National Security. This notice does not revise the roles and authorities of the office or the Assistant Deputy Secretary for National Security, who serves as the Secretary's Senior Intelligence Official.

The changes are as follows:

A. Under Chapter AB, Section AB.10 Organization, replace Office of Security and Strategic Information (ABE), with Office of National Security (ABE).

B. Under Chapter AB, Section AB.20, Functions, replace the last paragraph, which begins with ''Office of Security and Strategic Information (ABE),'' with: Office of National Security (ABE).

The Office of National Security (ONS) is headed by the Assistant Deputy Secretary for National Security, who reports directly to the Deputy Secretary and also serves as the Secretary's Senior Intelligence Official on intelligence and counterintelligence issues. The Assistant Deputy Secretary for National Security has been delegated original classification authority by the Secretary. The Assistant Deputy Secretary for National Security manages the ONS.ONS' vision is for HHS personnel to successfully accomplish missions worldwide in a security-informed manner and with the actionable intelligence needed, at the right time, for operational and policy decisions. ONS' responsibilities include: Integrating intelligence and security information into HHS policy and operational decisions; assessing, anticipating, and warning of potential security threats to the Department and our national security; and, providing policy guidance on and managing the OS implementation of the Department's security, intelligence and counterintelligence programs. ONS' programs include national security adjudication, classified national security information management, secure compartmented information facilities management, communications security, safeguarding and sharing of classified information, cyber threat intelligence, insider threat, and counterintelligence. In coordination with the Director of National Intelligence, ONS has been designated as a Federal Intelligence Coordinating Office and the Assistant Deputy Secretary for National Security serves as the HHS Federal Senior Intelligence Coordinator. ONS has responsibilities to establish implementing guidance, provide oversight, and manage the Department's policy for the sharing, safeguarding, and coordinated exchange of information related to national or homeland security with other federal departments and agencies, including law enforcement organizations and the Intelligence Community, in compliance with HHS policies and applicable laws, regulations, and Executive Orders.

C. Delegation of Authority. Pending further redelegation, directives or orders made by the Secretary or Deputy Secretary, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

Dated: February 12, 2019.

Eric D. Hargan,

Deputy Secretary, Department of Health and Human Services.

[FR Doc. 2019–02663 Filed 2–15–19; 8:45 am]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; 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 Eye Institute Special Emphasis Panel; R21 and R01 Data Analysis Applications.

Date: March 19, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Brian Hoshaw, Ph.D., Scientific Review Officer, National Eye Institute, National Institutes of Health, Division of Extramural Research, 6700 B Rockledge Dr., Ste 3400, Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 12, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02614 Filed 2–15–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: April 2–5, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Geetanjali Bansal, Ph.D., Scientific Reviewer Officer, Scientific Review Program, Division of Extramural Activities, Room 3G49, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5073, *geetanjali.bansal@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: April 30–May 2, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Geetanjali Bansal, Ph.D., Scientific Reviewer Officer, Scientific Review Program, Division of Extramural Activities, Room 3G49, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5073, *geetanjali.bansal@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 13, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02681 Filed 2–15–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information (RFI) on Assays and Approaches for Evaluating Chemical Effects on Cancer Pathways

AGENCY: National Institutes of Health, HHS.

ACTION: Request for information.

SUMMARY: The National Toxicology Program (NTP) at the National Institute of Environmental Health Sciences is seeking input on assays and approaches for evaluating chemical effects on cancer pathways, specifically, pathways that map to the hallmarks of cancer and key characteristics of carcinogens.

DATES: The National Toxicology Program's Request for Information is open for public comment for a period of 60 days. Comments must be received by April 22, 2019 to ensure consideration. After the public comment period has closed, the comments received by the NTP will be used to inform the April 29–30th Workshop Converging on Cancer (*https://ntp.niehs.nih.gov/go/coc*). All responses to information requested in this RFI are voluntary.

ADDRESSES: Submissions may be electronically to *https://ntp.niehs.nih.gov/go/COC_RFI* or by mail to Cynthia Rider, Ph.D., National Institute of Environmental Health Sciences, 111 TW Alexander Drive, PO Box 12233, MD:K2–12, Research Triangle Park, NC 27709.

FOR FURTHER INFORMATION CONTACT: Questions about this request for information should be directed to **FOR FURTHER INFORMATION CONTACT:** Questions about this request for information should be directed to Cynthia Rider, Ph.D., National Institute of Environmental Health Sciences, 111 TW Alexander Drive, PO Box 12233, MD:K2–12, Research Triangle Park, NC 27709, *cynthia.rider@nih.gov,* 984–287–3175.

SUPPLEMENTARY INFORMATION: Cancer is a leading cause of mortality worldwide. While the defining feature of cancer is uncontrolled division of abnormal cells, it is a complex disease with varied presentations (*i.e.,* different etiologies and target tissues) that involves dysregulation of multiple interconnected signaling pathways. Diverse environmental factors have been associated with the development and progression of various cancer types. A critical question in the field of environmental health is how to harness what is known about cancer biology and associated environmental exposures to improve public health outcomes. This Request for Information is in support of the Converging on Cancer Workshop, which is aimed at providing a clear path forward for evaluating the interactions between environmental exposures and cancer biology using the latest tools in toxicology and identifying knowledge gaps that require research attention. Potential applications of this understanding include building a framework for incorporating mechanistic data into cancer risk assessment, developing efficient and reliable screening tools to detect the carcinogenic potential of environmental chemicals (including mixtures), engineering safer products, and designing more effective multi-target therapeutics.

The hallmarks of cancer (1) and key characteristics of carcinogens (2) offer two paradigms for organizing information to better understand the interactions between environmental exposures and biological systems that lead to cancer. The hallmarks of cancer represent the biological traits of tumors that allow for the unchecked growth of cancer, while the key characteristics framework begins with known human carcinogens and identifies their defining properties. It is clear from biomonitoring studies that we are constantly exposed to numerous structurally-diverse chemicals. A recent nomination to NTP was for development of a testing strategy to better understand how environmental chemicals might interact with multiple cancer-relevant biological pathways to elicit mixture effects that would not be expected based on single chemical considerations. This RFI is intended to generate input that will facilitate new testing approaches designed to evaluate these hypotheses in a cancer context. Responses to the RFI should provide information on technologies targeting cancer-specific pathways and mechanisms, including organotypic and/or mechanistically insightful tools, preferred animal models, and in silico/computational approaches to link relevant pathways, as well as cancer types for use in evaluating hypotheses regarding the joint action of chemicals that target cancer pathways.

Information requested: The NTP requests information regarding assays and approaches to measure the key biological mechanisms/pathways associated with chemical carcinogenesis. Responses to any or all of the questions below are invited from interested individuals/groups, including, but not limited to, the environmental health research community, health professionals, educators, policy makers, industry, and the public.

- Systematic review approaches to transparently identify and evaluate mechanistic information on the carcinogenic properties of chemicals and chemical mixtures.
- Assays associated with the biological mechanisms/pathways described by the hallmarks of cancer and the key characteristics of carcinogens.
- Assays that integrate across multiple cancer-related pathways (*e.g.,* organotypic microphysiological systems, mechanistic animal models).
- Modeling approaches to assess the joint effects of multiple chemicals on carcinogenic potential.
- Feedback on critical pathways and mechanisms to target when developing novel carcinogenicity testing strategies.
- Feedback on cancer types conducive to exploring chemical interaction hypotheses.
- Environmental chemicals known to affect key biological mechanisms/pathways leading to cancer and which key biological mechanisms/pathways are affected by these chemicals.

• Types of scientific data (*e.g.,* mechanistic, epidemiological) needed to address underlying knowledge gaps of chemical exposures leading to carcinogenesis.

• New technologies and innovative research approaches that could be leveraged to address these underlying knowledge gaps.

References

1. Hanahan D, Weinberg RA. Hallmarks of cancer: the next generation. Cell. 2011;144(5):646–74. doi: 10.1016/j.cell.2011.02.013. PubMed PMID: 21376230.
2. Smith MT, Guyton KZ, Gibbons CF, Fritz JM, Portier CJ, Rusyn I, et al. Key Characteristics of Carcinogens as a Basis for Organizing Data on Mechanisms of Carcinogenesis. Environmental health perspectives. 2016;124(6):713–21. doi: 10.1289/ehp.1509912. PubMed PMID: 26600562; PubMed Central PMCID: PMC4892922.

Brian R. Berridge,

Associate Director, National Toxicology Program, National Institute of Environmental Health Sciences.

[FR Doc. 2019–02683 Filed 2–15–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel, NIAID Investigator Initiated Program Project Applications (P01).

Date: May 1, 2019.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Zhuqing (Charlie) Li, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room # 3G41B, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5068, *zhuqing.li@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 13, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02682 Filed 2–15–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Loan Repayment Review.

Date: March 25, 2019.

Time: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 12, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02613 Filed 2–15–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Clinical Trials in Urology.

Date: March 27, 2019.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 12, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02615 Filed 2–15–19; 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; PAR–18–009: Academic-Industrial Partnerships Research for Cancer Diagnosis and Treatment.

Date: March 20, 2019.

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: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR: Selected Topics in Transfusion Medicine.

Date: March 21–22, 2019.

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: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: International and Cooperative Projects 1.

Date: March 25, 2019.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brian H. Scott, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–7490, *brianscott@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and Related Research.

Date: March 28, 2019.

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: Shalanda A. Bynum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, Bethesda, MD 20892, 301–755–4355, *bynumsa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vascular and Hematology AREA Application Review.

Date: April 5, 2019.

Time: 1:00 p.m. to 6:00 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: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, *komissar@mail.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: February 12, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02612 Filed 2–15–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program; Notice of Public Meeting: Converging on Cancer Workshop

AGENCY: National Institutes of Health, HHS.

ACTION: Notice of Public Meeting and Registration Information.

SUMMARY: The National Toxicology Program (NTP) announces a workshop titled ''Converging on Cancer'' on April 29–30, 2019, to bring together researchers working in the area of cancer biology, assay development, mixtures toxicology, in silico modeling, and cancer risk assessment. The objectives of the workshop are to identify technologies and models that can be used in a systems toxicology approach for cancer risk assessment. Specific applications to understanding the joint effects of multiple chemical exposures will be discussed. The workshop will consist of plenary sessions (webcast), breakout discussion sessions, and a poster session. This workshop is open to the public. Members of the public can register to attend the workshop in person as observers or view the plenary proceedings via webcast.

DATES:

Meeting: April 29–30, 2019, begins at 9:00 a.m. to approximately 5:00 p.m. Eastern Daylight Time (EDT).

Meeting Registration: Deadline is April 22, 2019. Registration to view the workshop via webcast is required.

ADDRESSES:

Meeting Location: William J. Clinton East Building, U.S. Environmental Protection Agency, 1201 Constitution Ave. NW, Washington, DC 20460.

Meeting Web page: The preliminary agenda and registration are at *https://ntp.niehs.nih.gov/go/coc.*

Webcast: Plenary sessions of the workshop will be webcast; the URL will be provided to those who register for viewing.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Rider, Toxicology Branch, NIEHS, P.O. Box 12233, K2–12, Research Triangle Park, NC 27709, (telephone) 984–287–3175, Email: *cynthia.rider@nih.gov.*

SUPPLEMENTARY INFORMATION:

Background: Cancer is a leading cause of mortality worldwide. While the defining feature of cancer is uncontrolled division of abnormal cells, it is a complex disease with varied presentations (*i.e.,* different etiologies and target tissues) that involves dysregulation of multiple interconnected signaling pathways. Diverse environmental factors have been associated with the development and progression of various cancer types. A critical question in the field of environmental health is how to harness what is known about cancer biology and associated environmental exposures to improve public health outcomes. The Converging on Cancer Workshop is aimed at providing a clear path forward for evaluating the interactions between environmental exposures and cancer biology using the latest tools in toxicology and identifying knowledge gaps that require research attention. Potential applications of this understanding include building a framework for incorporating mechanistic data into cancer risk assessment, developing effective screening tools to detect the

carcinogenic potential of environmental chemicals (including mixtures), engineering safer products, and designing more effective multi-target therapeutics.

The hallmarks of cancer (1) and the key characteristics of carcinogens (2) offer two paradigms for organizing information to better understand the interactions between environmental exposures and biological systems that lead to cancer. The hallmarks of cancer represent the biological traits of tumors that allow for the unchecked growth of cancer, while the key characteristics of carcinogens begin with known human carcinogens and identify the defining properties of carcinogens. A series of webinars prior to the workshop will provide background on these frameworks. Discussion at the workshop will include recommended application of the two frameworks, clarifying terminology, the relationship between the frameworks, and the available assays for measuring effects associated with each of the hallmarks and key characteristics.

It is clear from biomonitoring studies that humans are constantly exposed to numerous structurally-diverse chemicals. A recent nomination to NTP was for development of a testing strategy to better understand how environmental chemicals might interact with multiple cancer-relevant biological pathways to elicit mixture effects that would not be expected based on single chemical considerations. An aim of the workshop is to channel the collective wisdom of cancer biologists, toxicologists, and mixtures statisticians to propose testing approaches designed to evaluate hypotheses regarding the joint action of chemicals that target cancer pathways. This effort will include discussion of cancer-specific pathways and mechanisms, associated technologies including organotypic and/or mechanistically insightful tools, preferred animal models, in silico/computational approaches to link relevant biological pathways, as well as specific cancer types to use in evaluating the hypotheses.

Meeting and Registration: This meeting is open to the public, free of charge, with attendance limited only by the space available. The meeting will consist of plenary sessions (webcast), breakout discussion sessions, and a poster session. The breakout sessions and poster session will be open to the public but will not be webcast. Individuals who plan to attend in person as observers or view the proceedings via webcast should register on the NTP website (*https://ntp.niehs.nih.gov/go/coc*) by April 22, 2019, to facilitate meeting planning. Interested individuals are encouraged to visit the web page to stay abreast of the most current information about the meeting.

Information for visitors to the US EPA is available at *https://www.epa.gov/aboutepa/visiting-epa-headquarters.* Individuals with disabilities who need accommodation to participate in this event should contact Dr. Cynthia Rider at phone: (984) 287–3175 or email: *cynthia.rider@nih.gov.* TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

Meeting Materials: The preliminary agenda and additional information are available at *https://ntp.niehs.nih.gov/go/coc.*

References

1. Hanahan D, Weinberg RA. Hallmarks of cancer: The next generation. Cell. 2011;144(5):646–74. doi: 10.1016/j.cell.2011.02.013. PubMed PMID: 21376230.
2. Smith MT, Guyton KZ, Gibbons CF, Fritz JM, Portier CJ, Rusyn I, et al. Key Characteristics of Carcinogens as a Basis for Organizing Data on Mechanisms of Carcinogenesis. Environmental health perspectives. 2016;124(6):713–21. doi: 10.1289/ehp.1509912. PubMed PMID: 26600562; PubMed Central PMCID: PMC4892922.

Brian R. Berridge,

Associate Director, National Toxicology Program, National Institute of Environmental Health Sciences.

[FR Doc. 2019–02684 Filed 2–15–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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: Microbiology, Infectious Diseases and AIDS Initial Review Group; Acquired Immunodeficiency Syndrome Research Review Committee.

Date: April 24, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Arlington Capital View Hotel, 2800 South Potomac Avenue, Arlington, VA 22202.

Contact Person: Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3F40A, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5035, *robert.unfer@nih.gov.*

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Acquired Immunodeficiency Syndrome Research Review Committee, AIDSRRC Review Meeting.

Date: August 1–2, 2019.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3F40A, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5035, *robert.unfer@nih.gov.*

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Acquired Immunodeficiency Syndrome Research Review Committee, AIDSRRC Review Meeting.

Date: December 3–4, 2019.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3F40A, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5035, *robert.unfer@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 13, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02686 Filed 2–15–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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: National Institute of Nursing Research Special Emphasis Panel; Training Applications.

Date: June 5, 2019.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Room 703, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tamizchelvi Thyagarajan, Ph.D., Scientific Review Officer, National Institute of Nursing, Research National Institutes of Health, Bethesda, MD 20892, (301) 594–0343, *tamizchelvi.thyagarajan@nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; R34 Applications.

Date: July 8, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Tamizchelvi Thyagarajan, Ph.D., Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–0343, *tamizchelvi.thyagarajan@nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Institutional Training Grants.

Date: September 20, 2019.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Room 703, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: February 12, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02616 Filed 2–15–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0108]

Agency Information Collection Activities: Canadian Border Boat Landing Permit

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than April 22, 2019) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0108 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Canadian Border Boat Landing Permit.

OMB Number: 1651–0108.

Form Number: CBP Form I–68.

Current Actions: This submission is being made to extend the expiration date with a decrease to the burden hours. There is no change to the information collected.

Type of Review: Extension (With Change).

Affected Public: Individuals or Households.

Abstract: The Canadian Border Boat Landing Permit, U.S. Customs and Border Protection (CBP) Form I–68, generally allows select individuals entering the United States along the

northern border by small [1] pleasure boats to report their arrival and make entry without having to travel to a designated port of entry for an inspection by a CBP officer. United States citizens, Lawful Permanent Residents of the United States, Canadian citizens, and Landed Residents of Canada who are nationals of the Visa Waiver Program countries listed in 8 CFR 217.2(a) are eligible to apply for the permit.

The information collected on CBP Form I–68 allows eligible individuals who enter the United States from Canada by small pleasure boats to be inspected only once during the boating season, rather than each time they make an entry. This information collection is provided for by 8 CFR 235.1(g) and Section 235 of Immigration and Nationality Act. CBP Form I–68 is accessible at *http://www.cbp.gov/newsroom/publications/forms?title=68&=Apply.*

CBP has developed a smart phone application known as Reporting Offsite Arrival—Mobile (ROAM) that will generally allow travelers to electronically complete their I–68 application, report their arrival in the United States, and make U.S. entry using automated document (passport) reading, global positioning system (GPS) location, and video chat. CBP believes providing the traveling public with the option to use this smart phone app will increase traveler compliance with U.S. arrival and entry requirements. Additionally, the ROAM app will allow CBP officers to remotely conduct traveler interviews with a phone's video chat capability, and replace other technologies used for remote inspections that are obsolete or inefficient.

CBP Form I–68 Paper Version

Estimated Number of Respondents: 18,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Responses: 18,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 2,988.

ROAM App

Estimated Number of Respondents: 50,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 50,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 4,150.

Dated: February 13, 2019.

Seth D Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–02627 Filed 2–15–19; 8:45 am]

BILLING CODE 9111–14–P

[1] Weighing less than five net tons.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6136–N–01]

Waivers, Alternative Requirements and Extensions for Community Development Block Grant Disaster Recovery Grantees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice governs Community Development Block Grant disaster recovery (CDBG–DR) funds awarded under several appropriations. Specifically, this notice provides waivers and establishes alternative requirements for certain grantees that have submitted waiver requests for grants provided pursuant to Public Laws 112–55, 113–2, 114–113, 114–223, 114–254, 115–31, 115–56 and 115–123. This notice also provides further clarification on the application of the green building standards established by the Department for 2017 CDBG–DR grantees in the February 9, 2018 **Federal Register** notice (83 FR 5844). Additionally, this notice addresses the availability of an alternative requirement to Section 414 of the Stafford Act and other URA provisions for grantees that received an allocation of CDBG–DR funds under Public Laws 114–113, 114–223, 114–254, and 115–31.

DATES: Applicability Date: February 25, 2019.

FOR FURTHER INFORMATION CONTACT: Claudette Fernandez, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW, Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech disability may access this number via TTY/VRS by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Ms. Fernandez at 202–708–0033. (Except for the''800'' number, these telephone numbers are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

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I. Public Law 112–55 Waivers and Alternative Requirements

New LMI National Objective Criteria for Buyouts and Housing Incentives (New York State only)

New York State was awarded $71,654,166 of CDBG–DR funds under Public Law 112–55 for recovery from Hurricane Irene and Tropical Storm Lee (77 FR 22583) and $4,416,882,000 of CDBG–DR funds under Public Law 113–2 for recovery from Hurricane Sandy. This section of the notice specifies waivers and alternative requirements and modifies requirements for CDBG–DR funds awarded to New York State under Public Law 112–55 to allow the State to better coordinate recovery efforts across multiple CDBG–DR allocations.

Public Law 112–55 authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with HUD's obligation or use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5. As required by Public Law 112–55, waivers and alternative requirements provided in this paragraph are in response to a request by New York State explaining why the waiver is required to facilitate the use of the funds and based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974, as amended (HCDA).

The Department's April 16, 2012 notice authorized New York State to carry out ''buyouts,'' which for purposes of grants under Public Law 112–55, are a type of acquisition activity limited to acquisition of properties located in a

floodway or floodplain that is intended to reduce risk from future flooding. The April 16, 2012 notice prohibits redevelopment of property acquired through buyouts and imposes other requirements on the use of CDBG–DR funds for this activity. This same notice also waives 42 U.S.C. 5305(a) and associated regulations to allow New York State to offer housing incentives. Housing incentives are usually offered to encourage households to relocate to a suitable housing development or to an area promoted by the community's comprehensive recovery plan and may be provided in addition to acquisition or buyout awards.

The **Federal Register** notices governing New York State's grants for disasters occurring in 2012 also included waivers and alternative requirements authorizing similar buyout and housing incentive activities.

The Department's December 27, 2017 notice (82 FR 61320) provided an alternative requirement that established criteria under which buyout activities and housing incentives related to recovery from New York State's 2012 disasters (and other specified disasters) can meet a low- and moderate-income (LMI) national objective (82 FR 61322). HUD defined these alternative national objective criteria as Low/Mod Buyout (LMB) and Low/Mod Housing Incentive (LMHI). In that **Federal Register** notice, HUD did not make the LMB and LMHI criteria applicable to New York State's grant under the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112–55), because Public Law 112–55 only permits HUD to grant waivers and alternative requirements upon a request by a grantee receiving funds under that appropriation.

The State has now requested that HUD establish the alternative requirement for meeting an LMI national objective for buyout activities and housing incentives carried out with CDBG–DR funds under Public Law 112–55. New York State is currently using the new national objective criteria for the buyout program funded with CDBG–DR funds awarded under Public Law 113–2. The State contends that granting this waiver and alternative requirement for its grant under Public Law 112–55 ''will ensure a consistency of approach between the grants and allow. . . [the State] to account for the benefits provided to LMI households through these important, long term recovery activities.'' The LMB and LMHI national objective criteria will provide a valuable method to demonstrate how these program activities assist LMI households.

Based on the above, in addition to the existing national objective criteria at 24 CFR 570.483(b)(1)–(4), HUD is establishing this alternative requirement to add additional national objective criteria for activities benefiting low and moderate income persons to allow New York State to use the LMB and LMHI national objective criteria described in section II of the Department's December 27, 2017 notice to demonstrate a national objective for buyout activities and housing incentives it carries out under its Public Law 112–55 CDBG–DR award.

II. Public Law 113–2 Extensions, Waivers and Alternative Requirements

This section of the notice applies to certain grantees that received an allocation of funds appropriated under Public Law 113–2, which ultimately made available $15.2 billion in CDBG–DR funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013.

Public Law 113–2 authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with HUD's obligation or use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCDA. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

For the waivers and alternative requirements described in this section of notice, the Secretary has determined that good cause exists and that the waivers and alternative requirements are not inconsistent with the overall purposes of title I of the HCDA. Grantees under Public Law 113–2 may request waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Public Law 113–2 also authorizes the Department to provide waivers and establish alternative requirements absent a request from a CDBG–DR grantee.

1. *Additional eligible activities for the extension of expenditure deadlines.* The Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2) requires grantees to expend CDBG–DR funds within 24 months of the date on which the Department obligates funds to a grantee and authorizes the Office of Management and Budget (OMB) to grant a waiver of the 24-month expenditure deadline. OMB authorized the Department to provide CDBG–DR grantees with expenditure deadline extensions for activities that are inherently long-term and where it would be impracticable to expend funds within the 24-month period and still achieve program missions, up to an amount approved by OMB.

In the May 11, 2015 notice (80 FR 26942), the Department established the process and criteria for the submission of expenditure deadline extension requests for CDBG–DR grantees in receipt of funds under Public Law 113–2. Section III of the May 11, 2015 notice established four categories of disaster recovery activities that would be eligible for an extension of the 24-month expenditure deadline: Public facilities and improvements; housing; economic revitalization; and grant administration. Since the publication of the May 11, 2015 notice, the Department has reviewed and acted on expenditure deadline extension requests from several CDBG–DR grantees. As recovery activities approach completion and with a requirement that all CDBG–DR funds provided under Public Law 113–2 be expended no later than September 30, 2022, the Department has determined that additional categories of disaster recovery activities that are not identified in the May 11, 2015 notice are also inherently long-term in nature, and present implementation challenges that make it impracticable for grantees to achieve disaster recovery program missions within the 24-month expenditure deadline. The Department, for instance, recognizes that many Public Law 113–2 grantees are engaged in long term planning activities to enhance the resiliency of their jurisdiction to future disasters. Similarly, the Department has determined that certain public service activities, most notably various job training initiatives, continue to play an important role in grantee post-disaster economic recovery efforts. These types of activities therefore warrant inclusion in the activities that may qualify for an extension of the 24-month expenditure deadlines. The Department, however, shall only extend planning and public service activities that are authorized in a grantee's action plan as of the applicability date of this notice. Accordingly, the Department is replacing section III of the May 11, 2015 notice with the following:

''III. Eligible Activities

The National Disaster Recovery Framework acknowledges that long-term recovery is inherently a multi-year process. The Department recognizes that grantees allocate a significant portion of CDBG–DR funds to complex and large-scale programs and projects that are long-term in nature and that planning and public services are often critical components of long-term recovery. The Department also recognizes that grantees will require CDBG–DR administrative funds to conduct grant closeout and engage in ongoing program oversight, and that these efforts will inevitably extend beyond the twenty-four-month expenditure deadline that applies to each obligation.

Within the amounts waived by OMB as not being subject to the expenditure deadline, the Department will limit its consideration of expenditure deadline extension requests to certain types of eligible disaster recovery activities undertaken by grantees which are determined to be long-term in nature. The Department will consider grantee programs and projects within the following six categories for expenditure deadline extensions:

• *Public facilities and improvements.* Typical public facilities and improvement activities include the rehabilitation, replacement, or relocation of damaged public facilities and improvements, as well as investments to increase the resiliency of those facilities and improvements.

• *Housing.* Typical housing activities include new construction, elevation, and rehabilitation of single family or multifamily residential units.

• *Economic revitalization.* Economic revitalization activities often include the provision of loans and grants to small businesses, job training programs, the construction of education facilities to teach technical skills, making improvements to commercial or retail districts, and financing other efforts that attract and retain workers in disaster-impacted communities.

• *Grant administration.* Typical administrative activities include salaries, wages, and related costs of grantee or subrecipient staff and others engaged in program management, monitoring, and evaluation. Administrative costs are limited by the Appropriations Act to five percent of each grantee's total allocation.

• *Public Services.* Public service activities typically include employment services (*e.g.,* job training), fair housing counseling, and education programs.

• *Planning.* Planning activities often include community development plans, functional plans (*e.g.,* for resiliency) and capacity building activities.''

2. Change in the Substantial Amendment Criteria.

The Department's March 5, 2013 notice (78 FR 14329) established the criteria for substantial amendments to action plans for disaster recovery and included the requirement that an allocation or re-allocation of more than $1 million would constitute a substantial amendment. Grantees awarded funds under Public Law 113–2 are nearing the end of their recovery programs and are moving towards the eventual closeout of their CDBG–DR awards. Whereas grantees in the earliest stages of recovery rely more often on estimated activity budgets, grantees approaching closeout rely more on actual budgets and more routinely reallocate funds between activities and projects as their budgets transition from estimates of program costs to actual costs. Accordingly, to provide grantees with increased flexibility in the reallocation of CDBG–DR funds and consistent with the Department's definition of a substantial amendment for 2015, 2016 and 2017 CDBG–DR grantees, the Department is deleting the third paragraph of section VI.A.3.a. of the March 5, 2013 notice and establishing the following new definition of a substantial amendment for all grantees allocated funds under Public Law 113–2:

> ''Subsequent to publication of the action plan, the grantee must provide a reasonable time frame and method(s) (including electronic submission) for receiving comments on the plan or substantial amendment. In its action plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: A change in program benefit or eligibility criteria; the addition or deletion of an activity; the allocation or reallocation of a monetary threshold amount as specified by the grantee in its action plan; or a change in the monetary threshold amount above which allocations or reallocations trigger a substantial amendment. The grantee may substantially amend the action plan if it follows the same procedures required in this Notice for the preparation and submission of an action plan for Disaster Recovery. Prior to submission of a substantial amendment, the grantee is encouraged to work with its HUD representative to ensure the proposed change is consistent with this Notice, and other requirements made applicable by the Federal award.''

If a grantee chooses to change the threshold amount established by HUD in the March 5, 2013 notice ($1 million), a grantee shall undertake a substantial amendment to make changes to its monetary threshold above which allocations and reallocations constitute a substantial amendment. Once that substantial amendment is approved by HUD, the grantee shall apply the new definition of a substantial amendment.

3. *Buildings for the general conduct of government (City of Minot, North Dakota only).*

The Department's June 7, 2016 notice (81 FR 36557) established the requirements for grantees receiving CDBG–DR funds through the National Disaster Resilience Competition (CDBG–NDR), under Public Law 113–2. The city of Minot was awarded a CDBG–NDR grant of $74,340,770 and its approved Phase 2 application included an allocation of $3,750,000 for the relocation of its City Hall.

The city's existing City Hall and its emergency communications center are in the city's flood inundation area and within the most recent FEMA-identified flood plain. The city plans to use CDBG–NDR grant funds to acquire a building for the City Hall, emergency communications center, and for the Center for Technical Education that will also be established pursuant to the city's approved Phase 2 CDBG–NDR application. The importance of the City Hall relocation with the emergency police dispatch center is further reflected in the city's commitment of $1 million of its own funds to this aspect of the CDBG–NDR award.

To implement this portion of the city's CDBG–NDR award, the city has requested a waiver of 42 U.S.C. 5305(a)(2), which excludes acquisition, construction, reconstruction, or installation of buildings for the general conduct of government from eligible public facilities activities. The Department has determined that the city's waiver request is consistent with the underlying premise and purpose of the city's CDBG–NDR grant and is approving the requested waiver to authorize the expenditure of CDBG–NDR grant funds for the acquisition, rehabilitation and reuse of a commercial office structure for use as its primary governmental offices, consistent with the city's approved Phase 2 CDBG–NDR application. Therefore, HUD is waiving the prohibition on buildings for the general conduct of government in 42 U.S.C. 5305(a)(2) and associated regulations at 24 CFR 570.207(a) to permit the City of Minot to carry out the public facility activity referred to as City Hall and comprised of activities as outlined in the city's CDBG–NDR application and approved CDBG–NDR action plan.

4. *Clarification that certain actions constitute part of new construction and*

disposition activities associated with relocation of the Isle de Jean Charles community (State of Louisiana only). The Department awarded the State of Louisiana $92,629,249 in CDBG–NDR funds, of which $48,373,249 was to enable the community on the Isle de Jean Charles (IDJC) to relocate to a new and more resilient community. As part of this award, the State grantee will construct new housing on land it acquires for relocation purposes. This housing will be transferred to former residents of the Isle de Jean Charles community that relocate to the new community.

In its approved application for CDBG–NDR funds, the State noted that IDJC has experienced a 98 percent loss of land since 1955, with only 320 acres remaining of what was a 22,400-acre island in 1955. The State's Phase 1 application notes that the island's residents will relocate to a new community, but as long as the island itself exists, the residents will retain their property on the island for ceremonial, cultural, historic and recreational uses. The Phase 1 application also notes that the connecting road to the island will very soon be impassible and that access will then be available only by boat.

To implement the IDJC portion of its grant, the State of Louisiana has explored a variety of voluntary relocation assistance options to facilitate the movement of island residents to the planned new community. Both the State and IDJC community have indicated that to effectively relocate as many island residents as possible, it is critical to provide those residents with continued access to their property for ceremonial, cultural, historic and recreational uses for the finite remaining life of the island.

While it is important to permit the community's continued access to the island for these limited purposes, it is also important to take reasonable measures to ensure that the land is no longer used for primary residences or otherwise developed in ways that frustrate the purposes of the grant to relocate the community to a safer area. The current residents of the island will continue to own their property on the island. However, as a condition of receiving newly constructed housing, the State plans to restrict owners' use of their former land on the island as a primary residence. The State indicates that it may need to record mortgage liens or limited real property interests such as easements or deed restrictions on the property of relocated island residents to restrict the use of the island land as a primary residence.

For this reason, HUD is clarifying that costs incurred by the State to establish and record mortgage liens or limited real property interests on the island to restrict the use of the land as a primary residence are eligible costs that may be charged to the grant as part of the State's new construction and disposition activities to relocate island residents. HUD considers the costs incurred to restrict continued use of the island property as a primary residence to meet the same national objective as the new construction and disposition activities. HUD is also clarifying that since the actions to limit use as a primary residence are undertaken as a condition of new construction and disposition activities to provide relocated residents with more resilient housing, the actions are not undertaken as part of acquisition activities that trigger buyout requirements.

The State should impose conditions on assistance to relocate island residents that are consistent with the purpose of the CDBG–NDR award. Specifically, the State should prohibit new construction, reconstruction, and major rehabilitation on the property and prohibit use of the property as a primary residence. CDBG–NDR funds may not be used for rehabilitation of structures on the island. However, if the State chooses to permit limited, minor rehabilitation of structures on the property with other, non-grant funds to allow for the continued interim use of the property for ceremonial, cultural, historic and recreational uses, the State should specify in its policies and procedures the allowable activities that would constitute a minor rehabilitation. Under the second homes prohibition established for all CDBG–NDR grantees in the June 7, 2016 notice (81 FR 36578), the State may not provide CDBG–NDR funds for rehabilitation of residential structures on the island.

5. Rental Assistance Waiver extension (State of New Jersey only). In the Department's August 15, 2016 notice (81 FR 54114), the State of New Jersey was granted a waiver for the use of CDBG–DR funds for rental assistance for New Jersey homeowners in the Rehabilitation, Reconstruction, Elevation and Mitigation (RREM) Program and the Low and Moderate-Income (LMI) Homeowners Rebuilding Program (LMI Program). In the State of New Jersey, more than 7,600 homeowners have participated in the State's RREM Program or the LMI Program to rebuild their Sandy-damaged homes. Nearly 6,400 of those homeowners have completed construction; however, the approximately 1,200 remaining participants, many of whom are LMI households, are still in the construction phase due to insufficient funding to complete the project, contractor disputes or delays associated with the re-opening of certain claims under the National Flood Insurance Program. While undergoing rehabilitation of their homes, most of these applicants are required to continue to make payments for the mortgage on the home in addition to paying rent for alternative housing during the rehabilitation. The August 15, 2016 notice waived the requirements at section 105(a)(8) of the HCDA to the extent necessary to allow the State of New Jersey to use up to $30 million of its CDBG–DR allocation to provide up to 21 months of rental assistance through its Rental Assistance Program (RAP) to eligible RREM and LMI program applicants. The State estimates that approximately 200 of the 400 current RAP recipients in both rehabilitation programs will exhaust their maximum 21 months of RAP assistance in January 2019. The State is taking several actions to close out RAP and address the remaining rehabilitations of these homes. To address the continuing need of RREM and LMI program participants, the State of New Jersey will submit a substantial amendment to allocate an additional $50 million to its housing rehabilitation programs to assist participants in the completion of their homes. The State also indicates that it has increased its project management support to the remaining homeowner-managed construction projects to accelerate completions. To date, the State has only disbursed $11.6 million of the $30 million allowed under the previous waiver for RAP assistance and has not requested an increase to this cap. Without the waiver provided herein, the State could not continue to use CDBG–DR funds for these payments to individuals or families.

Accordingly, to allow the State of New Jersey to continue RAP and to assist homeowners in completing the rehabilitation of their homes, HUD is extending its original waiver granted in the August 15, 2016 notice to allow the State to use up to $30 million of its CDBG–DR allocation to provide RAP assistance to eligible RREM and LMI program applicants for an additional 19 months, for a total of 40 months. The State must implement this alternative requirement consistent with the approach outlined in its requests and as described herein. This waiver and alternative requirement shall remain in effect until June 30, 2022, after which

the State will no longer be able to use CDBG–DR funds for any RAP assistance.

6. Waiver and alternative requirement to permit certain activities as part of the Iowa Watershed Approach (State of Iowa only). The Department awarded the State of Iowa $96,887,177 in CDBG–NDR funds to support the Iowa Watershed Approach, a holistic watershed-scale program designed to sustain the State's agricultural economy while protecting vulnerable residents and communities. HUD funding will enable several watersheds to form Watershed Management Authorities, which will develop hydrological assessment and watershed plans, and implement pilot projects in the upper and lower watersheds, as well as invest in more resilient, healthy homes in Dubuque.

As part of the Iowa Watershed Approach, the State's NDR application proposed to fund subrecipients to install improvements and implement stormwater management practices on mostly privately-owned agricultural land to collect and hold back water in times of increased rain to prevent or minimize the impact of downstream flooding. To the extent some of these activities take place on privately-owned land, all of the activities may not be eligible under section 105(a)(2) of the HCDA, which permits the acquisition, construction, reconstruction, or installation of public works, facilities, and site or other improvements. However, HUD recognizes that the improvements and planned management practices to be installed or applied on private lands provide public benefits that are similar to the public benefits derived from public works, facilities, and other improvements generally eligible under section 105(a)(2). Accordingly, the Department is approving a waiver and alternative requirement to expand section 105(a)(2) of the HCDA to the extent necessary to permit Iowa to carry out the activities described in its NDR application by installing improvements and implementing stormwater management practices for the purpose of preventing downstream flooding. This eligible activity includes the expenditure of CDBG–NDR funds for actions necessary to obtain mandatory environmental permits (if approved by the permitting agency). The State must demonstrate at a program level that such payments are necessary and reasonable and are required in order to secure the permits needed to implement its CDBG–NDR project.

III. Public Law 114–113 and 115–31 Waivers and Alternative Requirements

This section of the notice applies to grantees that received an allocation for a major disaster in 2015 and 2016 under Public Law 114–113 and Public Law 115–31. Public Laws 114–113 and 115–31 authorize the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5. As required by Public Laws 114–113 and 115–31, waivers and alternative requirements provided in this section are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCDA.

1. Most Impacted and Distressed Area Requirements (South Carolina and Texas only).

This paragraph amends the Department's August 7, 2017 notice, which allocated additional CDBG–DR funds for qualified disasters that occurred in 2015. Table 2 of the August 7, 2017 notice indicates the HUD-identified ''most impacted and distressed'' (MID) areas impacted by the qualified disasters and the amounts that each grantee is required to expend in the MID areas. The notice required that at least 80 percent of the total combined funds provided within each State address unmet needs within the HUD-identified MID areas. The methodology, however, that HUD used to calculate the required amount to be expended in the MID areas for South Carolina and Texas was not correct. For the State of South Carolina, the amount established for its MID area expenditures did not account for CDBG–DR funds that would also be expended by Lexington County, Columbia, and Richland County as CDBG–DR grantees. For the State of Texas, the MID area expenditure calculation should have been based on a consideration of damage data received by HUD from December 2016, or fuller data received in May 2017. The MID calculation in the August 7, 2017 notice for Texas, however, only reflects the consideration of the December 2016 data. Therefore, this notice replaces Table 2 of the August 7, 2017 notice to reflect the corrected MID area expenditure amounts for the States of South Carolina and Texas:

TABLE 2—QUALIFYING 2015 AND 2016 DISASTERS AND ''MOST IMPACTED AND DISTRESSED'' AREAS

FEMA disaster No.	Grantee	Minimum amount that must be expended for recovery in the HUD-identified ''most impacted and distressed'' areas
2015 Disasters		
4241	Lexington County (Urban County), SC	($5,038,000) Lexington County Urban County Jurisdiction.
4241	Columbia, SC	($6,166,000) Columbia.
4241	Richland County, SC	($7,254,000) Richland County Urban County Jurisdiction.
4241	State of South Carolina	($20,205,200) Charleston, Dorchester, Florence, Georgetown and Clarendon Counties.
4223, 4245	Houston, TX	($20,532,000) City of Houston.
4223, 4245	San Marcos, TX	($8,714,000) City of San Marcos.
4223, 4245, 4272	State of Texas	($13,248,400) Harris, Hays, Hidalgo, and Travis Counties.
2016 Disasters		
4263, 4277	State of Louisiana	($41,148,000) East Baton Rouge, Livingston, Ascension, Tangipahoa, Ouachita, Lafayette, Vermilion, Acadia, Washington, and St. Tammany Parishes.
4273	State of West Virginia	($36,476,000) Kanawha, Greenbrier, Clay, and Nicholas Counties.
4266, 4269, 4272	State of Texas	($13,304,800) Harris, Newton, Montgomery, Fort Bend, and Brazoria Counties.
4285	State of North Carolina	($30,380,800) Robeson, Cumberland, Edgecombe, and Wayne Counties.
4286	State of South Carolina	($23,824,800) Marion and Horry Counties.

TABLE 2—QUALIFYING 2015 AND 2016 DISASTERS AND "MOST IMPACTED AND DISTRESSED" AREAS—Continued

FEMA disaster No.	Grantee	Minimum amount that must be expended for recovery in the HUD-identified "most impacted and distressed" areas
4280, 4283	State of Florida	($47,468,000) St. Johns County.

2. Waiver and alternative requirement for 70 percent overall low- and moderate-income benefit requirement (Lexington County, South Carolina only). This paragraph specifies a waiver and alternative requirement for CDBG–DR funds awarded to Lexington County under Public Laws 114–113 and 115–31 in order to allow the County to meet the unmet needs of residents in the HUD-defined MID areas. Lexington County was allocated $16,332,000 of CDBG–DR funds under Public Law 114–113 and was awarded an additional $5,038,000 under Public Law 115–31, both for recovery from 2015 severe storms and flooding (81 FR 39687 and 82 FR 36812).

The overall benefit requirement established by the HCDA requires that 70 percent of the aggregate of a grantee's CDBG–DR fund expenditures shall be used to support activities benefitting low- and moderate-income persons. Under certain circumstances, it can be difficult for grantees working in disaster recovery to meet this overall benefit test, because disasters do not always affect low- and moderate-income (LMI) areas and this requirement can therefore (in some cases) limit a grantee's ability to assist the MID areas resulting from the disaster. The Department's June 17, 2016 notice maintained the 70 percent overall benefit requirement for all CDBG–DR grantees receiving funds under Public Law 114–113 but provided grantees with the option of submitting a request to HUD for a lower overall benefit requirement. Specifically, the notice allows a grantee to request to further reduce its overall benefit requirement if it submitted a justification that, at a minimum: (a) Identifies the planned activities that meet the needs of its low- and moderate-income population; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee's long-term disaster recovery plan; (c) describes how the activities/programs identified in (b) prevent the grantee from meeting the 70 percent requirement; and (d) demonstrates that LMI persons' disaster-related needs have been sufficiently met and that the needs of non–LMI persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them.

Lexington County submitted a request to establish a lower overall benefit requirement based on the above criteria. In its request, the County contends that its three established programs: Minor Residential Rehabilitation, Residential Buyout and Public Infrastructure Improvement, will meet all the unmet housing needs of its LMI population in the county. Specifically, in its Residential Buyout program the County has worked to prioritize the needs of LMI persons in its four identified Disaster Reduction Risk Areas who are most at-risk to repetitive flooding damage. The majority of the applications the County received for its Minor Residential Rehabilitation program were in the eligible buyout areas and were encouraged to move to the Residential Buyout program. After three years of public outreach, the County ultimately had 135 applications that were either eligible for its Minor Residential Rehabilitation program or its Residential Buyout program, and the County will be able to assist them all. Of the 135 eligible applications, 52 of those households are LMI. According to data provided by the County, once the Minor Residential Rehabilitation and Residential Buyout programs are completed it will have addressed all LMI unmet needs in those two programs.

The County's Public Infrastructure program is still in the design phase, but the County's unmet needs analysis has shown that the projects left to be funded involve damaged bridges and improvements needed for storm water management systems. The County's analysis shows that while LMI persons will likely benefit from all of its public infrastructure projects, none of the bridges that need repair are in areas that will qualify as LMI areas under the applicable national objective criteria. However, the improvements to the storm water management systems will benefit an LMI area, will be leveraged with additional federal and private funds, and will incorporate buyout properties into the program. The County plans to allocate around $300,000 to repair the damaged bridges and over $1 million to improve storm water management systems.

To enable the County to undertake the activities it has determined to be most critical for its recovery, and to ensure that LMI persons are sufficiently served or assisted, HUD is granting a waiver and alternative requirement to reduce the overall benefit requirement from 70 percent to not less than 50 percent of the County's total allocation of CDBG–DR funds. This is a limited waiver modifying sections 101(c) and 104(b)(3)(A) of the HCDA and 24 CFR 570.200(a)(3) only to the extent necessary to reduce the LMI overall benefit requirement that the County of Lexington must meet when carrying out activities identified in its approved action plan from 70 percent to not less than 50 percent of the grantee's allocations of CDBG–DR funds under Public Laws 114–113 and 115–31. Based on the analysis submitted by the County, the Secretary finds a compelling need for this reduction due to the circumstances outlined in the County's request. In particular, HUD notes that the County has accepted applications in its buyout and housing program for three years following the disaster event, with significant amounts of public outreach during that time to ensure that it reached all affected communities including: updates on its disaster recovery website, neighborhood meetings and public presentations at County council meetings.

IV. Public Law 114–113, 114–223, 114–254 and 115–31 Waivers and Alternative Requirements

This section of the notice applies to grantees that received an award for a major disaster in 2015, 2016, or 2017 under Public Law 114–113, Public Law 114–223, Public Law 114–254 or Public Law 115–31, and an award for a 2017 major disaster under Public Laws 115–56 or 115–123.

1. Planning and Administration Expenditures. Grantees that received an allocation for a major disaster in 2015, 2016, or 2017 under Public Law 114–113, Public Law 114–223, Public Law 114–254 or Public Law 115–31, and an award for a 2017 major disaster under Public Laws 115–56 or 115–123, are subject to different requirements with respect to determining how planning and administrative funds will be accounted for in the requirement that 80 percent of the total grant award be

expended in the HUD-identified ''most impacted and distressed'' areas. To avoid the administrative burden of tracking MID area expenditures differently between different grants, HUD is authorizing grantees under Public Laws 114–113, 114–223, 114–254 and 115–31 to follow the provisions of the Department's February 9, 2018 notice. Specifically, for these grantees and for allocations pursuant to the above Public Laws, HUD will include 80 percent of a grantee's expenditures for grant administration in its determination that 80 percent of the total award has been expended in the MID areas. HUD will include expenditures for planning activities towards a grantee's 80 percent expenditure requirement only if the grantee amends its action plan to include a description of how those planning activities benefit the HUD-identified MID areas.

2. *Waiver of Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).* Section 414 of the Stafford Act (42 U.S.C. 5181) provides that ''Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) [42 U.S.C. 4601 *et seq.*] [''URA''] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by [the URA].'' Accordingly, homeowner occupants and tenants displaced from their homes as a result of the identified disaster and who would have otherwise been displaced, as a direct result of any acquisition, rehabilitation, or demolition of real property for a federally funded program or project, may become eligible for a replacement housing payment, notwithstanding their inability to meet occupancy requirements prescribed in the URA.

Grantees that received an allocation for a major disaster in 2015, 2016, or 2017 under Public Laws 114–113, 114–223, 114–254 or 115–31, and an award for a 2017 major disaster under Public Laws 115–56 or 115–123, are subject to different requirements with respect to protections afforded to tenants and homeowners under Section 414 of the Stafford Act. The Department issued a waiver of Section 414 for all grantees receiving an allocation for a 2017 major disaster under Public Laws 115–56 and 115–123 and provided an alternative requirement in the Department's February 9, 2018 notice (83 FR 5844), as amended and replaced by language in the August 14, 2018 notice (83 FR 40314) that did not apply to grantees receiving an allocation for a major disaster in 2015, 2016, or 2017 under Public Laws 114–113, 114–223, 114–254 or 115–31.

To avoid the administrative burden of implementing two different sets of URA requirements, HUD is authorizing grantees under Public Laws 114–113, 114–223, 114–254 and 115–31 that also received an award under Public Law 115–56 or 115–123 to either: (a) Continue to follow Section 414 of the Stafford Act (or any grantee-specific alternative requirement previously authorized by HUD); or (b) follow the alternative requirement of this section as previously established for Public Law 115–56 and 115–123, if the relevant activity has not yet received a Request for Release of Funds (RROF) as of the applicability date of this Notice. If a grantee chooses to follow option (b) above then it must identify this approach in its policies and procedures related to that particular activity, and consistently apply that option for all displaced persons affected by that activity.

This waiver and alternative requirement is as follows: Section 414 of the Stafford Act (including its implementing regulation at 49 CFR 24.403(d)(1)), is waived to the extent that it would apply to real property acquisition, rehabilitation or demolition of real property for a CDBG–DR funded project, undertaken by the grantee or subrecipient, commencing more than one year after the Presidentially declared disaster, provided that the project was not planned, approved, or otherwise underway prior to the disaster. For purposes of this paragraph, a CDBG–DR funded project shall be determined to have commenced on the earliest of: (1) The date of an approved RROF and certification, or (2) the date of completion of the site-specific review when a program utilizes tiered environmental reviews, or (3) the date of sign-off by the approving official when a project converts to exempt under 24 CFR 58.34(a)(12). The Secretary has the authority to waive provisions of the Stafford Act and its implementing regulations that the Secretary administers in connection with the obligation of CDBG–DR funds covered under this waiver and alternative requirement, or the grantees' use of these funds. The Department has determined that good cause exists for a waiver and that such waiver is not inconsistent with the overall purposes of title I of the HCDA. The waiver will simplify the administration of the disaster recovery process and reduce the administrative burden associated with the implementation of Stafford Act Section 414 requirements for projects commencing more than one year after the date of the Presidentially declared disaster, considering the majority of such persons displaced by the disaster will have returned to their dwellings or found another place of permanent residence. This waiver does not apply with respect to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced or relocated temporarily by other HUD-funded programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted by this waiver.

3. *One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements.*

Similar to the Section 414 waiver above, grantees that have received an allocation of CDBG–DR funds for 2017 disasters under Public Law 115–56 and 115–123 are currently subject to different requirements with respect to One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements, than grantees that received an allocation of CDBG–DR funds for 2015, 2016 and 2017 disasters pursuant to Public Laws 114–113, 114–223, 114–254, and 115–31. To avoid the administrative burden of implementing two different sets of URA requirements, HUD is authorizing grantees under Public Laws 114–113, 114–223, 114–254, or 115–31that also received an award under Public Law 115–56 or 115–123, to either continue to follow the section on One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements as provided in Section VI.A.19. of the June 17, 2016 notice (81 FR 39700) and Section VI.A.19. of the November 21, 2016 notice (81 FR 83266); or (b) follow the requirements of the same section in Section VI.A.23.a. through e. (excluding Section VI.A.23.f.) of the February 9, 2018 notice (83 FR 5858), if the relevant activity has not yet received a Request for Release of Funds (RROF) as of the applicability date of this Notice. If a grantee chooses to follow option (b) above then it must identify this approach in its policies and procedures related to that particular activity, and consistently apply that option for all displaced persons affected by that activity.

The provisions in Section VI.A.23.a. through e. of the February 9, 2018 notice governing One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements are not

amended but are restated below for reference:

''23. *One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements.* Activities and projects undertaken with CDBG–DR funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (''URA'') and section 104(d) of the HCD Act (42 U.S.C. 5304(d)) (section 104(d)). The implementing regulations for the URA are at 49 CFR part 24. The regulations for section 104(d) are at 24 CFR part 42, subpart C. For the purpose of promoting the availability of decent, safe, and sanitary housing, HUD is waiving the following URA and section 104(d) requirements with respect to the use of CDBG–DR funds allocated under this notice:

a. Section 104(d) one for one replacement. One-for-one replacement requirements at section 104(d)(2)(A)(i) and (ii) and (d)(3) of the HCD Act and 24 CFR 42.375 are waived in connection with funds allocated under this notice for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. The section 104(d) one-for-one replacement requirements generally apply to demolished or converted occupied and vacant occupiable lower-income dwelling units. This waiver exempts disaster-damaged units that meet the grantee's definition of ''not suitable for rehabilitation'' from the one-for-one replacement requirements. Before carrying out activities that may be subject to the one-for-one replacement requirements, the grantee must define ''not suitable for rehabilitation'' in its action plan or in policies and procedures governing these activities. A grantee with questions about the one-for-one replacement requirements is encouraged to contact the HUD regional relocation specialist responsible for its jurisdiction. HUD is waiving the section 104(d) one-for-one replacement requirement for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation because it does not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Further, the requirement may discourage grantees from converting or demolishing disaster-damaged housing when excessive costs would result from replacing all such units. Disaster-damaged housing structures that are not suitable for rehabilitation can pose a threat to public health and safety and to economic revitalization. Grantees should reassess post-disaster population and housing needs to determine the appropriate type and amount of lower-income dwelling units to rehabilitate and/or rebuild. Grantees should note that the demolition and/or disposition of PHA-owned public housing units is covered by section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970.

b. Relocation assistance. The relocation assistance requirements at section 104(d)(2)(A) of the HCD Act and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by this notice, for activities related to disaster recovery. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (*e.g.,* buyouts and relocation). Both FEMA and CDBG funds are subject to the requirements of the URA; however, CDBG funds are subject to section 104(d), while FEMA funds are not. The URA provides at 49 CFR 24.402(b) that a displaced person is eligible to receive a rental assistance payment that is calculated to cover a period of 42 months. By contrast, section 104(d) allows a lower-income displaced person to choose between the URA rental assistance payment and a rental assistance payment calculated over a period of 60 months. This waiver of the section 104(d) relocation assistance requirements assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance under this notice.

c. Tenant-based rental assistance. The requirements of sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(vii), 24.2(a)(6)(ix), and 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing payment obligation to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (*e.g.,* Section 8 rental voucher or certificate), provided that comparable replacement dwellings are made available to the tenant in accordance with 49 CFR 24.204(a) where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant this waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash replacement housing payments are limited and such payments are required by the URA to be based on a 42-month term.

d. Arm's length voluntary purchase. The requirements at 49 CFR 24.101(b)(2)(i) and (ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who uses funds allocated under this notice and does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. Given the often large-scale acquisition needs of grantees, this waiver is necessary to reduce burdensome administrative requirements following a disaster. Grantees are reminded that tenants occupying real property acquired through voluntary purchase may be eligible for relocation assistance.

e. Optional relocation policies. The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the grantee level. Unlike the regular CDBG program, States may carry out disaster recovery activities directly or through subrecipients, but 24 CFR 570.606(d) does not account for this distinction. This waiver makes clear that grantees receiving CDBG–DR funds under this notice may establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies. This waiver is intended to provide States with maximum flexibility in developing optional relocation policies with CDBG– DR funds.''

V. Public Law 114–223, 114–254 and 115–31 Waivers and Alternative Requirements

This paragraph of the notice applies to the State of Louisiana, which received allocations for major disasters in 2016 under Public Laws 114–223, 114–254 and 115–31. The Department may grant a waiver pursuant to the authority provided under the above appropriations, which authorize the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with HUD's obligation or use by the recipient of these funds (except for requirements related to fair housing, non-discrimination, labor standards, and the environment). As required by Public Laws 114–223, 114–254 and 115–31, the waiver and alternative requirement provided in this paragraph is based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCDA.

Rental assistance to tenants—42 U.S.C. 5305(a)(8) is modified to permit rental assistance for up to 24 months (State of Louisiana only).

The Department has received a request from the State of Louisiana to provide up to 24 months of tenant-based rental assistance (TBRA) to households impacted by a covered disaster when those households do not meet the definition of a ''displaced person'' under the URA. Existing CDBG regulations allow these payments to cover rent and utilities for a short period of time as a public service activity under 42 U.S.C. 5305(a)(8), but these payments cannot extend for so long that they no longer qualify as an eligible public service activity. Following a disaster, however, households may be forced to abandon their residences and may be unable to return if the damage to the units have made them uninhabitable. Furthermore, scarcity of affordable replacement units in the recovery period following a disaster, and security and utility deposits can further exacerbate affordability concerns for tenants. This waiver and alternative requirement will provide additional time to stabilize persons or households in permanent housing and is consistent with the goal of preventing homelessness.

Due to the severe flooding that occurred in 2016, the housing stock and shelters in several parishes of the State were severely damaged or destroyed.

The State notes that thousands of families continue to be doubled up with family and friends, facing eviction, in temporary housing conditions, including FEMA trailers that will be removed or have rents increased in the near future. The damage from the flooding diminished the opportunities for homeless or at-risk persons or households to independently establish re-housing. This waiver and alternative requirement will provide additional time to stabilize persons or households in permanent housing. The goal of this waiver and alternative requirement is to prevent homelessness and provide additional time to stabilize persons or households in permanent housing along with supportive services. In developing the policies and procedures for the Rapid Rehousing program, the State must list the services to be provided and outline a referral process that will enable the targeted households to apply to live in affordable housing units, including those that are created under other CDBG–DR funded programs.

The use of CDBG–DR funds for this purpose advances the Department's priority to support forward-thinking solutions to help communities that are struggling to house and serve persons and families that are homeless or at risk of homelessness as a result of a disaster. For the reasons above, HUD is expanding the definition of public service at 42 U.S.C. 5305(a)(8) to include the following activity: Provision of rental assistance to disaster-impacted households for up to 24 months. This activity is subject to the 15 percent cap on public services.

In implementing this waiver and alternative requirement, the State must document in its policies and procedures how it will determine that the amount of assistance to be provided is necessary and reasonable and not duplicative of any other funding source, including insurance. Additionally, the State is reminded that any rental assistance provided by FEMA must first be exhausted prior to providing CDBG–DR funds for this purpose. Eligible assistance includes rental assistance and utility payments and may also include rental costs (*i.e.,* security deposits and utility deposits) when the grantee determines that such payments are necessary and reasonable to help prevent a household from being homeless.

A homeowner receiving any form of CDBG–DR interim mortgage assistance that may be offered by the State is not eligible for rental assistance as authorized by this section. This waiver and alternative requirement shall expire on September 30, 2022.

VI. Public Law 115–56 and 115–123 Waivers and Alternative Requirements

This section of the notice authorizes waivers and alternative requirements for certain grantees that received an allocation of funds appropriated under Public Laws 115–56 and 115–123, which together made available $17.4 billion in CDBG–DR funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization due to qualified disasters that occurred in calendar year 2017.

Public Laws 115–56 and 115–123 both authorize the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with HUD's obligation or use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). As required by these appropriations, each waiver and alternative requirement in this section is based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCDA.

1. *Clarification of the Green Building Standards.* The Department's February 9, 2018 notice (83 FR 5844) included the requirement for the application of green building standards that have applied to CDBG–DR awards since 2013. Section VI.B.32. of the February 9, 2018 notice requires grantees to meet the green building standards for ''(i) All new construction of residential buildings and (ii) all replacement of substantially damaged residential buildings.'' Section VI.B.32. subparagraph b. of the February 9, 2018 notice includes a list of green building standards that grantees may adopt and asks grantees to identify which green building standard it will use to meet the requirements. Some grantees have interpreted this requirement to mean that they must choose only one of the specified green building standards and must apply that one standard to all CDBG–DR funded activities that are subject to the requirement. HUD's requirement, however, is only intended to require grantees to identify which green building standard it will meet for each project. It is not intended to require grantees to limit themselves to using only one of the authorized standards. To clarify HUD's intention, HUD is replacing section VI.B.32. subparagraph b. of the February 9, 2018 notice with the following:

''b. Meaning of Green Building Standard. For purposes of this notice, the Green Building Standard means the grantee will require all construction covered by subparagraph a., above, to meet an industry-recognized standard that has achieved certification under at least one of the following programs: (i) ENERGY STAR (Certified Homes or Multifamily High-Rise), (ii) Enterprise Green Communities, (iii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), (iv) ICC–700 National Green Building Standard, (v) EPA Indoor AirPlus (ENERGY STAR a prerequisite), or (vi) any other equivalent comprehensive green building program acceptable to HUD. Grantees must identify, in each project file, which Green Building Standard will be used on any building covered by subparagraph a., along with a checklist or other documentation demonstrating the elements of the chosen standard have been followed. This will allow grantees flexibility in the implementation of this requirement and will also allow HUD to readily identify the authorized standard chosen for each building.''

2. Waiver to increase tourism and business marketing cap (Commonwealth of Puerto Rico only). In the August 14, 2018 notice, the Department granted the Commonwealth of Puerto Rico a waiver to create a new eligible activity to use up to $15,000,000 of CDBG–DR funds for tourism marketing activities to promote travel and to attract new businesses to disaster-impacted areas, consistent with the amount allocated by the Commonwealth in the action plan submitted to HUD pursuant to the February 9, 2018 notice. This notice increases the amount by $10,000,000, allowing the Commonwealth to use up to $25,000,000 in CDBG–DR funds to promote travel and to attract new businesses to disaster-impacted areas. This additional $10,000,000 in CDBG–DR funds represents a substantial and necessary infusion of CDBG–DR resources to sustain the following unmet tourism marketing and business promotion needs identified in the Commonwealth's prior waiver request: (1) Advertising and publicity to correct and update public perception of Puerto Rico as a tourism destination and location for new business investment; and (2) sales promotion and publicity to update professional planners' perceptions of the destination and its ability to host business events (*e.g.,* conventions, quarterly sales conferences, corporate meetings, association conferences) and new businesses. As the Commonwealth of Puerto Rico is proposing advertising and marketing activities rather than direct assistance to tourism-dependent and other businesses, and because the measures of long-term benefit from the

proposed activities must be derived using indirect means, 42 U.S.C. 5305(a) is waived only to the extent necessary to expand the tourism and business marketing eligible activity to permit no more than $25,000,000 for assistance for tourism and business marketing activities to promote travel and to attract new businesses to disaster-impacted areas. No elected officials or candidates for political office shall appear in tourism or business marketing materials financed with CDBG–DR funds. Given the importance of tourism and new business investment to the overall economy, HUD is authorizing this use of funds without regard to unmet housing need.

This waiver will expire two years after the Commonwealth first draws CDBG–DR funds under the allocation of CDBG–DR funds provided in the February 9, 2018 notice. The requirements of the August 14, 2018 notice for the Commonwealth apply to all amounts used for tourism and business marketing, including the additional $10,000,000 permitted by this waiver. The Commonwealth cannot use its CDBG–DR tourism expenditures to supplant Commonwealth or local government funds for tourism and business marketing activities, and it must develop metrics in its action plan that will demonstrate the impact of its CDBG–DR tourism and business marketing expenditures.

The Commonwealth shall coordinate its tourism promotion and business marketing activities with its designated Opportunity Zones.

3. Waiver and alternative requirement for homeowner mortgage assistance (Commonwealth of Puerto Rico only). The widespread damage to the Commonwealth's housing stock following Hurricane Maria has also negatively impacted the Commonwealth's housing market. Elderly homeowners in particular have experienced new difficulties in meeting their mortgage obligations. To assist these homeowners during the period of recovery, HUD is expanding the definition of public service at 42 U.S.C. 5305(a)(8) to include this activity and allow the Commonwealth to use up to $5,000,000 of CDBG–DR funds for the purpose of paying arrearages on taxes and insurance for Home Equity Conversion Mortgages (HECM) insured by the Federal Housing Administration, provided such arrearages have been incurred by the homeowner following and not before the qualified disaster and that such payments serve only to make the homeowner current in his/her required tax and insurance payments for the HECM.

Payments pursuant to this paragraph shall be made by the Commonwealth to: (1) The HECM servicer where the HECM servicer advanced taxes and insurance payments on behalf of the borrower, or (2) to the local taxing authority and/or property insurer on behalf of the borrower. The Commonwealth is reminded that as a public service activity, the HECM assistance authorized herein is subject to the 15 percent cap on the use of CDBG–DR for public service activities. This waiver and alternative requirement shall expire two years after the date on which the Commonwealth first draws CDBG–DR funds for the purpose of providing the assistance authorized herein.

4. Rental assistance to tenants—42 U.S.C. 5305(a)(8) is modified to permit rental assistance to tenants for up to 24 months (Commonwealth of Puerto Rico only).

The Department has received a request from the Commonwealth of Puerto Rico to provide up to 24 months of tenant-based rental assistance (TBRA) to households impacted by a covered disaster when those households do not meet the definition of a ''displaced person'' under the URA. Existing CDBG regulations allow these payments to cover rent and utilities for a short period as a public service under 42 U.S.C. 5305(a)(8), but these payments cannot extend for so long that they are no longer qualify as an eligible public service activity. Following a disaster, however, households may be forced to abandon their residences and may be unable to return if the damage to the units have made them uninhabitable. Furthermore, scarcity of affordable replacement units in the recovery period following a disaster, and security and utility deposits can further exacerbate affordability concerns for tenants. This alternative requirement will provide additional time to stabilize persons or households in permanent housing and is consistent with the goal of preventing homelessness.

As a result of Hurricanes Maria and Irma, rental units across the Commonwealth were seriously damaged or destroyed and affordable rental housing units are urgently needed, especially for the elderly who are in need of rental assistance. Many elderly residents are at immediate risk of becoming homeless because they cannot afford to pay rent without assistance. The goal of this waiver is to prevent and minimize the time disaster-impacted households are homeless by providing rental assistance and re-housing services, and by linking the households with services that can help them become stable and self-sufficient. In developing the policies and procedures for this TBRA program, the Commonwealth must list services to be provided and outline a referral process that will enable the targeted households to apply to live in affordable housing units, including those that are created under other CDBG–DR funded programs. The Commonwealth must clearly demonstrate in its action plan the concrete steps it will take to prevent households from becoming homeless after the exhaustion of the CDBG–DR TBRA assistance.

The use of CDBG–DR funds for this purpose advances the Department's priority to support forward-thinking solutions to help communities that are struggling to house and serve persons and families that are homeless or at risk of homelessness as a result of a disaster. For the reasons above, HUD is expanding the definition of public service at 42 U.S.C. 5305(a)(8) to include the following activity: Provision of rental assistance to disaster-impacted households for up to 24 months. This activity is subject to the 15 percent cap on public services.

In implementing this alternative requirement, the Commonwealth must document, in its policies and procedures, how it will determine that the amount of assistance to be provided is necessary and reasonable and not duplicative of any other funding source. Additionally, the Commonwealth is reminded that any rental assistance provided by FEMA or insurance must first be exhausted prior to providing CDBG–DR funds for this purpose. Eligible assistance includes rental assistance and utility payments and may also include rental costs (*i.e.,* security deposits and utility deposits) when the grantee determines that such payments are necessary and reasonable to help prevent a household from being homeless.

A homeowner receiving any form of CBDG–DR interim mortgage assistance that may be offered by the Commonwealth is not eligible for rental assistance as authorized by this section. This waiver and alternative requirement shall expire on September 30, 2022.

5. Waiver to increase tourism marketing cap to further permit some activities in support of the tourism industry (U.S. Virgin Islands only). In the Department's August 14, 2018 notice, HUD granted the U.S. Virgin Islands (USVI) a waiver to spend up to $5,000,000 of CDBG–DR funds on tourism marketing activities to promote travel to disaster-impacted areas related to the effects of Hurricanes Irma and Maria, consistent with the amount allocated by the USVI in the action plan

submitted to HUD pursuant to the February 9, 2018 notice.

The USVI is seeking a waiver request to allow it to spend an additional $20,000,000 on activities to promote tourism within those same areas, for a combined total of $25,000,000. This increase in funding for tourism marketing activities is based upon the USVI Department of Tourism's identification of specific travel and tourism niches in which the USVI is acknowledged to be competitive, including sports and adventure; meetings, incentives, conferences and exhibitions; and destination weddings and honeymoons.

Accordingly, 42 U.S.C. 5305(a) is waived only to the extent necessary to make eligible use of no more than $25,000,000 for assistance for tourism marketing, provided the assisted activities are designed to support tourism to the disaster-impacted areas related to the effects of Hurricanes Irma and Maria. This waiver will expire two years after the USVI first draws CDBG–DR funds under the allocation of CDBG–DR funds provided in the February 9, 2018 notice. The requirements of the August 14, 2018 notice for the USVI apply to all amounts used for tourism marketing, including the additional $20,000,000 permitted by this waiver. These include requirements for the USVI to develop metrics in its action plan that will demonstrate the impact of its CDBG–DR tourism expenditures and that no elected officials or candidates for political office shall appear in tourism marketing materials financed with CDBG–DR funds. Any CDGB–DR tourism expenditures may not supplant USVI or local government funds for tourism marketing.

The USVI shall coordinate its tourism promotion and marketing activities with its designated Opportunity Zones.

6. Rental assistance to tenants—42 U.S.C. 5305(a)(8) is modified to permit rental assistance to tenants for up to 24 months (U.S. Virgin Islands only).

The Department has received a request from the USVI to provide up to 24 months of tenant-based rental assistance (TBRA) to households impacted by a covered disaster when those households do not meet the definition of a ''displaced person'' under the URA. Existing CDBG regulations allow these payments to cover rent and utilities for a short period as a public service under 42 U.S.C. 5305(a)(8), but these payments cannot extend for so long that they are no longer a public service. Following a disaster, however, households may be forced to abandon their residences and may be unable to return if the damage to the units have made them uninhabitable. Furthermore, scarcity of affordable replacement units in the recovery period following a disaster, and security and utility deposits can further exacerbate affordability concerns for tenants. This waiver and alternative requirement will provide additional time to stabilize persons or households in permanent housing and is consistent with the goal of preventing homelessness.

Many of the homeowners in USVI own their homes outright or reside in long-standing familiar homes. This practice has allowed them to live on very low, fixed expenses each month and therefore these homeowners may not have the means to pay rent at a different location while their home is under repair. Additionally, many homeowners have either expended their FEMA temporary assistance and rental assistance provided by insurance or did not qualify for any rental assistance in the first place. Thus, temporary rental assistance for homeowners is necessary to prevent displacement and/or homelessness while these homes are repaired or reconstructed. The goal of this waiver and alternative requirement is to prevent and minimize the time households are homeless as a result of the disaster by providing rental assistance and re-housing services. In developing the policies and procedures for the rental assistance program, the grantee must list services to be provided and outline a referral process that will enable the targeted households to apply to live in affordable housing units, including those that are created under other CDBG–DR funded programs. Grantees must also clearly demonstrate in its action plan the concrete steps it will take to prevent households from becoming homeless after the exhaustion of CDBG–DR TBRA assistance.

The use of CDBG–DR funds for this purpose advances the Department's priority to support forward-thinking solutions to help communities that are struggling to house and serve persons and families that are homeless or at risk of homelessness as a result of a disaster. For the reasons above, HUD is expanding the definition of public service at 42 U.S.C. 5305(a)(8) to include the following activity: provision of rental assistance to disaster-impacted households for up to 24 months. This activity is subject to the 15 percent cap on public services.

In implementing this waiver and alternative requirement, the USVI must document, in its policies and procedures, how it will determine that the amount of assistance to be provided is necessary and reasonable and not duplicative of any other funding source, including insurance. Additionally, the USVI is reminded that any rental assistance provided by FEMA must first be exhausted prior to providing CDBG–DR funds for this purpose. Eligible assistance includes rental assistance and utility payments and may also include rental costs (*i.e.,* security deposits and utility deposits) when the grantee determines that such payments are necessary and reasonable to help prevent a household from being homeless.

A homeowner receiving any form of CBDG–DR interim mortgage assistance that may be offered by the USVI is not eligible for rental assistance as authorized by this section. This waiver and alternative requirement shall expire on September 30, 2022.

VII. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.218 for Entitlement CDBG grantees and 14.228 for State CDBG grantees.

VIII. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Dated: February 8, 2019.

David Woll, Jr.,

Acting Assistant Secretary, Office of Community Planning and Development.

[FR Doc. 2019–02695 Filed 2–15–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2018–0108; FXIA16710900000–178–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by March 21, 2019.

ADDRESSES:

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *http://www.regulations.gov* in Docket No. FWS–HQ–IA–2018–0108.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2018–0108.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2012018–0108; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2104, via email at *DMAFR@fws.gov,* or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *http://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Tufts University, Medford, MA; Permit No. 99652C

The applicant requests a permit to import biological samples of wild Andean condor (*Vultur gryphus*) from Chile for the purpose of scientific research. This notification is for a single import.

Applicant: Nicole Angeli, Smithsonian Institution, Washington DC; Permit No. 98899C

The applicant requests a permit to import a salvaged Virgin Islands tree boa (*Epicrates monensis granti*) from the British Virgin Islands for the purpose of scientific research. This notification is for a single import.

Applicant: De Novo Genomics Corporation, Kansas City, KS; Permit No. 01268D

The applicant requests a permit to import a scientific samples collected from captive-held and captive-bred Sumatran orangutans (*Pongo abelii*), western gorillas (*Gorilla gorilla*), central chimpanzees (*Pan troglodytes*) and bonobos (*Pan paniscus*) from the Copenhagen Zoo, Denmark, for the purpose of scientific research. This notification is for a single import.

Applicant: Warren Mabey, Pilesgrove, NJ; Permit No. 03090D

The applicant requests an interstate commerce permit to purchase two captive-bred Madagascar radiated tortoise (*Astrochelys radiata*) from a registered captive-bred wildlife breeder for the purpose of enhancing the propagation or survival of the species. This permit is for a single transaction.

Applicant: Metro Richmond Zoo, Moseley, VA; Permit No. 00398D

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species:

Chimpanzee (*Pan troglodytes*), orangutan (*Pongo pygmaeus* x *Pongo abelii* hybrids), siamang (*Symphalangus syndactylus*), white-handed gibbon (*Hylobates lar*), Diana monkey (*Cercopithecus diana*), black and white ruffed lemur (*Varecia variegata*), red ruffed lemur (*Varecia rubra*), ring-tailed lemur (*Lemur catta*), Baird's tapir (*Tapirus bairdii*), Brazilian tapir (*Tapirus terrestris*), Malayan tapir (*Tapirus indicus*), bontebok (*Damaliscus pygargus*), cheetah (*Acinonyx jubatus*), African lion (*Panthera leo*), snow leopard (*Uncia uncia*), Galapagos tortoise (*Chelonoidis niger*), and komodo monitor (*Varanus komodoensis*), to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Gibbon Conservation Center, Santa Clarita, CA; Permit No. 757434

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance the propagation or survival of the species: Silvery Javan gibbon (*Hylobates moloch*), pilated gibbon (*Hylobates pileatus*), northern white-cheeked gibbon (*Nomascus leucogenys*), siamang (*Symphalangus syndactylus*), and hoolock gibbon (*Bunopithecus hoolock*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Fresno Chaffee Zoo, Fresno, CA; Permit No. 09932D

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) to enhance the propagation or survival of the following species:

Common name	Scientific name
African lion	*Panthera leo.*
Andean condor	*Vultur gryphus.*
Cheetah	*Acinonyx jubatus.*
Fiji banded iguana	*Brachylophus fasciatus.*
Goeldi's monkey	*Callimico goeldii.*
Golden lion tamarin	*Leontopithecus rosalia.*
Komodo monitor	*Varanus komodoensis.*
Tiger	*Panthera tigris.*
Red ruffed lemur	*Varecia rubra.*
Ring-tailed lemur	*Lemur catta.*
San Esteban Island chuckwalla.	*Sauromalus varius.*

This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Avian Preservation and Education Conservancy, Jacksonville, FL; Permit No. 94795C

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the red siskin (*Carduelis cucullata*), to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Trophy Applicants

The following applicants request permits to import sport-hunted trophies of male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

Applicant: Owen Lawrence, Memphis, TN; Permit No. 02698D

Applicant: Dean Young, Franklin, ME; Permit No. 04447D

Applicant: David Cordex, Aurora, CO; Permit No. 06348D

Applicant: John Sholes, Gaithersburg, MD; Permit No. 11591D

Applicant: John Weinzierl, Houston, TX; Permit No. 11593D

Applicant: Arthur Newcombe, South Miami, FL; Permit No. 11665D

Applicant: Hugh Richardson, Houston, TX; Permit No. 08288D

Applicant: Michael Marinkovich, Redlands, CA; Permit No. 13028D

Applicant: James Werner, Midland, TX; Permit No. 15743D

Applicant: Christian Hansen, Bellevue, WA; Permit No. 13256D

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *http://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2019–02570 Filed 2–15–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2018–0114; FXIA16710900000–178–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by March 21, 2019.

ADDRESSES:

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *http://www.regulations.gov* in Docket No. FWS–HQ–IA–2018–0114.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2018–0114.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2018–0114; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2104, via email at *DMAFR@fws.gov,* or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment

on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *http://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Elizabeth Tapanes, Takoma Park, MD; Permit No. 09835D

The applicant requests a permit to import biological samples from Diademed sifaka (*Propithecus diadema*) for the purpose of scientific research. This notification is for a single import.

Applicant: Regis Opferman, Pueblo, CO; Permit No. 073270

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*), to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Robert Jackson, Jonesboro, AR; Permit No. 13264D

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *http://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to regulations.gov and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2019–02621 Filed 2–15–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2018–N160; FXES11140100000–189–FF01E00000]

Draft Safe Harbor Agreement for Nene at Haleakala Ranch, Maui

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from the Haleakala Ranch Company (the Ranch) for an enhancement of survival permit (permit) pursuant to the Endangered Species Act of 1973, as amended (ESA). The permit application includes a draft Safe Harbor Agreement (SHA) between the Ranch, the State of Hawaii Department of Land and Natural Resources (DLNR), and the Service. Implementation of the proposed SHA is intended to benefit the recovery of the nene (Hawaiian goose, *Branta sandvicensis*) on 3,056 acres of privately-owned Ranch land on the island of Maui. The proposed SHA conservation measures on the Ranch include nene habitat improvement and maintenance, establishment and maintenance of a nene release pen, and control of predators. The activities implemented under this SHA will aid in increasing the current range of the covered species, restoring this species to part of its historic range, and increasing the total population of the species, thus contributing to its overall recovery. The Service is making the permit application, including the proposed SHA, and the NEPA environmental action statement for categorical exclusion available for public review and invites comments, including the submission of written data.

DATES: All comments from interested parties must be received on or before March 21, 2019.

ADDRESSES: To request further information, obtain copies of documents, or submit written comments, please use one of the following methods. Please include your name and return address in your

comments and refer to the ''Safe Harbor Agreement for Nene at Haleakala Ranch'':

- *Internet:* Documents may be viewed on the internet at *http://www.fws.gov/pacificislands.*
- *Email: pifwo_admin@fws.gov.* Include ''Safe Harbor Agreement for Nene at Haleakala Ranch'' in the subject line of the message.
- *U.S. Mail:* Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room #3–122, Honolulu, HI 96822.
- *In-Person Drop-off, Viewing, or Pickup:* Documents will be available for public inspection, by appointment, during normal business hours between 8 a.m. and 5 p.m. at the U.S. Fish and Wildlife Service's Pacific Islands Fish and Wildlife Office.
- *Fax:* Pacific Islands Fish and Wildlife Office, 808–792–9580, Attn: Safe Harbor Agreement for Nene at Haleakala Ranch.

FOR FURTHER INFORMATION CONTACT: Jodi Charrier, Pacific Islands Fish and Wildlife Office (see **ADDRESSES**), telephone 808–792–9400, or email *pifwo_admin@fws.gov.* If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The Service has received an application from the Haleakala Ranch Company (the Ranch) for an enhancement of survival permit (permit) pursuant to the ESA (16 U.S.C. 1531 *et seq.*). The permit application includes a draft SHA between the Ranch, the State of Hawaii DLNR, and the Service. Implementation of the proposed SHA is intended to benefit the recovery of the nene on 3,056 acres of privately-owned Ranch land on the island of Maui. The proposed SHA conservation measures on the Ranch include nene habitat improvement and maintenance, establishment and maintenance of a nene release pen, and control of predators. The activities implemented under this SHA will aid in increasing the current range of the nene, restoring this species to part of its historic range, and increasing the total population of this species, thus contributing to the overall recovery of the nene. The Service is making the permit application, including the proposed SHA, and the NEPA environmental action statement for categorical exclusion available for public review and comment.

Background

Under a SHA, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the ESA. SHAs, and the subsequent permit issued to participating landowners pursuant to section 10(a)(1)(A) of the ESA, encourage private and other non-Federal property owners to implement conservation actions for federally listed species by assuring the landowners that they will not be subjected to increased property use restrictions as a result of their efforts to either attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. Enrolled landowners may make lawful use of the enrolled property during the permit term and may incidentally take the listed species named on the permit. Application requirements and issuance criteria for permits associated with SHAs are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(c).

Draft Safe Harbor Agreement

Nene were probably extirpated from Maui by the end of the 19th century. Today nene are found on Maui primarily within the boundaries of Haleakala National Park, where reintroduction efforts on Maui began in 1962. In addition, populations of the nene have been established through reintroduction programs at Piiholo Ranch on Maui, which has been successfully implementing a SHA for the reintroduction of nene since 2004. In 2011, the estimated population of nene on Maui was approximately 350 to 375 birds.

The private lands subject to the proposed SHA and permit consist of 3,056 acres on the Ranch, and current land use practices include cattle ranching operations. Habitat on the Ranch varies and includes nonnative-plant-dominated grasslands, native and nonnative forests, and gulches. Land elevation ranges from sea level to approximately 3,000 feet. The baseline nene population for this SHA is zero (0) nene.

The expected net conservation benefit to the nene as a result of the proposed SHA is the establishment of a breeding population of 200 nene on the Ranch. This benefit will be achieved by providing high-quality, predator-controlled nene habitat on Ranch property. Conservation measures proposed by the Ranch to encourage the establishment and survival of nene on the enrolled lands include allowing DLNR to: (1) Construct or expand a nene release pen; (2) make road improvements as needed to implement the agreement; (3) maintain the release pen and associated water source, and to monitor nene throughout the term of the agreement; (4) allow DLNR to release nene into the release pen; and (5) allow DLNR to conduct predator control in and around the release pen.

The proposed duration of the conservation measures contained in the SHA is for 10 years; however, the landowner may terminate the SHA after 5 years for reasons beyond their control and return to baseline. The proposed duration of the permit is for 50 years. The permit would authorize the incidental take of nene on the enrolled lands as a result of lawful activities at the Ranch, from the time the SHA is executed. The Ranch may continue current land use practices, undertake new ones, or make any other lawful use of the property, even if such use incidentally results in the loss of nene or their habitat covered under this SHA. Once the SHA has ended, the Ranch can return the enrolled lands to baseline conditions. The authority for incidental take of the nene associated with the return to baseline conditions is provided by the permit.

During the nonbreeding season, the birds may disperse and have seasonal movement throughout Maui, but due to their site fidelity, they are expected to return to the protected pen for breeding. It is expected that some of the nene released under the SHA, and their progeny, will still utilize the site upon expiration or termination of the SHA and that a percentage of nene will remain on the Ranch property for the permit term and beyond. Based on experience from similar sites, the Service and DLNR anticipate this SHA will result in an increase in the number of nene on Maui and an increase in the total area of suitable habitat on private lands utilized by nene. Without this cooperative government/private landowner effort, these lands would not otherwise be utilized by nene in the foreseeable future. For these reasons, this SHA and the activities it covers, which are facilitated by the allowable incidental take, would provide a net conservation benefit to the nene.

When this 10-year SHA expires, the parties have the option to extend the term of the SHA, or return to baseline numbers. By establishing the term of the permit at 50 years, the Ranch may defer returning the property to baseline conditions when the 10-year SHA expires. Nene would, in this case, continue to benefit from any ongoing or residual conservation actions on the Ranch for an additional period of time. Providing for a 50-year term of the permit also offers flexibility to the Ranch landowner; if there is no immediate need to return to baseline

conditions, the Ranch landowner may therefore be interested in having nene on the Ranch for a longer period of time. The Ranch will notify DLNR and the Service in advance of conducting any activities that it anticipates will adversely affect the nene and also report any dead, injured, or diseased nene during the term of the permit, as well as provide a report on the status of the reintroduced nene population every 5 years after the SHA expires for the 50-year term of the permit.

If at the end of 10 years the Ranch plans to return to baseline conditions, they will notify DLNR and the Service to provide time to relocate nene from the property. At the end of the term of the SHA, the Ranch may also remove any nene habitat and return the property to the baseline conditions existing prior to the SHA. Additionally, the Ranch will provide 1-year notice to DLNR and the Service prior to a potential return to baseline conditions to allow DLNR to develop a suitable alternate site and move birds. The SHA may be renewed upon approval by the Service and DLNR.

National Environmental Policy Act Compliance

The development of the draft SHA and the proposed issuance of a permit is a Federal action that triggers the need for compliance with the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*). The Service has made a preliminary determination that the proposed SHA and permit application are eligible for a categorical exclusion under NEPA, based on the following criteria: (1) Implementation of the SHA would result in minor or negligible adverse effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the SHA would result in minor or negligible adverse effects on other environmental values or resources; and (3) impacts of the SHA, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative adverse effects to environmental values or resources which would be considered significant. We explain the basis for this determination in more detail in an Environmental Action Statement (EAS) that is also available for public review.

Based on the EAS, we have preliminarily determined that the issuance of the associated permit would have minor or negligible adverse effects on the species covered in the SHA. Therefore, we determined that the SHA qualifies for categorical exclusion under NEPA, as provided by the Department of the Interior NEPA regulations (43 CFR part 46).

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we use in preparing the EAS, will be available for public inspection by appointment, during normal business hours, at our Pacific Islands Fish and Wildlife Office (see **ADDRESSES**).

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

Katherine B. Hollar,

Acting Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2019–02633 Filed 2–15–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2018–N147]; [FXES11140100000–189–FF01E00000]

Proposed Green Diamond Resource Company Candidate Conservation Agreement With Assurances for Fisher in Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an enhancement of survival permit application from Green Diamond Resource Company pursuant to the Endangered Species Act (ESA). The requested permit would authorize the incidental take of fisher should the species become federally listed in the future under the ESA. The permit application is associated with a template candidate conservation agreement with assurances (CCAA) previously developed for the conservation of the fisher. We also have prepared a draft environment action statement (EAS) pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA) for the potential issuance of this individual permit. We are making the permit application package and draft EAS available for public review and comment.

DATES: To ensure consideration, written comments must be received from interested parties no later than March 21, 2019.

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the ''Green Diamond CCAA.''

- *Internet:* Documents may be viewed on the internet at *http://www.fws.gov/oregonfwo/.*
- *Email: GreenDiamondCCAAcomments@fws.gov.* Include ''Green Diamond CCAA'' in the subject line of the message or comments.
- *U.S. Mail:* State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service; 2600 SE 98th Avenue, Suite 100 Portland, OR 97266.
- *Fax:* 503–231–6195, Attn: Green Diamond CCAA.
- *In-Person Drop-off, Viewing, or Pickup:* Comments and materials received will be available for public inspection, by appointment (necessary for viewing or picking up documents only), during normal business hours at the Oregon Fish and Wildlife Office (at the above address); call 503–231–6179 to make an appointment. Written comments can be dropped off during regular business hours at the above address on or before the closing date of the public comment period (see **DATES**).

FOR FURTHER INFORMATION CONTACT: Richard Szlemp (see **ADDRESSES**); telephone: 503–231–6179; facsimile: 503–231– 6195. If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an enhancement of survival permit application from Green Diamond Resource Company pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permit would authorize the incidental take of fisher (*Pekania pennanti*) during

Green Diamond Resource's routine forest-related management activities for a period of 29 years should the fisher become federally listed in the future under the ESA. The permit application is associated with a template candidate conservation agreement with assurances (CCAA) previously developed for the conservation of the fisher.

Background

A CCAA is a voluntary agreement whereby landowners agree to manage their lands to remove or reduce threats to species that may become listed under the ESA (64 FR 32726; June 17, 1999). CCAAs are intended to facilitate the conservation of proposed and candidate species, and species likely to become candidates in the near future by giving non-Federal property owners incentives to implement conservation measures for declining species by providing certainty with regard to land, water, or resource use restrictions that might be imposed should the species later become listed as threatened or endangered under the ESA. In return for managing their lands to the benefit of the covered species, enrolled landowners receive assurances that additional regulatory requirements pertaining to the covered species will not be required if the covered species becomes listed as threatened or endangered under the ESA, so long as the CCAA remains in place and is being fully implemented.

A CCAA serves as the basis for the Service to issue enhancement of survival permits to non-Federal participants pursuant to section 10(a)(1)(A) of the ESA. Application requirements and issuance criteria for permits under CCAAs are found in the Code of Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d). The Service developed a template CCAA for the West Coast Distinct Population Segment (DPS) of the fisher in Oregon and a draft EAS for future permit issuance under the finalized template to comply with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). The template CCAA and the EAS were noticed for comment in the **Federal Register** (81 FR 15737; March 24, 2016). The template CCAA and EAS were finalized and signed by the Service on June 20, 2018.

The CCAA template established general guidelines and identified minimum conservation measures for potential participants in the CCAA. Interested participants can voluntarily enroll their property under the CCAA through individual ''site plans'' that are submitted as part of their permit applications. The permits would authorize incidental take with assurances to qualifying landowners who carry out conservation measures that would benefit the West Coast DPS of the fisher.

Proposed Action

Pursuant to the ESA, we have received an application for an enhancement of survival permit from Green Diamond Resource Company under the template CCAA for their lands in Oregon. The requested permit would authorize the incidental take of fisher, should it become federally listed, during Green Diamond Resource's routine forest-related management activities on their properties in Jackson, Klamath, and Lake Counties, Oregon for a period of 29 years, which is the current time remaining under the template CCAA. Approximately 491,544 acres of Green Diamond Resource lands would be covered under the CCAA. The permit application includes a (1) proposed site plan that describes the lands to be covered by the permit and (2) the required conservation measures of the template CCAA.

We are making the permit application package, including the site plan, as well as the draft EAS, available for public review and comment (see **ADDRESSES**). The final template CCAA and prior EAS are also available for reference.

Public Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on our proposed Federal action, including adequacy of the site plan in relation to the template CCAA pursuant to the requirements for permits at 50 CFR parts 13 and 17.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation, will be available for public inspection by appointment, during normal business hours, at our Oregon Fish and Wildlife Office (see **ADDRESSES**).

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*), and NEPA (42 U.S.C. 4321 *et seq.*) and their implementing regulations (50 CFR 17.22, and 40 CFR 1506.6, respectively).

Kevin S. Foerster,

Acting Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2019–02632 Filed 2–15–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2019–N152; FXES11140200000–189–FF02ENEH00]

Incidental Take Permit Application To Participate in American Burying Beetle Amended Oil and Gas Industry Conservation Plan in Oklahoma

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: Under the Endangered Species Act, we, the U.S. Fish and Wildlife Service, invite the public to comment on a federally listed American burying beetle incidental take permit (ITP) application. The applicant anticipates American burying beetle take as a result of impacts to Oklahoma habitat the species uses for breeding, feeding, and sheltering. The take would be incidental to the applicant's activities associated with oil and gas well field and pipeline infrastructure (gathering, transmission, and distribution), including geophysical exploration (seismic), construction, maintenance, operation, repair, decommissioning, and reclamation. If approved, the permit would be issued under the approved *American Burying Beetle Amended Oil and Gas Industry Conservation Plan (ICP) Endangered Species Act Section 10(a)(1)(B) Permit Issuance in Oklahoma.*

DATES: To ensure consideration, we must receive written comments on or before March 21, 2019.

ADDRESSES: You may obtain copies of all documents and submit comments on the applicant's ITP application by one of the following methods. Please refer to the proposed permit number when requesting documents or submitting comments.

- *Email: fw2_hcp_permits@fws.gov.*
- *U.S. Mail:* U.S. Fish and Wildlife Service, Endangered Species—HCP Permits, P.O. Box 1306, Room 6093, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Marty Tuegel, Branch Chief, by U.S. mail at U.S. Fish and Wildlife Service, Environmental Review Division, P.O. Box 1306, Room 6078, Albuquerque, NM 87103; by telephone at 505–248–6651; or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

Under the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we, the U.S. Fish and Wildlife Service, invite the public to comment on an incidental take permit (ITP) application to take the federally listed American burying beetle (*Nicrophorus americanus*) during oil and gas well field infrastructure geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning, as well as oil and gas gathering, transmission, and distribution pipeline infrastructure construction, maintenance, operation, repair, decommissioning, and reclamation in Oklahoma.

If approved, the permit would be issued to the applicant under the *American Burying Beetle Amended Oil and Gas Industry Conservation Plan (ICP) Endangered Species Act Section 10(a)(1)(B) Permit Issuance in Oklahoma.* The original ICP was approved on May 21, 2014, and the ''no significant impact'' finding notice was published in the **Federal Register** on July 25, 2014 (79 FR 43504). The draft amended ICP was made available for comment on March 8, 2016 (81 FR 12113), and approved on April 13, 2016. The ICP and the associated environmental assessment/finding of no significant impact are available on our website at *http://www.fws.gov/southwest/es/oklahoma/ABBICP.* However, we are no longer taking comments on these finalized, approved documents.

Application Available for Review and Comment

We invite local, state, Tribal, and Federal agencies, and the public to comment on the following application under the ICP for incidentally taking the federally listed American burying beetle. Please refer to the proposed permit number (TE14926D) when requesting application documents and when submitting comments. Documents and other information the applicant submitted are available for review, subject to Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552) requirements.

Permit No. TE14926D

Applicant: DCP Operating Company, LP, Denver, CO

Applicant requests a permit for oil and gas upstream and midstream production, including oil and gas well field infrastructure geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning, as well as oil and gas gathering, transmission, and distribution pipeline infrastructure construction, maintenance, operation, repair, decommissioning, and reclamation in Oklahoma.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*), its implementing regulations (50 CFR 17.22), and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: November 20, 2018.

Amy Lueders,

Regional Director, Southwest Region.

[FR Doc. 2019–02622 Filed 2–15–19; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TPA–105–003]

United States-Mexico-Canada Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors

AGENCY: United States International Trade Commission.

ACTION: Change in date for transmittal of Commission report to the President and Congress.

SUMMARY: The Commission has changed the date for transmittal of its report to the President and Congress from no later than 105 days after the President entered into the agreement, to no later than 105 days plus an additional 35 days due to the lapse of appropriation between December 22, 2018 and January 25, 2019.

DATES: February 11, 2019.

FOR FURTHER INFORMATION CONTACT: Project Leader Serge Shikher (202–205–2393 or *serge.shikher@usitc.gov*) or Co-Project Leader Mihir Torsekar (202–205–3350 or *mihir.torsekar@usitc.gov*) for information specific to these investigations. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: The Commission published notice of institution of the above referenced investigation in the **Federal Register** on October 16, 2018 (83 FR 52232, October 16, 2018). In that notice the Commission stated that it would transmit its report to the President and Congress no later than 105 days after the President enters into the agreement. However, due to the lapse in appropriation (December 22, 2018 to January 25, 2019), the Commission will transmit its report to

the President and Congress no later than 105 days after the President entered into the agreement plus an additional 35 days. All other dates pertaining to this investigation remain the same as in the notice published in the **Federal Register** on October 16, 2018.

By order of the Commission.

Issued: February 12, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–02603 Filed 2–15–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–569]

U.S. SME Exports: Trade-Related Barriers Affecting Exports of U.S. Small- and Medium-Sized Enterprises to the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Notice, change in dates.

SUMMARY: Due to the lapse of appropriation between December 22, 2018 and January 25, 2019, the Commission has changed certain dates announced in its notice of investigation and hearing for these investigations: (i) It has extended the deadline for filing requests to appear at the public hearing from February 8, 2019 to March 28, 2019; (ii) it has extended the deadline for filing prehearing briefs and statements from February 13, 2019 to April 1, 2019; (iii) it has rescheduled the public hearing from February 26, 2019 to April 11, 2019; (iv) it has extended the deadline for filing post-hearing briefs from March 8, 2019 to April 18, 2019; (v) it has extended the deadline for filing all other written submissions from March 15, 2019 to April 30, 2019; and (vi) it will transmit its report to the USTR by September 4, 2019 instead of by July 31, 2019.

DATES: February 11, 2019.

FOR FURTHER INFORMATION CONTACT: Project Leader Mahnaz Khan (202–205–2046 or *Mahnaz.khan@usitc.gov*) or Deputy Project Leader Sarah Scott (202–708–1397 or *sarah.scott@usitc.gov*) for information specific to these investigations. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: The Commission published notice of institution of the above referenced investigations in the **Federal Register** on September 6, 2018 (83 FR 45281, September 6, 2018). Due to the lapse in appropriation (December 22, 2018 to January 25, 2019), the Commission has changed certain dates announced in that notice regarding these investigations: (i) It has extended the deadline for filing requests to appear at the public hearing from February 8, 2019 to March 28, 2019; (ii) it has extended the deadline for filing prehearing briefs and statements from February 13, 2019 to April 1, 2019; (iii) it has rescheduled a public hearing from February 26, 2019 to April 11 2019; (iv) it has extended the deadline for filing post-hearing briefs from March 8, 2019 to April 18, 2019; (v) it has extended the deadline for filing all other written submissions from March 15, 2019 to April 30, 2019 and (vi) it will transmit its report to the USTR by September 4, 2019 instead of by July 31, 2019.

By order of the Commission.

Issued: February 12, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–02601 Filed 2–15–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigative No. 337–TA–1063]

Certain X-Ray Breast Imaging Devices and Components Thereof; Notice of Commission Decision To Terminate the Investigation Based on Settlement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant the private parties' joint motion to terminate the investigation based on settlement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 1, 2017, based on a complaint and supplement, filed on behalf of Hologic, Inc. of Marlborough, Massachusetts. 82 FR 35823–24 (Aug. 1, 2017). The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain x-ray breast imaging devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,831,296; U.S. Patent No. 8,452,379 (''the '379 patent''); U.S. Patent No. 7,688,940; U.S. Patent No. 7,986,765 (''the '765 patent''); and U.S. Patent No. 7,123,684. The complaint further alleges that an industry in the United States exists as required by section 337. The notice of investigation named FUJIFILM Corporation of Tokyo, Japan; FUJIFILM Medical Systems USA, Inc. of Stamford, Connecticut; and FUJIFILM Techno Products Co., Ltd. of Hanamaki-Shi Iwate, Japan (collectively ''Fujifilm'') as respondents. The Office of Unfair Import Investigations (''OUII'') was named as a party. On January 18, 2018, the '765 patent was terminated in its entirety from the investigation. *See* Order No. 18 (Jan. 18, 2018) (unreviewed). On February 27, 2018, claims 6–10 of the '379 patent were terminated from the investigation. *See* Order No. 21 (Feb. 27, 2018) (unreviewed).

On July 26, 2018, the administrative law judge (''ALJ'') issued the final initial

determination (''ID'') in this investigation. The ALJ found that a violation of section 337 has occurred. On October 24, 2018, the Commission determined to review the ID in part. 83 FR 54608–10 (October 30, 3018).

On February 4, 2019, Hologic and Fujifilm filed a joint motion to terminate the investigation based on a settlement. The motion includes both confidential and public versions of the settlement agreement, and the parties represent that there are no other agreements, written or oral, express or implied between them concerning the subject matter of the proceeding. The parties also contend that the termination of the investigation would not adversely affect the public interest. On February 8, 2019, OUII filed a response in support of the motion.

The Commission has determined to grant the joint motion. The Commission finds that the private parties have complied with the Commission's Rules, and that termination of the investigation would not adversely affect the public interest. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: February 13, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–02671 Filed 2–15–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–556 and 731–TA–1311 (Final) (Remand)]

Truck and Bus Tires From China

Determinations

The United States International Trade Commission (Commission) hereby publishes notice of its final determinations pursuant to the remand ordered by the U.S. Court of International Trade in the antidumping and countervailing duty investigations of truck and bus tires from China. *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010); 19 U.S.C. 1673d(d). On the basis of the Court's remand instructions and the parties' comments, and the record [1] developed in the subject investigations, the Commission determines, pursuant to the Tariff Act of 1930, that an industry in the United States is materially injured by reason of subject imports of truck and bus tires from China, provided for in subheadings 4011.20.1015 and 4011.20.5020 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value and to be subsidized by the Government of China.[2]

Background

In February 2017, the Commission issued negative determinations in the antidumping and countervailing duty determinations of truck and bus tires from China. *Truck and Bus Tires from China,* 701–TA–556 and 731–TA–1311 (Final), USITC Pub. 4673 (March 2017). Petitioner, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC, appealed the Commission's negative determinations to the U.S. Court of International Trade. Following briefing and oral argument, the Court, on November 1, 2018, remanded the Commission's determinations for reconsideration by the Commission. *United Steel, Paper and Forestry, Rubber, Mfg., Energy, Allied Indus. and Serv. Workers Int'l Union* v. *United States,* Slip Op. 18–151 (Ct. Int'l Trade Nov. 1, 2018).

On January 30, 2019, the Commission on remand issued these affirmative determinations.

By order of the Commission.

Issued: February 12, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–02602 Filed 2–15–19; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Johanson and Commissioner Broadbent dissented, finding that an industry in the United States is neither materially injured nor threatened with material injury by reason of the subject imports.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. TA–131–043 and TPA–105–004]

U.S.-Japan Trade Agreement: Advice on the Probable Economic Effect of Providing Duty-Free Treatment for Currently Dutiable Imports

AGENCY: United States International Trade Commission.

ACTION: Change in date for transmittal of Commission report to the United States Trade Representative (USTR).

SUMMARY: The Commission has changed the date for transmittal of its report to the USTR in these investigations from January 24, 2018 to February 28, 2019 due to the lapse of appropriation between December 22, 2018 and January 25, 2019.

DATES: February 11, 2019.

FOR FURTHER INFORMATION CONTACT: Project Leader Justino De La Cruz (202–205–3252 or *Justino.delacruz@ustic.gov*) or Deputy Project Leader Saad Ahmad (202–205–3331 or *saad.ahmad@usitc.gov*) for information specific to these investigations. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: The Commission published notice of institution of the above referenced investigations in the **Federal Register** on November 9, 2018 (83 FR 56100, November 9, 2018). In that notice the Commission stated that it would transmit its report to the USTR by January 24, 2019. However, due to the lapse in appropriation (December 22, 2018 to January 25, 2019), the Commission will transmit its report to the USTR by February 28, 2019. All other dates pertaining to these

investigations remain the same as in the notice published in the **Federal Register** on November 9, 2018.

By order of the Commission.

Issued: February 12, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–02600 Filed 2–15–19; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Invitation for Membership on Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Request for applications.

SUMMARY: The Joint Board for the Enrollment of Actuaries (Joint Board), established under the Employee Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. To assist in its examination duties mandated by ERISA, the Joint Board established the Advisory Committee on Actuarial Examinations (Advisory Committee) in accordance with the provisions of the Federal Advisory Committee Act (FACA). The current Advisory Committee members' terms expire on February 28, 2019. On September 27, 2018, the Joint Board published a **Federal Register** notice, at 83 FR 48867, inviting applications for membership on the Advisory Committee for the upcoming term of March 1, 2019—February 28, 2021. However, the Board did not receive sufficient applications to fill all positions on the Advisory Committee; thus, it has decided to re-open the applications period. Applications made under the prior notice will continue to be considered and do not have to be resubmitted. This notice describes the Advisory Committee and invites applications from those interested in serving on the Advisory Committee for the period May 1, 2019—February 28, 2021.

DATES: Applications for membership on the Advisory Committee must be received by no later than March 19, 2019.

ADDRESSES: Applications must be sent electronically to *nhqjbea@irs.gov.*

SUPPLEMENTARY INFORMATION for application requirements.

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, at 202–317–3648.

SUPPLEMENTARY INFORMATION:

1. Background

To qualify for enrollment to perform actuarial services under ERISA, an applicant must satisfy certain experience and knowledge requirements, which are set forth in the Joint Board's regulations. An applicant may satisfy the knowledge requirement through the successful completion of Joint Board examinations in basic actuarial mathematics and methodology and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, the Society of Actuaries, and the American Society of Pension Professionals & Actuaries jointly offer examinations acceptable to the Joint Board for enrollment purposes and which are acceptable to the other two actuarial organizations as part of their respective examination programs

2. Scope of Advisory Committee Duties

The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations that enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The Advisory Committee's duties, which are strictly advisory, include (1) recommending topics for inclusion on the Joint Board examinations, (2) reviewing and drafting examination questions, (3) recommending examinations, (4) reviewing examination results and recommending passing scores, and (5) providing other recommendations and advice relative to the examinations, as requested by the Joint Board.

3. Member Terms and Responsibilities

Generally, members are appointed for a 2-year term. However, members selected pursuant to this notice will be appointed for 22 months, beginning May 1, 2019, and ending February 28, 2021. Members may seek reappointment for additional consecutive terms.

Members are expected to attend approximately 4 meetings each calendar year and are reimbursed for travel expenses in accordance with applicable government regulations. In general, members are expected to devote 125 to 175 hours, including meeting time, to the work of the Advisory Committee over the course of a year.

4. Member Selection

The Joint Board seeks to appoint an Advisory Committee that is fairly balanced in terms of points of view represented and functions to be performed. Every effort is made to ensure that most points of view extant in the enrolled actuary profession are represented on the Advisory Committee. To that end, the Joint Board seeks to appoint several members from each of the main practice areas of the enrolled actuary profession, including small employer plans, large employer plans, and multiemployer plans. In addition, to ensure diversity of points of view, the Joint Board limits the number of members affiliated with any one actuarial organization or employed with any one firm.

Membership normally will be limited to actuaries currently enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work will also be considered for membership. Federally-registered lobbyists and individuals affiliated with Joint Board enrollment examination preparation courses are not eligible to serve on the Advisory Committee.

5. Member Designation

Advisory Committee members are appointed as Special Government Employees (SGEs). As such, members are subject to certain ethical standards applicable to SGEs. Upon appointment, each member will be required to provide written confirmation that he/she does not have a financial interest in a Joint Board examination preparation course. In addition, each member will be required to attend annual ethics training.

6. Application Requirements

To receive consideration, an individual interested in serving on the Advisory Committee must submit (1) a signed, cover letter expressing interest in serving on the Advisory Committee and describing his/her professional qualifications, and (2) a resume and/or curriculum vitae. Applications must be submitted electronically to the attention of Ms. Elizabeth Van Osten at *nhqjbea@irs.gov.* In all cases, the cover letter must contain an original signature. Applications made under the prior notice will continue to be considered and do not have to be resubmitted. Applications must be received by no later than March 12, 2019.

Dated: February 11, 2019.

Thomas V. Curtin, Jr.,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2019–02625 Filed 2–15–19; 8:45 am]

BILLING CODE 4830–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

DATE AND TIME: The Legal Services Corporation's Board of Directors will meet telephonically on Monday, March 4, 2019. The meeting will commence at 12:30 p.m., EDT, and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW, Washington, DC 20007.

PUBLIC OBSERVATION: None

STATUS OF MEETING: Closed.

MATTERS TO BE CONSIDERED:

Institutional Advancement Committee

1. Approval of agenda
2. 45th Anniversary update
   - Nadia Elguindy, Director of Institutional Advancement
   - Michael Smith, Special Assist to the President
3. Legal Navigator report
   - Jim Sandman, President
4. Introduction to Emerging Leaders Council
   - John G. Levi, Chairman of Board
   - Kristen Sonday, Emerging Leaders Council Co-Chair
   - Brad Robertson, Emerging Leaders Council Co-Chair
5. Fundraising training initiative
   - Leo Latz, Latz & Company
6. Consider and act on motion to approve Leaders Council and Emerging Leaders Council invitees through a Notational Vote
7. Consider and act on other business
8. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: February 13, 2019.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs and General Counsel.

[FR Doc. 2019–02836 Filed 2–14–19; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (19–004)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, March 7, 2019, 9:30 a.m. to 10:45 a.m., Local Time.

ADDRESSES: NASA Kennedy Space Center, Headquarters Building, Room 3201, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Ms. Evette Whatley, Administrative Officer, Aerospace Safety Advisory Panel, NASA Headquarters, Washington, DC 20546, (202) 358–4733 or *evette.whatley@nasa.gov.*

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel (ASAP) will hold its First Quarterly Meeting for 2019. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include:

—Updates on the Exploration Systems Development

—Updates on the Commercial Crew Program

—Updates on the International Space Station Program

The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. This meeting is also available telephonically. Any interested person may call the USA toll free conference call number (888) 950–9404; pass code 9775026 and then the # sign. Attendees will be required to sign a visitor's register and to comply with NASA KSC security requirements, including the presentation of a valid picture ID and a secondary form of ID, before receiving an access badge. All U.S. citizens desiring to attend the ASAP 2019 First Quarterly Meeting at the Kennedy Space Center must provide their full name, date of birth, place of birth, social security number, company affiliation and full address (if applicable), residential address, telephone number, driver's license number, email address, country of citizenship, and naturalization number (if applicable) to the Kennedy Space Center Protective Services Office no later than close of business on February 25, 2019. All non-U.S. citizens must submit their name; current address; driver's license number and state (if applicable); citizenship; company affiliation (if applicable) to include address, telephone number, and title; place of birth; date of birth; U.S. visa information to include type, number, and expiration date; U.S. social security number (if applicable); Permanent Resident (green card) number and expiration date (if applicable); place and date of entry into the U.S.; and passport information to include country of issue, number, and expiration date to the Kennedy Space Center Protective Services Office no later than close of business on February 21, 2019. If the above information is not received by the noted dates, attendees should expect a minimum delay of two (2) hours. All visitors to this meeting will be required to process in through the KSC Badging Office, Building M6–0224, located just outside of KSC Gate 3, on SR 405, Kennedy Space Center, Florida. Please provide the appropriate data required above by email to Tina Delahunty at *tina.delahunty@nasa.gov* or fax 321–867–7206, noting at the top of the page ''Public Admission to the NASA Aerospace Safety Advisory Panel Meeting at KSC.'' For security questions, please email Tina Delahunty at *tina.delahunty@nasa.gov.*

At the beginning of the meeting, members of the public may make a verbal presentation to the Panel on the subject of safety in NASA, not to exceed 5 minutes in length. To do so, members of the public must contact Ms. Evette Whatley at *evette.whatley@nasa.gov* or at (202) 358–4733 at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA. It is imperative that the meeting be held on this date to accommodate the

scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2019–02668 Filed 2–15–19; 8:45 am]

BILLING CODE 4510–13–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on April 3–4, 2019. A sample of agenda items to be discussed during the public session includes: A discussion on medical-related events; a discussion on the ACMUI's recommendations and comments on revision 10 of the draft Yttrium-90 Microsphere Brachytherapy Sources and Devices TheraSphere® and SIR_Spheres® Licensing Guidance; a discussion on the summary of changes to the NRC's requirements regarding medical use of byproduct material; a discussion of the ACMUI's recommendations related to the appropriateness of the required reporting and notification of a medical event; a presentation from Lucerno Dynamics on the detection of nuclear medicine injection infiltrations; and a discussion on the ACMUI's recommendations and comments on the draft Germanium-68/Gallium-68 Pharmacy Grade Generator Licensing Guidance. *The agenda is subject to change.* The current agenda and any updates will be available at *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2019.html* or by emailing Ms. Kellee Jamerson at the contact information below.

FOR FURTHER INFORMATION CONTACT: Ms. Kellee Jamerson, email: *Kellee.Jamerson@nrc.gov,* telephone: (301) 415–7408.

SUPPLEMENTARY INFORMATION:

Purpose: Discuss issues related to 10 CFR part 35 Medical Use of Byproduct Material.

Date and Time for Open Sessions: April 3, 2019, from 8:30 a.m. to 2:45 p.m. and April 4, 2019, from 8:30 a.m. to 2:45 p.m. Eastern Standard Time.

Date and Time for Closed Session: April 3, 2019, from 2:45 p.m. to 5:00 p.m. Eastern Standard Time.

Address for Public Meeting: U.S. Nuclear Regulatory Commission, Three White Flint North Building, Rooms 3WFN–1C03/1–C05, 11601 Landsdown Street, North Bethesda, Maryland 20852.

Public Participation

Any member of the public who wishes to participate in the meeting in person or via phone should contact Ms. Jamerson using the information below. The meeting will also be webcast live at *https://video.nrc.gov/.*

Conduct of the Meeting

Christopher J. Palestro, M.D., will chair the meeting. Dr. Palestro will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to

Ms. Jamerson using the contact information listed above. All submittals must be received by March 29, 2019, three business days before the meeting, and must pertain to the topics on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The draft transcript and meeting summary will be available on ACMUI's website *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2019.html* on or about May 16, 2019.

4. Persons who require special services, such as those for the hearing impaired, should notify Ms. Jamerson of their planned attendance.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in title 10 of the *Code of Federal Regulations,* Part 7.

Dated at Rockville, Maryland, on February 13, 2019.

For the U.S. Nuclear Regulatory Commission.

Russell E. Chazell,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–02694 Filed 2–15–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–18–043; NRC–2019–0039]

In the Matter of Mr. Randy Bethea

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order prohibiting involvement in NRC-licensed activities to Mr. Randy Bethea. Mr. Bethea was employed as a radiographer at Mistras Group, Inc., (Mistras). Mr. Bethea engaged in deliberate misconduct in violation of the regulations that caused Mistras to be in violation of the regulations and license condition 9.A of its license.

DATES: The Order prohibiting involvement in NRC-licensed activities was issued on February 13, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0039 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0039. Address questions about dockets in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Document collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Leelavathi Sreenivas, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–

001; telephone: 301–287–9249, email: *Leelavathi.Sreenivas@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 13th day of February 2019.

For the Nuclear Regulatory Commission.

George A. Wilson Jr.,

Acting Director Office of Enforcement.

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of Randy Bethea

IA-18-043

ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES

I

At the time of the incident described below, Mr. Randy Bethea was employed as a radiographer at Mistras Group, Inc., (Mistras or licensee) located in Burr Ridge, Illinois. Mistras holds License No.12-16559-02, as amended on October 31, 2018, by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 34 of Title 10 of the *Code of Federal Regulations* (10 CFR). The license authorizes radiographic operations in accordance with the conditions specified in the license.

II

On September 8, 2017, a Sinclair Oil Refinery (Sinclair) quality assurance department employee was reviewing production radiography film packets provided by a Mistras employee and identified a radiograph of a human hand. Sinclair staff notified Mistras management personnel of the radiograph, who verified it was a radiograph of a hand. On the day the radiograph was submitted to Sinclair staff, only two Mistras employees were at the Sinclair facility. In a written report, dated October 2, 2017, Mistras' corporate radiation safety officer notified the NRC of an industrial radiographer possibly exceeding the annual occupational dose limit in 10 CFR 20.1201(a)(1)(i). The written report also indicated that the radiographer admitted to intentionally radiographing his own hand. The NRC staff reviewed the written report and noted several items concerning NRC regulations for conducting radiographic operations that required further agency review.

The NRC Office of Investigations (OI), Region III Field Office, initiated an investigation to determine whether: (1) a radiographer willfully failed to use iridium-192 for industrial radiography as authorized by the NRC license issued to Mistras while at a refinery in Sinclair, Wyoming; (2) a radiographer willfully conducted radiographic operations without being accompanied by another qualified radiographer or an individual who has met the necessary training requirements; (3) Mistras willfully permitted an individual to act as a radiographer during radiographic operations without wearing on the body a personal dosimeter that is processed and evaluated by an accredited National Voluntary Laboratory Accreditation Program processor; (4) a radiographer willfully failed to conduct a survey of the radiographic device after each radiographic exposure to determine that the sealed source had been returned to its shielded position; and (5) Mistras willfully failed to control the annual occupational dose of an individual adult to 5 rem.

The Region III OI interviewed a number of individuals including: (1) Sinclair quality assurance staff; (2) Mistras staff and management; (3) Mr. Bethea, the Mistras radiographer assigned to the Sinclair site at the time of the hand radiography; and (4) the radiographer's assistant assigned to the Sinclair site at the time of the hand radiography. During the OI investigation, Mr. Bethea admitted to radiographing his own hand. The individual indicated that he took two radiographs of his hand. Mr. Bethea indicated that he took the radiographs of his hand by himself, without the knowledge of the radiographer's assistant. Mr. Bethea also indicated that he did not intend to provide the hand radiographs to anyone. However, one of the hand radiographs was in the packet of radiographs provided to Sinclair quality assurance staff on September 8, 2017.

During the OI investigation, Mr. Bethea indicated that he wore his personal dosimeter and performed a survey of the guide tube and exposure device after each radiographic exposure of his hand. The results of the OI investigation also indicated the licensee had originally calculated that Mr. Bethea had received an occupational dose of 5.311 rem for the year. However, after the licensee performed a recalculation of Mr. Bethea's exposure using the actual strength of the source used for the hand radiographs, the licensee determined that the radiographer's occupational dose was 4.897 rem for the year.

In a letter received by the NRC on January 3, 2019, Mr. Bethea stated the reason for the violation was too much stress from personal issues at home including a sick family member. Mr. Bethea also stated there was no excuse for his actions and that corrective actions included not working away from home for extended periods of time and stating that any blatant disrespect to the NRC regulations will never happen again.

Based on a review of the OI report, training records, statements from the radiographer, and statements from Mistras personnel, it appears that on September 8, 2017, Mr. Bethea deliberately radiographed his own hand, a use not authorized by Condition 9.A of Mistras' NRC license and contrary to 10 CFR 30.34(c), which limits the use of radioactive material to the purposes authorized in the license.

III

Based on the above, the NRC has concluded that Mr. Randy Bethea engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1) that caused Mistras to be in violation of 10 CFR 30.34(c) and License Condition 9.A of its license. The NRC must be able to rely on the licensee and its employees to comply with NRC requirements. Mr. Bethea's actions raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, the NRC lacks the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements, and that the health and safety of the public will be protected if Mr. Bethea were permitted at this time to be involved in NRC-licensed activities. Therefore, the public's health, safety, and interest require that Mr. Bethea be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order. Additionally, Mr. Bethea is prohibited from acting as the lead radiographer, or from supervising or directing radiographic operations, for a period of three years from the date of this Order. Finally, Mr. Bethea is required to notify the NRC of his first employment in NRC-licensed activities for a period of one year following the one-year prohibition period for having any involvement in NRC licensed activities.

IV

Accordingly, pursuant to sections 81, 161b, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 30.10, IT IS HEREBY ORDERED THAT:

1. Mr. Randy Bethea is prohibited for one year from the date of this Order from engaging in, supervising, directing, or in any other way conducting NRC-licensed activities. NRC-licensed activities are those activities that are

conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in the NRC's jurisdiction pursuant to the authority granted by 10 CFR 150.20.

2. Mr. Randy Bethea is prohibited for three years from the date of this Order from acting as the lead radiographer, or from supervising or directing radiographic operations that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in the NRC's jurisdiction pursuant to the authority granted by 10 CFR 150.20.

3. If Mr. Randy Bethea is currently engaged in NRC-licensed activities with any licensee, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee.

4. For a period of one year after the one-year period of prohibition for conducting NRC-licensed activities has expired, Mr. Randy Bethea shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the notification, Mr. Bethea shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, or designee, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Bethea of good cause.

V

In accordance with 10 CFR 2.202, Mr. Bethea must submit a written answer to this Order under oath or affirmation within 30 days of its publication in the **Federal Register**. Mr. Bethea's failure to respond to this Order could result in additional enforcement action in accordance with the Commission's Enforcement Policy. Any person adversely affected by this Order may submit a written answer to this Order within 30 days of its publication in the **Federal Register**. In addition, Mr. Bethea and any other person adversely affected by this Order may request a hearing on this Order within 30 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter ''petition''), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended by 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) calendar days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at 301-415-1677, to: (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html*. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html*. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's Public Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail to *MSHD.Resource@nrc.gov*, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail

as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd*, unless excluded pursuant to an Order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''Cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or Order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

If a person (other than Randy Bethea) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final thirty (30) calendar days from the date of issuance of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION

George A. Wilson Jr.,

Acting Director Office of Enforcement

Dated this 13th day of February 2019

[FR Doc. 2019–02667 Filed 2–15–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

661st Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on March 7–9, 2019, Two White Flint North, 11545 Rockville Pike, Conference Room T3D50, Rockville, MD 20852.

Thursday, March 7, 2019, Conference Room T3D50

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–12:30 p.m.: NuScale Safety Evaluation Report with Open Items for Chapters 10, 11, 12, 13 and 18 (Open/Closed)—The Committee will have briefings by and discussion with representatives of the NRC staff and NuScale regarding the identified chapters. [*Note:* This session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

1:30 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)].

Friday, March 8, 2019, Conference Room T3D50

8:30 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy]. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

10:15 a.m.–12:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

1:00 p.m.–6:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

Saturday, March 9, 2019, Conference Room T3D50

8:30 a.m.–12:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on December 7, 2018 (83 FR 26506). In accordance with those procedures, oral or written views may be presented by

members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience. The bridgeline number for the meeting is 866–822–3032, passcode 8272423#.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's document system (ADAMS) which is accessible from the NRC website at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/#ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Ms. Paula Dorm, ACRS Audio Visual Technician (301–415–7799), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: February 12, 2019.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2019–02575 Filed 2–15–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of February 18, 25, March 4, 11, 18, 25, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 11, 2019

There are no meetings scheduled for the week of February 11, 2019.

Week of February 18, 2019—Tentative

There are no meetings scheduled for the week of February 18, 2019.

Week of February 25, 2019—Tentative

There are no meetings scheduled for the week of February 25, 2019.

Week of March 4, 2019—Tentative

Tuesday, March 5, 2019

10:00 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

Week of March 11, 2019—Tentative

There are no meetings scheduled for the week of March 11, 2019.

Week of March 18, 2019—Tentative

Wednesday, March 20, 2019

10:00 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public) (Contact: Paul Michalak: 301–415–5804)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of March 25, 2019—Tentative

There are no meetings scheduled for the week of March 25, 2019.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* Braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Diane.Garvin@nrc.gov.*

Dated at Rockville, Maryland, this 14th day of February 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–02847 Filed 2–14–19; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Meeting of the Advisory Committee on Reactor Safeguards (ACRS); Subcommittee on NuScale

The ACRS Subcommittee on NuScale will hold a meeting on February 20, 2019, at U.S. Nuclear Regulatory Commission, Three White Flint North, 11601 Landsdown Street, Conference Rooms 1C3–1C5, North Bethesda, MD 20852.

The meeting will be open to public attendance with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

Wednesday, February 20, 2019—8:30 a.m. Until 5:00 p.m.

The Subcommittee will review Chapters 10, ''Steam and Power Conversion System,'' Chapter 11, ''Radioactive Waste Management,'' and Chapter 12, ''Radiation Protection,'' of the safety evaluation report with open items associated with the NuScale design certification application. The

Subcommittee will hear presentations by and hold discussions with the NRC staff, NuScale and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Michael Snodderly (Telephone 301–415–2241 or Email: *Michael.Snodderly@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. The public bridgeline number for the meeting is 866–822–3032, passcode 8272423. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on December 7, 2018 (83 FR 26506).

Detailed meeting agendas and meeting transcripts are available on the NRC website at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the Three White Flint North Building, 11601 Landsdown Street, North Bethesda, MD 20852. After registering with Security, please proceed to conference room 1C3–1C5, located directly behind the security desk on the first floor. You may contact Paula Dorm (Telephone 301–415–7799) for assistance or to be escorted to the meeting room.

Dated: February 12, 2019.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2019–02592 Filed 2–15–19; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Annual Financial and Actuarial Information Reporting

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval of information collection.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of a collection of information contained in its regulation on Annual Financial and Actuarial Information Reporting. This notice informs the public of PBGC's intent and solicits public comment on the collection.

DATES: Comments must be submitted on or before April 22, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov.*
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026.

All submissions received must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and refer to ''4010 reporting,'' OMB Control No. 1212–0049. All comments received will be posted without change to PBGC's website, *http://www.pbgc.gov,* including any personal information provided.

Copies of the collection of information may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, or calling 202–326–4040 during normal business hours. TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–326–4040. PBGC's laws and procedures for coverage determinations may be accessed on PBGC's website at *http://www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephanie Cibinic, Deputy Assistant General Counsel, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington DC 20005–4026; 202–326–4400, extension 6352. (TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–326–4400, extension 6352.)

SUPPLEMENTARY INFORMATION: Section 4010 of the Employee Retirement Income Security Act of 1974 (ERISA) and PBGC's regulation on Annual Financial and Actuarial Information Reporting (29 CFR part 4010) require each member of a controlled group to submit financial and actuarial information to PBGC under certain circumstances. Section 4010 specifies that each controlled group member must provide PBGC with certain financial information, including audited (if available) or (if not) unaudited financial statements. Section 4010 also specifies that the controlled group must provide PBGC with certain actuarial information necessary to determine the liabilities and assets for all PBGC-covered plans.

PBGC's 4010 regulation specifies the items of identifying, financial, and actuarial information that filers must submit under section 4010, through PBGC's secure e-4010 web-based application. Computer-assisted analysis of this information helps PBGC to anticipate possible major demands on the pension insurance system and to focus PBGC resources on situations that pose the greatest risks to that system. Because other sources of information are usually not as current as the section 4010 information and do not reflect a plan's termination liability, the section 4010 filing plays a major role in PBGC's ability to protect participant and premium-payer interests.

PBGC estimates that 560 controlled groups would file each year. The total estimated annual burden of the information collection would be approximately 532 hours and $12,830,000.

The existing collection of information was approved under OMB control number 1212–0049 (expires July 31, 2019). PBGC intends to request that OMB extend approval of this information collection for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC is soliciting public comments 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 methodologies 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.

Issued in Washington, DC.

Stephanie Cibinic,

Deputy Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2019–02640 Filed 2–15–19; 8:45 am]

BILLING CODE 7709–02–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85109; File No. SR–MRX–2019–01]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Provisions for Excluding a Day From Its Volume Calculations for Purposes of Determining Pricing Tiers

February 12, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2019, Nasdaq MRX, LLC (''MRX'' 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's provisions for excluding a day from its volume calculations for purposes of determining pricing tiers.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's provisions for excluding a day from its volume calculations for purposes of determining pricing tiers. The Exchange is standardizing its practice for removing a day from volume calculations in its Pricing Schedule with its affiliated options market, Nasdaq PHLX LLC (''Phlx'').[3] Each change is discussed below.

Background

To avoid penalizing members when aberrant low volume days result from systems or other issues at the Exchange, or where the Exchange closes early for holiday observance, the Exchange currently has language in its Pricing Schedule allowing it to exclude certain days from its average daily volume (''ADV'') calculations. Currently, language in the Exchange's Pricing Schedule provides that, for purposes of determining ADV for certain incentive programs,[4] any day that the market is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from such calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included. The proviso language (hereinafter, the ''better of rule'') ensures that members would only have the day removed when doing so is beneficial for the member. As such, the Exchange only applies the better of rule to ADV calculations, and not for other volume-based pricing where members would not benefit from having the day excluded (*e.g.,* straight volume accumulations).

Proposal

In Options 7, Section 1, the Exchange proposes to adopt subsection (a) with the title ''Removal of Days for Purposes of Pricing Tiers,'' and renumber the existing first paragraph (related to fee disputes) as subsection (b). The Exchange also proposes to adopt new language in subsection (a) that is substantially similar to language currently in place on Phlx.[5] Specifically, as proposed:

(1)(A) Any day that the Exchange announces in advance that it will not be open for trading will be excluded from the options tier calculations set forth in its Pricing Schedule; and (B) any day with a scheduled early market close (''Scheduled Early Close'') may be excluded from the options tier calculations only pursuant to paragraph (3) below.

(2) The Exchange may exclude the following days (''Unanticipated Events'') from the options tier calculations only pursuant to paragraph (3) below, specifically any day that: (A) The market is not open for the entire trading day, (B) the Exchange instructs members in writing to route their orders to other markets, (C) the Exchange is inaccessible to members during the 30-minute period before the opening of trade due to an Exchange system disruption, or (D) the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours.

(3) If a day is to be excluded as a result of paragraph (1)(B) or (2) above, the Exchange will exclude the day from

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Phlx Pricing Schedule, Options 7, Section 1(b). The Exchange's other affiliated options markets, Nasdaq ISE, Nasdaq GEMX, Nasdaq BX, and The Nasdaq Options Market will also file similar rule change proposals to conform to Phlx's rule.

[4] The current language in the Pricing Schedule applies to the calculations of Total Affiliated and/or Appointed Member ADV used to determine tiered maker/taker fees for members. *See* Options 7, Section 3, Table 3 (Qualifying Tier Thresholds).

[5] *See* note 3 above.

any member's monthly options tier calculations as follows:

(A) The Exchange may exclude from the ADV calculation any Scheduled Early Close or Unanticipated Event; and

(B) the Exchange may exclude from any other applicable options tier calculation provided for in its Pricing Schedule (together with (3)(A), ''Tier Calculations'') any Scheduled Early Close or Unanticipated Event.

provided, in each case, that the Exchange will only remove the day for members that would have a lower Tier Calculation with the day included.

The proposed language: (i) Applies the rule for excluding days to all volume based calculations rather than specified incentive programs,[6] (ii) expands upon the existing scenarios where the Exchange may remove a day to adopt two additional situations related to Exchange systems disruptions, (iii) categorizes the potential excluded days into days that are known in advance (*i.e.,* days in proposed paragraph (1), including Scheduled Early Closes) and days that are not (*i.e.,* Unanticipated Events in proposed paragraph (2)), (iv) clarifies how the potential excluded days proposed above would be removed from the ADV and other applicable volume based tier calculations in the Pricing Schedule, and (v) generally adds more detail to clarify the application of the better of rule. As it relates to Unanticipated Events, the Exchange will inform all members if any such day will be excluded from its Tier Calculations through a system status message disseminated to all members. The Exchange notes that it is not proposing to amend the thresholds a member must achieve to become eligible for, or the dollar amount associated with, the tiered rebates or fees.

Rule Application

Currently, the Exchange's rule for removing a day from its ADV calculations applies to specific ADV calculations of Total Affiliated[7] and/or Appointed Member[8] ADV[9] and Total Affiliated and/or Appointed Priority Customer ADV.[10] As applied, the Exchange can remove a day from tier calculations for the maker fees[11] and taker fees[12] assessed to members.[13] The Exchange now believes it is appropriate to expand this provision to cover all volume based calculations including ADV rather than limit it to specific enumerated programs. Applying this rule to all volume based calculations will benefit members by permitting the Exchange to exclude atypical low volume days from its volume calculations regardless of the specific pricing program impacted. As is the case today, the Exchange would only remove the day for members that would have a lower volume calculation with the day included. This change will standardize the Exchange's practice with Phlx, which currently applies its rule to cover all ADV and other volume calculations set forth in its pricing schedule rather than specified programs.[14]

Exchange Systems Disruptions

The Exchange proposes to adopt two additional scenarios as ''Unanticipated Events'' that the Exchange may determine to exclude from its Tier Calculations. First, the Exchange proposes to exclude days where the Exchange is inaccessible to members during the 30-minute period before the opening of trade (*i.e.,* between 9:00 a.m. to 9:30 a.m. Eastern Time) due to an Exchange system disruption, even if the Exchange does not instruct members to route away to other markets. As discussed above, the Exchange's current ability to remove days is limited to days where the market is not open for the entire trading day, and where the Exchange instructs members to route away to other markets. This allows the Exchange to exclude days, for example, where the Exchange honors a market-wide trading halt declared by another market, closes early for holiday observance, or instructs members to route away to other markets because of a systems issue in the morning, which ultimately does not carry over into the trading day. The Exchange notes, however, that it may not always instruct members to route away. For instance, the Exchange may be inaccessible to members in the morning due to a systems disruption but the Exchange resolves the issue shortly before 9:30 a.m. and as a result, the Exchange does not instruct members to route away. In such cases, the Exchange is not permitted to exclude the day from its ADV calculations. The Exchange generally experiences a high volume of member participation within the 30-minute window leading up to the opening of trade from members who submit eligible interest be included in the Exchange's opening process. As a result, days where members are precluded from submitting eligible interest during this 30-minute time period due to an Exchange systems disruption, even if the issue is ultimately resolved by the Exchange before the market opens (and members

[6] *See* note 4 above. Since the proposed language will now apply to all current and future programs administered by the Exchange that are based on ADV and other applicable volume calculations, the current rule in Options 7, Section 3 will be replaced by the proposed language in Section 1(a) with the modifications described above, including language providing that the rule will apply to all Tier Calculations in its Pricing Schedule.

[7] An ''Affiliated Member'' is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member's Form BD, Schedule A.

[8] An ''Appointed Member'' is either an Appointed Market Maker or Appointed Order Flow Provider. An ''Appointed Market Maker'' is a Market Maker who has been appointed by an Electronic Access Member pursuant to Section 3, Table 3. An ''Appointed Order Flow Provider'' is an Electronic Access Member who has been appointed by a Market Maker pursuant to Section 3, Table 3.

[9] Total Affiliated and/or Appointed Member ADV means all ADV executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members and/or Appointed Members. All eligible volume from Affiliated Members will be aggregated in determining applicable tiers. All eligible volume from an Appointed Order Flow Provider will be aggregated with its designated Appointed Market Maker's eligible volume in determining the Appointed Market Maker's applicable tiers, provided the Appointed Market Maker is designated by the Appointed Order Flow Provider in accordance with Section 3, Table 3. An Appointed Market Maker is eligible to receive and aggregate volume credit from both their Affiliated Members and their Appointed Order Flow Provider. An Appointed Order Flow Provider will not receive volume credit from its Appointed Market Maker or the Appointed Market Maker's Affiliated Members in determining its applicable tiers.

[10] Total Affiliated and/or Appointed Priority Customer ADV means all Priority Customer ADV executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members and/or Appointed Members. The Exchange aggregates volume executed by Affiliated Members and Appointed Members in the same manner as it aggregates volume for purposes of Total Affiliated and/or Appointed Member ADV. *See* note 9 above.

[11] Members are charged tiered maker fees in Penny Symbols and Non-Penny Symbols, all of which are based on Total Affiliated and/or Appointed Member ADV. *See* Options 7, Section 3, Table 1.

[12] Members are charged tiered taker fees in Penny Symbols and Non-Penny Symbols, all of which are based on Total Affiliated and/or Appointed Member ADV. *See* Options 7, Section 3, Table 1. A reduced Market Maker taker fee in Penny and Non-Penny Symbols of $0.05 per contract applies instead of the applicable Market Maker taker fee when trading with Priority Customer orders entered by an Affiliated Member or Appointed Member if the Member has a Total Affiliated and/or Appointed Priority Customer ADV of 5,000 contracts or more. This Market Maker taker fee is further reduced to $0.00 per contract when trading with Priority Customer orders entered by an Affiliated Member or Appointed Member if the Member has a Total Affiliated and/or Appointed Priority Customer ADV of 50,000 contracts or more. *See* Options 7, Section 3, Table 1, note 2.

[13] The highest tier threshold attained applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants.

[14] *See* note 3 above.

therefore are not instructed to route away), are likely to have lower trading volume. Including such days in calculations of ADV will therefore make it more difficult for members to achieve particular pricing tiers for that month. Accordingly, excluding such days will diminish the likelihood of a cost increase occurring because a member is not able to reach a pricing tier on that date that it would reach on other trading days during the month. Phlx currently has identical language allowing it to remove such days from its volume based tiers.[15]

Second, the Exchange proposes to exclude days where there is an Exchange system disruption that lasts for more than 60 minutes during regular trading hours (*i.e.,* 9:30 a.m. to 4:00 p.m. Eastern Time), even if such disruption would not be categorized as a complete outage of the Exchange's system. Such a disruption may occur where a certain options series traded on the Exchange is unavailable for trading due to an Exchange systems issue, or where the Exchange may be able to perform certain functions with respect to accepting and processing orders, but may have a failure to another significant process, such as routing to other market centers, that would lead members who rely on such processes to avoid using the Exchange until the Exchange's entire system was operational. The Exchange believes that certain system disruptions that are not complete system outages could preclude some members from submitting orders to the Exchange. The Exchange notes that this proposal is consistent with the rules of Phlx and other options exchanges.[16]

The Exchange believes that the two scenarios proposed above are reasonable and equitable because the intent of the current rule has always been to avoid penalizing members that might otherwise qualify for certain tiered pricing but that because of aberrant low volume days resulting, for instance, from Exchange systems disruptions, did not participate on the Exchange to the extent they might have otherwise participated.

In addition, to avoid penalizing members that step up and trade on a day with artificially low volume, the Exchange currently only removes days for members that would have a lower ADV calculation with the day included (*i.e.,* the better of rule). The Exchange believes that applying the better of rule to the proposed system disruption-related scenarios would be similarly helpful as it would ensure that members that continue to execute a large volume of contracts on such days are not inadvertently disadvantaged when the Exchange removes a systems disruption-related day from its calculations of ADV. This is consistent with the treatment of such days on Phlx.[17]

Categories of Excluded Days

Similar to Phlx, the Exchange seeks to restructure the existing rule by separating out the different scenarios between days that are known in paragraph (1) and days that are not in paragraph (2), and define the latter as Unanticipated Events.

For planned days, the Exchange proposes to further distinguish between days that the Exchange announces in advance that it will not be open for trading in paragraph (1)(A) (*e.g.,* Thanksgiving), and Scheduled Early Closes in paragraph (1)(B) (*e.g.,* the trading day after Thanksgiving). The Exchange notes that it currently considers Scheduled Early Closes as a subset of days that the market is not open for the entire trading day. The Exchange believes it would be more clear to distinguish Scheduled Early Closes in paragraph (1) as a day that is planned for in advance, and separately consider days that are not open for the entire trading day as Unanticipated Events in paragraph (2)(A). As proposed, (2)(A) would continue to cover unplanned days where the Exchange declares a trading halt in all securities or honors a market-wide trading halt declared by another market. The other scenarios that will be categorized as Unanticipated Events in paragraph (2) are the two systems-related disruptions proposed above, and days that the Exchange instructs members in writing to route their orders to other markets, which is an existing scenario covered under the current rule as described above.

Exclusion of Days by Tier Calculation

The Exchange proposes to further amend the existing rule to align with the Phlx rule by specifying how the days in paragraphs (1) and (2) will be excluded from its Tier Calculations. As it relates to days where the Exchange announces in advance that it will not be open for trading, the Exchange notes that it will exclude those days from all options tier calculations set forth in its Pricing Schedule.[18] This is also the case today since no trading activity occurs on those days, and the Exchange is only clarifying its current practice within the proposed rule text in paragraph (1)(A).

As discussed above, the Exchange currently removes Scheduled Early Closes as provided in paragraph (1)(B), and the Unanticipated Events in paragraphs (2)(A) and (2)(B), from its calculations of ADV only for members that would have a lower ADV with the day included. The Exchange is not changing how it currently excludes these days from the ADV calculations. And as further discussed above, the Exchange is proposing to adopt the same principle-based approach for excluding the two Unanticipated Events related to Exchange system disruptions as provided in paragraphs (2)(C) and (2)(D). Accordingly, the proposed language in paragraph (3)(A) will clarify for the ADV calculation that the Exchange may exclude any Scheduled Early Close or Unanticipated Event, subject to the better of rule.[19]

Similar to Phlx, the proposal also adds a ''catch-all'' provision in paragraph (3)(B) that would apply to other applicable volume based tier calculations that are set forth in its Pricing Schedule, but are not specified within paragraph (3)(A) (*i.e.,* not an ADV calculation).[20] This catch-all provision will provide the Exchange with flexibility to apply the better of rule going forward to all pricing programs administered by the Exchange that are based on volume calculations. The Exchange believes that adopting a similar principle-based approach for its options volume calculations would ensure that days are removed from such calculations only if doing so would be beneficial for the member. Accordingly, the proposed language will not apply to straight volume accumulations, as is the case today, and the Exchange will continue to not exclude days from such calculations as members do not benefit when volume executed on an excluded day is removed from straight volume accumulations.

Clarifying Changes

The Exchange proposes to add further details similar to Phlx's rule to bring greater transparency as to how the Exchange will apply the better of rule when removing days from its Tier Calculations. In particular, the Exchange

[15] *See id.* at paragraph 2(C).

[16] *See id.* at paragraph 2(D). *See also* BATS [sic] BZX Options Exchange Fee Schedule (defining an ''Exchange System Disruption'' as any day that the exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours); and NYSE Arca Options Fee Schedule (defining an ''Exchange System Disruption'' as a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours).

[17] *See* note 3 above at paragraph 3.

[18] *See id.* at paragraph (1)(A) for similar language on Phlx.

[19] *See id.* at paragraph (3)(A) for similar language on Phlx.

[20] *See id.* at paragraph (3)(C) for similar language on Phlx.

proposes to make clear that it will only remove days pursuant to the better of rule by specifying in paragraphs (1)(B) and (2) that such days may be excluded from the Tier Calculations only pursuant to paragraph (3).[21] Paragraph (3) will then provide that if a day is to be excluded as a result of paragraph (1)(B) or (2), the Exchange will be required to exclude the day from any member's monthly options volume tier calculations as detailed within paragraph (3).[22] With the proposed changes, the Exchange seeks to clarify that it will exclude days from any member's Tier Calculations in a uniform manner to ensure that days are removed only in situations where the member benefits. The Exchange will look at each potential excluded day in a month and determine for every member their ADV or other applicable volume calculation based on their trading volume on that day. If any member would have a lower Tier Calculation with the particular day included, the Exchange will exclude that day for that member. This is how the Exchange applies the better of rule today for ADV calculations. As such, the proposed changes are intended to make clear that the Exchange will apply the better of rule in a uniform manner for all members, and that there is no arbitrary selection of ''winners'' or ''losers'' when the Exchange excludes days. In addition, the Exchange proposes to make two technical changes within the better of rule; first, to clarify that the rule applies in each case of the tier calculations specified in paragraph (3), and second, to use the defined term Tier Calculations instead of ADV to reflect the changes proposed herein.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[23] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[24] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change is reasonable and equitable as it provides a new framework for removing days from the Exchange's volume calculations that the Exchange believes is beneficial to members and consistent with similar provisions already in place on Phlx. The proposed rule change would permit the Exchange to remove a day from its pricing tiers in more circumstances, and ensures that the Exchange will only do so in circumstances where beneficial for the member because the member would have a lower volume calculation the with the day included.

By applying the rule to all volume based calculations rather than specified incentive programs based on Total Affiliated and/or Appointed Member ADV and Total Affiliated and/or Appointed Priority Customer ADV, the Exchange believes that members will be further protected if the Exchange experiences a systems or other issue that results in a day being excluded from the Exchange's volume calculations. Without this change, members would only have the day excluded for the specific ADV based pricing programs described above, and would not get the benefit for other un-enumerated programs.

The Exchange believes it is reasonable and equitable to exclude a day from its volume based calculations when the Exchange's system experiences a disruption during the 30-minute period prior to the opening of trade that renders the Exchange inaccessible to members as this preserves the Exchange's intent behind adopting volume-based pricing. Without this change, members that are precluded from submitting eligible interest during the 30-minute window before the opening of trade may be negatively impacted, even if the Exchange resolves the issue before the market opens and as a result, does not instruct members to route away. The proposed change to exclude such days will diminish the likelihood of a cost increase occurring because a member is not able to reach a volume tier calculation on that date that it would reach on other trading days during the month.

Similarly, excluding a day where the Exchange's system experiences a disruption that lasts for more than 60 minutes intra-day is reasonable and equitable because the proposal seeks to avoid penalizing members that might otherwise qualify for certain tiered pricing but that, because of an Exchange systems disruption, did not participate on the Exchange to the extent they might have otherwise participated. The Exchange believes that certain systems disruptions could preclude some members from sending order flow to the Exchange even if such issue is not actually a complete systems outage.

In addition, the Exchange believes that it is reasonable and equitable to apply the better of rule to both systems disruption-related scenarios. Without these changes, members that step up and trade significant volume on excluded trading days may be negatively impacted, resulting in an effective cost increase for those members. The proposal would align the Exchange's approach to how it applies this rule today for days where the market is not open for the entire trading day or where the Exchange instructs members to route away.

Furthermore, the Exchange believes that categorizing the potential excluded days is reasonable and equitable because it will bring greater transparency to the application of its rule. Specifically, the Exchange is distinguishing between planned and unplanned days in paragraphs (1) and (2), defining the latter as Unanticipated Events, and stipulating how the Exchange will exclude such days pursuant to this rule. Categorizing days in this manner will clarify the application of its rule in light of the Exchange's proposal to expand the rule to adopt additional days that may be excluded from its tier calculations. Providing in paragraph (1)(A) that the Exchange will always exclude from its tier calculations days that it announces in advance it will not be open for trading will clarify current practice. Furthermore, the Exchange believes that the proposed changes to specify how days in paragraphs (1) and (2) may be excluded from its tier calculations will bring greater transparency by delineating the various circumstances in which the better of rule will apply. Providing in paragraph (3) that the Exchange may exclude any Scheduled Early Close or Unanticipated Event from the ADV and other Tier Calculations, subject to the better of rule, will make clear that the Exchange will take a consistent approach when excluding days for purposes of its volume based pricing tiers. In addition, having a catch-all in paragraph (3)(B) so that the better of rule applies to other options volume calculations than ADV to allow the Exchange to apply the rule going forward to all pricing programs based on volume calculations will further protect members. The Exchange notes that aberrant low volume days resulting from, for instance, an Unanticipated Event, impacts all volume-based calculations, and allowing the Exchange to exclude such days from any Tier Calculation if the member would have a lower Tier Calculation with the day included will further protect members from being inadvertently penalized.

Furthermore, the proposed changes specifying that the days in paragraphs

[21] *See id.* at paragraphs (1)(B) and (2) for similar language on Phlx.

[22] *See id.* at paragraph (3) for similar language on Phlx.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(4) and (5).

(1)(B) and (2) may be excluded only pursuant to paragraph (3), and requiring the Exchange to exclude such days pursuant to the specifications in paragraph (3) will likewise make clear that the Exchange will take a consistent approach with respect to excluding days from its volume calculations. As discussed above, these modifications will clarify that the Exchange will apply the better of rule in a uniform manner to all members, and that there is no arbitrary selection of ''winners'' or ''losers.'' The Exchange also believes that the two technical changes proposed in the better of rule to reflect the changes proposed herein will likewise bring greater clarity to its rule.

Finally, the Exchange further believes that the proposed rule change is not unfairly discriminatory because it will apply equally to all members. While the Exchange currently has rules in place for removing a day from its pricing, the Exchange believes that the proposed changes will benefit all members by providing more circumstances to remove a day, and ensuring that such days are removed only in situations where the member benefits.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to protect members from the possibility of a cost increase by excluding days when overall member participation might be significantly lower than a typical trading day. The Exchange believes that the proposed modifications to its tier calculations are pro-competitive and will result in lower total costs to end users, a positive outcome of competitive markets. Furthermore, other options exchanges have adopted rules that are substantially similar to the Exchange's proposal.[25]

The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[26] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MRX–2019–01 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–MRX–2019–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2019–01 and should be submitted on or before March 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02606 Filed 2–15–19; 8:45 am]

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[25] *See* notes 3 and 16 above.

[26] 15 U.S.C. 78s(b)(3)(A)(ii).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85112; File No. SR–FINRA–2019–002]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide Temporary Relief To Permit Member Alternative Trading Systems (ATSs) and ATS Subscribers Additional Flexibility in Transitioning To Disaggregated Reporting for Certain Transactions in U.S. Treasury Securities

February 12, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2019, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to permit member alternative trading systems (ATSs) and ATS subscribers additional flexibility in transitioning to disaggregated reporting by April 12, 2019 for certain transactions in U.S. Treasury Securities.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Beginning on July 10, 2017, amendments to FINRA Rule 6730 took effect that required members to report transactions in U.S. Treasury Securities [4] to TRACE.[5] In advance of the effective date, FINRA engaged in extensive discussions with members regarding U.S. Treasury Security reporting and, as part of those conversations, understood that certain member ATSs and their member subscribers would not be ready to report accurately U.S. Treasury Securities to TRACE in circumstances where trades are executed in matching sessions known as ''trading'' or ''workup'' sessions. A trading session generally is a discrete or timed order-matching event during which one or more additional subscribers can interact with the original order on the opposite side of the market or add to the initial order on the same side of the market.[6] In the context of trading sessions, FINRA understood that ATSs typically provided each subscriber a trade message at the end of the session that aggregated each subscriber's activity during the session (including, for example, an aggregate size and average price). FINRA also understood that these aggregated trade messages were used systematically for TRACE reporting both by the ATS and its member subscribers. As a result, ATSs and ATS subscribers would be required to make systems changes to comply with Rule 6730, which requires all members to report trades individually.

In light of these concerns regarding readiness prior to the effective date of the U.S. Treasury Security reporting requirement, FINRA filed a proposed rule change to, on a temporary basis, provide an exception to permit ATSs and ATS subscribers to aggregate transactions that occurred during a trading session.[7] Specifically, FINRA adopted Supplementary Material .06 (Temporary Exception for Aggregate Transaction Reporting of U.S. Treasury Securities Executed in ATS Trading Sessions) to permit members to report aggregate transaction information reflecting the aggregate size and average price of such transactions, and to permit trade reports to use a Time of Execution [8] communicated by the ATS to each Party to a Transaction [9] (the ''Aggregation Exception''). The Aggregation Exception was intended to provide members with additional time to complete the systems changes necessary to accurately report each individual transaction in a U.S. Treasury Security executed in a trading session, as required by Rule 6730, and was scheduled to sunset on July 10, 2018.

On April 16, 2018, prior to the expiration of the relief provided by the Aggregation Exception and in response to continued readiness concerns expressed by members regarding the substantial systems changes necessary to disaggregate transaction reporting for trades executed in ATS trading sessions, FINRA extended the Aggregation Exception for an additional nine months, until April 12, 2019.[10] As stated in the Extension Filing, FINRA understood from discussions with multiple member ATSs that are active in the market for U.S. Treasury Securities that the systems changes necessary to comply with Rule 6730 required substantial development and testing to complete and that, further, the systems changes required by subscriber members also are significant and could not be completed by July 10, 2018. FINRA also noted that, while we understood that member ATSs had begun the development work necessary to report individual execution information, additional time was necessary (including to develop an additional data feed to deliver execution level information to subscribers and vendors), and that member subscribers required additional time to update their systems to consume the new execution information to be provided by the ATSs and to systematically incorporate this information in their TRACE reporting to FINRA. The Extension Filing provided that the Aggregation Exception would continue until April 12, 2019. In the Extension Filing, FINRA also stated that necessary testing of new required functionality should commence well in advance of the extended deadline of April 12, 2019, but at a minimum, no later than January 12, 2019.

Since the effectiveness of the Extension Filing, FINRA has continued to engage in conversations with member ATSs and ATS subscribers to remind them of the April 12, 2019 date and to remain updated on industry efforts towards readiness. In this context, FINRA has become aware of scenarios where members, as part of their transition efforts, are reporting on a partially disaggregated basis. For example, some members have made systems changes to phase out work-up sessions and are reporting many of the

[3] 17 CFR 240.19b–4(f)(6).

[4] Rule 6710(p) defines a ''U.S. Treasury Security'' as ''a security, other than a savings bond, issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities.'' The term ''U.S. Treasury Security'' also includes separate principal and interest components of a U.S. Treasury Security that has been separated pursuant to the Separate Trading of Registered Interest and Principal of Securities (''STRIPS'') program operated by the U.S. Department of Treasury. *See* Rule 6710(p).

[5] *See* Securities Exchange Act Release No. 79116 (October 18, 2016), 81 FR 73167 (October 24, 2016) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of File No. SR–FINRA–2016–027). *See also* Regulatory Notice 16–39 (October 2016).

[6] For detailed descriptions of trading sessions and trade reporting in the context of trading sessions, *see* Securities Exchange Act Release No. 81018 (June 26, 2017), 82 FR 29956 (June 30, 2017) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2017–023) (''Original Filing'').

[7] *See* Original Filing.

[8] Rule 6710(d) provides, among other things, that the ''Time of Execution'' for a transaction in a TRACE-Eligible Security means the time when the Parties to a Transaction agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade.

[9] Rule 6710(e) defines ''Party to a Transaction'' as an introducing broker-dealer, if any, an executing broker-dealer, or a customer. ''Customer'' includes a broker-dealer that is not a FINRA member.

[10] *See* Securities Exchange Act Release No. 83098 (April 24, 2018), 83 FR 18866 (April 30, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2018–014) (''Extension Filing'').

trades executed on the ATS on an individual basis, but are not yet able to transition fully to disaggregated trade reporting (for example, continue to aggregate reporting in instances where a single ATS subscriber matches against multiple ATS subscriber counterparties in a trade). FINRA believes this type of interim approach is beneficial, provides improved audit trail information and is an effective way to transition to disaggregated reporting, but notes that it does not fall squarely within the scope of the relief provided by Rule 6730.06 because the trading no longer is occurring in the context of a trading session. However, FINRA believes this type of partial disaggregation should be a permissible transitional approach (until April 12, 2019) and demonstrates positive efforts by ATSs and their member subscribers to meet the April 12, 2019 date.

In recognition of the fact that ATSs may take a variety of approaches towards full disaggregation of TRACE trade reports for transactions in U.S. Treasury Securities, FINRA is filing the instant rule change to provide member ATSs and ATS subscribers with an appropriate degree of flexibility as they transition. Specifically, member ATSs and affected member subscribers temporarily are permitted to submit reports to TRACE that reflect the aggregate size of two or more orders or transactions executed on an ATS that is transitioning away or recently transitioned from matching orders in trading sessions, consistent with the trade messages generated by the ATS and used for TRACE reporting by the ATS and its subscribers, until April 12, 2019. Thus, for example, where an ATS sends confirmation messages that aggregate the quantity of trades when a single ATS subscriber matches against multiple counterparties, the ATS and its subscribers may continue to use the aggregated confirmation message (with the size, price and Time of Execution used by the ATS's system for that message) until April 12, 2019. However, FINRA stresses that ATSs and their subscribers relying on this relief during the transition period (which must end by April 12, 2019) may not submit reports to TRACE that are less granular or accurate than that provided to date pursuant to the Rule 6730.06 relief (*i.e.,* interim reporting must be incrementally better).[11] The purpose of this relief is temporarily to permit a degree of aggregation in cases where the ATS no longer formally uses workup sessions, not to permit a degradation in the accuracy of the information reported to TRACE. As a condition of this relief, ATSs must provide to FINRA upon request individual transaction information for each trade in a U.S. Treasury Security. Finally, FINRA reminds member ATSs and subscribers that their TRACE trade reporting must be fully disaggregated by April 12, 2019.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing and it will sunset on April 12, 2019.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must 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. The proposed rule change is designed to provide members an appropriate degree of flexibility in TRACE reporting for U.S. Treasury Securities on a temporary basis as they work towards fully disaggregated reporting by April 12, 2019. FINRA notes that reports received pursuant to this relief may not be less granular or accurate than that provided to date in reliance on the relief provided by Rule 6730.06. Therefore, the instant proposal does not degrade the quality of the information reported to TRACE. In addition, FINRA notes that transparency will not be impacted by the proposed temporary relief because transaction information in U.S. Treasury Securities currently is not subject to public dissemination.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes the proposed rule change is appropriate to provide members with flexibility as they make the technological changes necessary to comply with Rule 6730 and such accommodation will be limited in duration. Moreover, FINRA retains the right to require a member ATS availing itself of this relief to provide individual transaction information for each trade in a U.S. Treasury Security upon request.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such action will provide members a reasonable degree of flexibility in TRACE reporting for U.S. Treasury Securities on a temporary basis until fully disaggregated reporting is required by April 12, 2019. The proposed rule change will permit a degree of aggregation of reported trade information in cases where an ATS no longer formally uses workup sessions in the trading of U.S. Treasury Securities, but the proposal will not permit degradation of the accuracy of the information reported to TRACE. In other words, an ATS that is required to report transactions in U.S. Treasury Securities may not, under this proposed rule change, submit reports to TRACE that are less granular or accurate than that provided to date pursuant to the Rule 6730.06 relief. In addition, the Commission notes that transparency in the U.S. Treasury market will not be impacted by the proposal because transaction information in U.S. Treasury

[11] The relief provided by the instant filing is only available in connection with trades on an ATS where the ATS has recently relied on Rule 6730.06 in connection with the aggregation of transactions in U.S. Treasury Securities executed in trading sessions, and is not available to members for TRACE reporting in any other context.

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day pre-filing notice requirement in this case.

Securities is not disseminated publicly. For these reasons, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2019–002 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–FINRA–2019–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2019–002 and should be submitted on or before March 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo Aleman,

Deputy Secretary.

[FR Doc. 2019–02609 Filed 2–15–19; 8:45 am]

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[15] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85097; File No. 4–551]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, BOX Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, and MIAX Emerald, LLC Concerning Options-Related Market Surveillance

February 11, 2019.

Notice is hereby given that the Securities and Exchange Commission (''Commission'') has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] approving and declaring effective an amendment to the plan for allocating regulatory responsibility (''Plan'') filed on January 8, 2019, pursuant to Rule 17d–2 of the Act,[2] by NYSE American LLC (''NYSE American''), Cboe BZX Exchange, Inc., (''BZX''), the Cboe EDGX Exchange, Inc. (''EDGX''), Cboe C2 Exchange, Inc. (''C2''), Cboe Exchange, Inc. (''Cboe''), Nasdaq ISE, LLC (''ISE''), Financial Industry Regulatory Authority, Inc. (''FINRA''), NYSE Arca, Inc. (''Arca''), The NASDAQ Stock Market LLC (''Nasdaq''), BOX Exchange LLC (''BOX''), NASDAQ BX, Inc. (''BX''), NASDAQ PHLX LLC (''PHLX''), Miami International Securities Exchange, LLC (''MIAX''), Nasdaq GEMX, LLC (''Gemini''), Nasdaq MRX, LLC (''Mercury''), MIAX PEARL, LLC (''MIAX PEARL''), and MIAX Emerald, LLC (MIAX Emerald) (collectively, ''Participating Organizations'' or ''parties'').

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)[4] or Section 19(g)(2)[5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d).

[5] 15 U.S.C. 78s(g)(2).

[6] 15 U.S.C. 78q(d)(1).

[7] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On December 11, 2007, the Commission declared effective the Participating Organizations' Plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[11] On April 11, 2008, the Commission approved an amendment to the Plan to include NASDAQ as a participant.[12] On October 9, 2008, the Commission approved an amendment to the Plan to clarify that the term Regulatory Responsibility for options position limits includes the examination responsibilities for the delta hedging exemption.[13] On February 25, 2010, the Commission approved an amendment to the Plan to add Bats and C2 as SRO participants and to reflect the name changes of the American Stock Exchange LLC to the NYSE Amex LLC, and the Boston Stock Exchange, Inc. to the NASDAQ OMX BX, Inc.[14] On May 11, 2012, the Commission approved an amendment to the Plan to add BOX as a participant to the Plan.[15] On December 5, 2012, the Commission approved an amendment to the Plan to add MIAX as a participant to the Plan.[16] On July 26, 2013, the Commission approved an amendment to the Plan to add Topaz Exchange, LLC as a Participant to the Plan.[17] On October 29, 2015, the Commission approved an amendment to add EDGX as a Participant to the Plan and to change the name of Topaz Exchange, LLC to ISE Gemini, LLC.[18] On February 16, 2016, the Commission approved an amendment to add ISE Mercury, LLC as a Participant to the Plan.[19] On February 2, 2017, the Commission approved an amendment to add MIAX PEARL as a Participant to the Plan.[20]

The Plan is designed to reduce regulatory duplication for common members by allocating regulatory responsibility for certain options-related market surveillance matters among the Participating Organizations. Generally, under the Plan, a Participating Organization will serve as the Designated Options Surveillance Regulator (''DOSR'') for each common member assigned to it and will assume regulatory responsibility with respect to that common member's compliance with applicable common rules for certain accounts. When an SRO has been named as a common member's DOSR, all other SROs to which the common member belongs will be relieved of regulatory responsibility for that common member, pursuant to the terms of the Plan, with respect to the applicable common rules specified in Exhibit A to the Plan.

III. Proposed Amendment to the Plan

On January 8, 2019, the parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to add MIAX Emerald as a Participant to the Plan and to reflect name changes of certain Participating Organizations. The text of the proposed amended 17d-2 plan is as follows (additions are *italicized;* deletions are [bracketed]):

* * * * *

AGREEMENT BY AND AMONG NYSE [MKT]*AMERICAN* LLC, [BATS]*CBOE* BZX EXCHANGE, INC., *CBOE* EDGX EXCHANGE INC., BOX [OPTIONS] EXCHANGE LLC, NASDAQ BX, INC., *CBOE* C2 [OPTIONS] EXCHANGE, INC.[ORPORATED], *CBOE* [THE CHICAGO BOARD OPTIONS] EXCHANGE, INC.[ORPORATED], [THE INTERNATIONAL SECURITIES EXCHANGE]*NASDAQ ISE*, LLC, [ISE GEMINI]*NASDAQ GEMX*, LLC, [ISE MERCURY]*NASDAQ MRX*, LLC, FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC., NYSE ARCA, INC., THE NASDAQ STOCK MARKET LLC, NASDAQ PHLX LLC, MIAMI INTERNATIONAL SECURITIES EXCHANGE, LLC, [AND] MIAX PEARL, LLC, *AND MIAX EMERALD*, PURSUANT TO RULE 17d–2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This agreement (this ''Agreement''), by and among NYSE [MKT]*American* LLC (''[MKT]]*NYSE American*''), [Bats]*Cboe* BZX Exchange, Inc., (''[Bats]*BZX*''), the [Bats]*Cboe* EDGX Exchange, Inc. (''EDGX''), [the]*Cboe* C2 [Options] Exchange, Inc.[orporated] (''C2''), *Cboe*[the Chicago Board Options] Exchange, Inc.[orporated] (''[CBOE]*Cboe*''), [the International Securities Exchange]*Nasdaq ISE*, LLC (''ISE''), Financial Industry Regulatory Authority, Inc. (''FINRA''), NYSE Arca, Inc. (''Arca''), The NASDAQ Stock Market LLC (''Nasdaq''), BOX [Options] Exchange LLC (''BOX''), NASDAQ BX, Inc. (''BX''), NASDAQ PHLX [Inc.]LLC (''PHLX''), Miami International

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[9] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[10] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[11] *See* Securities Exchange Act Release No. 56941 (December 11, 2007), 72 FR 71723 (December 18, 2007) (File No. 4–551).

[12] *See* Securities Exchange Act Release No. 57649 (April 11, 2008), 73 FR 20976 (April 17, 2008) (File No. 4–551).

[13] *See* Securities Exchange Act Release No. 58765 (October 9, 2008), 73 FR 62344 (October 20, 2008) (File No. 4–551).

[14] *See* Securities Exchange Act Release No. 61588 (February 25, 2010), 75 FR 9970 (March 4, 2010) (File No. 4–551).

[15] *See* Securities Exchange Act Release No. 66975 (May 11, 2012), 77 FR 29712 (May 18, 2010) (File No. 4–551).

[16] *See* Securities Exchange Act Release No. 68362 (December 5, 2012), 77 FR 73719 (December 11, 2012) (File No. 4–551).

[17] *See* Securities Exchange Act Release No. 70052 (July 26, 2013), 78 FR 46665 (August 1, 2013) (File No. 4–551).

[18] *See* Securities Exchange Act Release No. 76310 (October 29, 2015), 80 FR 68354 (November 4, 2015) (File No. 4–551).

[19] *See* Securities Exchange Act Release No. 77149 (February 16, 2016), 81 FR 8781 (February 22, 2016) (File No. 4–551).

[20] *See* Securities Exchange Act Release No. 79930 (February 2, 2017), 82 FR 9807 (February 8, 2017) (File No. 4–551).

Securities Exchange, LLC (''MIAX''), [ISE Gemini, LLC]*Nasdaq GEMX, LLC* (''Gemini''), [ISE Mercury]*Nasdaq MRX*, LLC (''Mercury''), [and] MIAX PEARL, LLC (''MIAX PEARL''), *and MIAX Emerald, LLC (MIAX Emerald),* is made this 10th day of October 2007, and as amended the 31st day of March 2008, the 1st day of October 2008, the 3rd day of February 2010, the 25th day of April 2012, and the 19th day of November 2012, and the 30th day of May 2013, and the 16th day of October 2015, and the 29th day of January 2016, [and] the 23rd day of January 2017, *and the 8th day of January 2019,* pursuant to Section 17(d) of the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), and Rule 17d–2 thereunder (''Rule 17d–2''), which allows for a joint plan among self-regulatory organizations (''SROs'') to allocate regulatory obligations with respect to brokers or dealers that are members of two or more of the parties to this Agreement (''Common Members''). [MKT, Bats,]*NYSE American, BZX,* C2, [CBOE]*Cboe*, EDGX, [ISE] Gemini, ISE, [ISE] Mercury, FINRA, Arca, Nasdaq, BOX, BX, PHLX, MIAX, [and] MIAX PEARL, *and MIAX Emerald*, are collectively referred to herein as the ''Participants'' and individually, each a ''Participant.'' This Agreement shall be administered by a committee known as the Options Surveillance Group (the ''OSG'' or ''Group''), as described in Section V hereof. Unless defined in this Agreement or the context otherwise requires, the terms used herein shall have the meanings assigned thereto by the Exchange Act and the rules and regulations thereunder.

WHEREAS, the Participants desire to eliminate regulatory duplication with respect to SRO market surveillance of Common Member [1] activities with regard to certain common rules relating to listed options (''Options''); and

WHEREAS, for this purpose, the Participants desire to execute and file this Agreement with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') pursuant to Rule 17d–2.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Participants agree as follows:

I. Except as otherwise provided in this Agreement, each Participant shall assume Regulatory Responsibility (as defined below) for the Common Members that are allocated or assigned to such Participant in accordance with the terms of this Agreement and shall be relieved of its Regulatory Responsibility as to the remaining Common Members. For purposes of this Agreement, a Participant shall be considered to be the

II. Designated Options Surveillance Regulator (''DOSR'') for each Common Member that is allocated to it in accordance with Section VII.

III. As used in this Agreement, the term ''Regulatory Responsibility'' shall mean surveillance, investigation and enforcement responsibilities relating to compliance by the Common Members with such Options rules of the Participants as the Participants shall determine are substantially similar and shall approve from time to time, insofar as such rules relate to market surveillance (collectively, the ''Common Rules''). For the purposes of this Agreement the list of Common Rules is attached as Exhibit A hereto, which may only be amended upon unanimous written agreement by the Participants. The DOSR assigned to each Common Member shall assume Regulatory Responsibility with regard to that Common Member's compliance with the applicable Common Rules for certain accounts.[2] A DOSR may perform its Regulatory Responsibility or enter an agreement to transfer or assign such responsibilities to a national securities exchange registered with the SEC under Section 6(a) of the Exchange Act or a national securities association registered with the SEC under Section 15A of the Exchange Act. A DOSR may not transfer or assign its Regulatory Responsibility to an association registered for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products.

The term ''Regulatory Responsibility'' does not include, and each Participant shall retain full responsibility with respect to:

(a) surveillance, investigative and enforcement responsibilities other than those included in the definition of Regulatory Responsibility;

(a) any aspects of the rules of a Participant that are not substantially similar to the Common Rules or that are allocated for a separate surveillance purpose under any other agreement made pursuant to Rule 17d–2. Any such aspects of a Common Rule will be noted as excluded on Exhibit A. With respect to options position limits, the term Regulatory Responsibility shall include examination responsibilities for the delta hedging exemption. Specifically, the Participants intend that FINRA will conduct examinations for delta hedging for all Common Members that are members of FINRA notwithstanding the fact that FINRA's position limit rule is, in some cases, limited to only firms that are not members of an options exchange (i.e., access members). In such cases, FINRA's examinations for delta hedging options position limit violations will be for the identical or substantively similar position limit rule(s) of the other Participant(s). Examinations for delta hedging for Common Members that are non-FINRA members will be conducted by the same Participant conducting position limit surveillance. The allocation of Common Members to DOSRs for surveillance of compliance with options position limits and other agreed to Common Rules is provided in Exhibit B. The allocation of Common Members to DOSRs for examinations of the delta hedging exemption under the options position limits rules is provided in Exhibit C.

III. Each year within 30 days of the anniversary date of the commencement of operation of this Agreement, or more frequently if required by changes in the rules of a Participant, each Participant shall submit to the other Participants, through the Chair of the OSG, an updated list of Common Rules for review. This updated list may add Common Rules to Exhibit A, shall delete from Exhibit A rules of that Participant that are no longer identical or substantially similar to the Common Rules, and shall confirm that the remaining rules of the Participant included on Exhibit A continue to be identically or substantially similar to the Common Rules. Within 30 days from the date that each Participant has received revisions to Exhibit A from the Chair of the OSG, each Participant shall confirm in writing to the Chair of the OSG whether that Participant's rules listed in Exhibit A are Common Rules.

[1] In the case of the BX and BOX, members are those persons who are Options Participants (as defined in the BOX [Options] Exchange LLC Rules and NASDAQ BX, Inc. Rules).

[2] Certain accounts shall include customer (''C'' as classified by the Options Clearing Corporation (''OCC'')) and firm (''F'' as classified by OCC) accounts, as well as other accounts, such as market maker accounts as the Participants shall, from time to time, identify as appropriate to review.

IV. Apparent violation of another Participant's rules discovered by a DOSR, but which rules are not within the scope of the discovering DOSR's Regulatory Responsibility, shall be referred to the relevant Participant for such action as is deemed appropriate by that Participant. Notwithstanding the foregoing, nothing contained herein shall preclude a DOSR in its discretion from requesting that another Participant conduct an investigative or enforcement proceeding (''Proceeding'') on a matter for which the requesting DOSR has Regulatory Responsibility. If such other Participant agrees, the Regulatory Responsibility in such case shall be deemed transferred to the accepting Participant and confirmed in writing by the Participants involved. Additionally, nothing in this Agreement shall prevent another Participant on whose market potential violative activity took place from conducting its own Proceeding on a matter. The Participant conducting the Proceeding shall advise the assigned DOSR. Each Participant agrees, upon request, to make available promptly all relevant files, records and/or witnesses necessary to assist another Participant in a Proceeding.

V. The OSG shall be composed of one representative designated by each of the Participants (a ''Representative''). Each Participant shall also designate one or more persons as its alternate representative(s) (an ''Alternate Representative''). In the absence of the Representative, the Alternate Representative shall assume the powers, duties and responsibilities of the Representative. Each Participant may at any time replace its Representative and/or its Alternate Representative to the Group.[3] A majority of the OSG shall constitute a quorum and, unless otherwise required, the affirmative vote of a majority of the Representatives present (in person, by telephone or by written consent) shall be necessary to constitute action by the Group.

The Group will have a Chair, Vice Chair and Secretary. A different Participant will assume each position on a rotating basis for a one-year term. In the event that a Participant replaces a Representative who is acting as Chair, Vice Chair or Secretary, the newly appointed Representative shall assume the position of Chair, Vice Chair, or Secretary (as applicable) vacated by the Participant's former Representative. In the event a Participant cannot fulfill its duties as Chair, the Participant serving as Vice Chair shall substitute for the Chair and complete the subject unfulfilled term. All notices and other communications for the OSG are to be sent in care of the Chair and, as appropriate, to each Representative.

VI. The OSG shall determine the times and locations of Group meetings, provided that the Chair, acting alone, may also call a meeting of the Group in the event the Chair determines that there is good cause to do so. To the extent reasonably possible, notice of any meeting shall be given at least ten business days prior to the meeting date. Representatives shall always be given the option of participating in any meeting telephonically at their own expense rather than in person.

VII. No less frequently than every two years, in such manner as the Group deems appropriate, the OSG shall allocate Common Members that conduct an Options business among the Participants (''Allocation''), and the Participant to which a Common Member is allocated will serve as the DOSR for that Common Member. Any Allocation shall be based on the following principles, except to the extent all affected Participants consent to one or more different principles:

(a) The OSG may not allocate a Common Member to a Participant unless the Common Member is a member of that Participant.

(b) To the extent practicable, Common Members that conduct an Options business shall be allocated among the Participants of which they are members in such manner as to equalize as nearly as possible the allocation among such Participants, provided that no Common Members shall be allocated to FINRA. For example, if sixteen Common Members that conduct an Options business are members only of three Participants, none of which is FINRA, those Common Members shall be allocated among the three Participants such that no Participant is allocated more than six such members and no Participant is allocated less than five such members. If, in the previous example, one of the three Participants is FINRA, the sixteen Common Members would be allocated evenly between the remaining Participants, so that the two non-FINRA Participants would be allocated eight Common Members each.

(c) To the extent practicable, Allocation shall take into account the amount of Options activity conducted by each Common Member in order to most evenly divide the Common Members with the largest amount of activity among the Participants of which they are members. Allocation will also take into account similar allocations pursuant to other plans or agreements to which the Common Members are party to maintain consistency in oversight of the Common Members.[4]

(d) To the extent practicable, Allocation of Common Members to Participants will be rotated among the applicable Participants such that a Common Member shall not be allocated to a Participant to which that Common Member was allocated within the previous two years. The assignment of DOSRs pursuant to the Allocation is attached as Exhibit B hereto, and will be updated from time to time to reflect Common Member Allocation changes.

(e) The Group may reallocate Common Members from time-to-time, as it deems appropriate.

(f) Whenever a Common Member ceases to be a member of its DOSR, the DOSR shall promptly inform the Group, which shall review the matter and allocate the Common Member to another Participant.

(g) A DOSR may request that a Common Member to which it is assigned be reallocated to another Participant by giving 30 days written notice to the Chair of the OSG. The Group, in its discretion, may approve such request and reallocate the Common Member to another Participant.

(h) All determinations by the Group with respect to Allocation shall be made by the affirmative vote of a majority of the Participants that, at the time of such determination, share the applicable Common Member being allocated; a Participant shall not be entitled to vote on any Allocation relating to a Common Member unless the

[3] A Participant must give notice to the Chair of the Group of such a change.

[4] For example, if one Participant was allocated a Common Member by another regulatory group that Participant would be assigned to be the DOSR of that Common Member, unless there is good cause not to make that assignment.

Common Member is a member of such Participant.

VIII. Each DOSR shall conduct routine surveillance reviews to detect violations of the applicable Common Rules by each Common Member allocated to it with a frequency (daily, weekly, monthly, quarterly, semi-annually or annually as noted on Exhibit A) not less than that determined by the Group. The other Participants agree that, upon request, relevant information in their respective files relative to a Common Member will be made available to the applicable DOSR. In addition, each Participant shall provide, to the extent not otherwise already provided, information pertaining to its surveillance program that would be relevant to FINRA or the Participant(s) conducting routine examinations for the delta hedging exemption.

At each meeting of the OSG, each Participant shall be prepared to report on the status of its surveillance program for the previous quarter and any period prior thereto that has not previously been reported to the Group. In the event a DOSR believes it will not be able to complete its Regulatory Responsibility for its allocated Common Members, it will so advise the Group in writing promptly. The Group will undertake to remedy this situation by reallocating the subject Common Members among the remaining Participants. In such instance, the Group may determine to impose a regulatory fee for services provided to the DOSR that was unable to fulfill its Regulatory Responsibility.

IX. Each Participant will, upon request, promptly furnish a copy of the report or applicable portions thereof relating to any investigation made pursuant to the provisions of this Agreement to each other Participant of which the Common Member under investigation is a member.

X. Each Participant will routinely populate a common database, to be accessed by the Group relating to any formal regulatory action taken during the course of a Proceeding with respect to the Common Rules concerning a Common Member.

XI. Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, to any Participant to the attention of that Participant's Representative, to the Participant's principal place of business or by e-mail at such address as the Representative shall have filed in writing with the Chair.

XII. The costs incurred by each Participant in discharging its Regulatory Responsibility under this Agreement are not reimbursable. However, any of the Participants may agree that one or more will compensate the other(s) for costs incurred.

XIII. The Participants shall notify the Common Members of this Agreement by means of a uniform joint notice approved by the Group. Each Participant will notify the Common Members that have been allocated to it that such Participant will serve as DOSR for that Common Member.

XIV. This Agreement shall be effective upon approval of the Commission. This Agreement may only be amended in writing duly approved by each Participant. All amendments to this Agreement, excluding changes to Exhibits A, B and C, must be filed with and approved by the Commission.

XV. Any Participant may manifest its intention to cancel its participation in this Agreement at any time upon providing written notice to (i) the Group six months prior to the date of such cancellation, or such other period as all the Participants may agree, and (ii) the Commission. Upon receipt of the notice the Group shall allocate, in accordance with the provisions of this Agreement, those Common Members for which the canceling Participant was the DOSR. The canceling Participant shall retain its Regulatory Responsibility and other rights, privileges and duties pursuant to this Agreement until the Group has completed the reallocation as described above, and the Commission has approved the cancellation.

XVI. The cancellation of its participation in this Agreement by any Participant shall not terminate this Agreement as to the remaining Participants. This Agreement will only terminate following notice to the Commission, in writing, by the then Participants that they intend to terminate the Agreement and the expiration of the applicable notice period. Such notice shall be given at least six months prior to the intended date of termination, or such other period as all the Participants may agree. Such termination will become effective upon Commission approval.

XVII. Participation in the Group shall be strictly limited to the Participants and no other party shall have any right to attend or otherwise participate in the Group except with the unanimous approval of all Participants. Notwithstanding the foregoing, any national securities exchange registered with the SEC under Section 6(a) of the Act or any national securities association registered with the SEC under section 15A of the Act may become a Participant to this Agreement provided that: (i) such applicant has adopted rules substantially similar to the Common Rules, and received approval thereof from the SEC; (ii) such applicant has provided each Participant with a signed statement whereby the applicant agrees to be bound by the terms of this Agreement to the same effect as though it had originally signed this Agreement and (iii) an amended agreement reflecting the addition of such applicant as a Participant has been filed with and approved by the Commission.

XVIII. This Agreement is wholly separate from the multiparty Agreement made pursuant to Rule 17d–2 by and among the NYSE MKT LLC, the Bats BZX Exchange, Inc., BOX Options Exchange, LLC, the C2 Options Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, LLC, Financial Industry Regulatory Authority, The NASDAQ Stock Market LLC, the New York Stock Exchange, LLC, the NYSE Arca, Inc., the NASDAQ BX, Inc., the NASDAQ PHLX LLC, Miami International Securities Exchange, LLC, ISE Gemini, LLC, ISE Mercury, LLC, [and] Bats EDGX Exchange, Inc., *and MIAX PEARL LLC* involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants entered into on [February 16, 2016,] *January 23, 2017,* and as may be amended from time to time.

LIMITATION OF LIABILITY

No Participant nor the Group nor any of their respective directors, governors, officers, employees or representatives shall be liable to any other Participant in this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory

Responsibility as provided hereby or for the failure to provide any such Regulatory Responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or more of the Participants and caused by the willful misconduct of one or more of the other Participants or its respective directors, governors, officers, employees or representatives. No warranties, express or implied, are made by the Participants, individually or as a group, or by the OSG with respect to any Regulatory Responsibility to be performed hereunder.

RELIEF FROM RESPONSIBILITY

Pursuant to Section 17(d)(1)(A) of the Exchange Act and Rule 17d–2, the Participants join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve the Participants that are party to this Agreement and are not the DOSR as to a Common Member of any and all Regulatory Responsibility with respect to the matters allocated to the DOSR.

* * * * *

EXHIBIT A

Options Surveillance Group 17d–2 Agreement

COMMON RULES as of *January 8, 2019* [January 23, 2017]

VIOLATION I: EXPIRING EXERCISE DECLARATIONS (EED)—FOR LISTED AND FLEX EQUITY OPTIONS

SRO	Description of Rule	Exchange Rule No.	Frequency of Review
[Bats]*BZX*	Exercise of Options Contracts	Rule 23.1	At Expiration.
BOX	Exercise of Options Contracts	Rule 9000	At Expiration.
C2	Exercise of Options Contracts	Rule 11.1	At Expiration.
[CBOE]*Cboe*	Exercise of Options Contracts	Rule 11.1	At Expiration.
EDGX	Exercise of Options Contracts	Rule 23.1	At Expiration.
FINRA	Exercise of Options Contracts	Rule 2360(b)(23)	At Expiration.
ISE	Exercise of Options Contracts	Rule 1100	At Expiration.
[ISE Gemini] *GEMX*	Exercise of Options Contracts	Rule 1100	At Expiration.
[ISE Mercury] *MRX*	Exercise of Options Contracts	Rule 1100	At Expiration.
MIAX	Exercise of Options Contracts	Rule 700	At Expiration.
MIAX PEARL	Exercise of Options Contracts	Rule 700	At Expiration.
MIAX Emerald	*Exercise of Options Contracts*	*Rule 700*	*At Expiration.*
Nasdaq	Exercise of Options Contracts	[Ch. VIII, Sect.1] *Options 5, Section 100.*	At Expiration.
Nasdaq BX	Exercise of Options Contracts	[Ch. VII, Sect.1] *Options 5, Section 100*	At Expiration.
Nasdaq PHLX	Exercise of Equity Options Contracts	Rule 1042	At Expiration.
NYSE Arca	Exercise of Options Contracts	Rule 6.24-*O*	At Expiration.
NYSE [MKT]*American*	Exercise of Options Contracts	Rule 980	At Expiration.

VIOLATION II: POSITION LIMITS (PL)—FOR LISTED EQUITY OPTIONS

SRO	Description of Rule (for review as they apply to PL)	Exchange Rule No.	Frequency of review
[Bats]*BZX*	Position Limits	Rule 18.7	Daily.
	Exemptions from Position	Rule 18.8	As Needed.
	Liquidation Positions	Rule 18.11	As Needed.
BOX	Position Limits	Rule 3120	Daily.
	Exemptions from Position Limits	Rule 3130	As Needed.
	Liquidation Positions	Rule 3160	As Needed.
C2	Position Limits	Rule 4.11	Daily.
	Liquidation of Positions	Rule 4.14	As Needed.
[CBOE]*Cboe*	Position Limits	Rule 4.11	Daily.
	Liquidation of Positions	Rule 4.14	As Needed.
EDGX	Position Limits	Rule 18.7	Daily.
	Exemptions from Position	Rule 18.8	As Needed.
	Liquidation Positions	Rule 18.11	As Needed.
FINRA	Position Limits	Rule 2860(b)(3)	Daily.
	Liquidation of Positions and Restrictions on Access.	Rule 2860(b)(6)	As Needed.
ISE	Position Limits	Rule 412	Daily.
	Exemptions from Position Limits	Rule 413	As Needed.
	Liquidati[ng]*on* Positions	Rule 416	As Needed.
[ISE Gemini] *GEMX*	Position Limits	Rule 412	Daily.
	Exemptions from Position Limits	Rule 413	As Needed.
	Liquidati[ng]*on* Positions	Rule 416	As Needed.
[ISE Mercury] *MRX*	Position Limits	Rule 412	Daily.
	Exemptions from Position Limits	Rule 413	As Needed.
	Liquidati[ng]*on* Positions	Rule 416	As Needed.
MIAX	Position Limits	Rule 307	Daily.
	Exemptions from Position Limits	Rule 308	As Needed.
	Liquidating Positions	Rule 311	As Needed.
MIAX Pearl	Position Limits	Rule 307	Daily.
	Exemptions from Position Limits	Rule 308	As Needed.
	Liquidating Positions	Rule 311	As Needed.
MIAX Emerald	*Position Limits*	*Rule 307*	*Daily.*

VIOLATION II: POSITION LIMITS (PL)—FOR LISTED EQUITY OPTIONS—Continued

SRO	Description of Rule (for review as they apply to PL)	Exchange Rule No.	Frequency of review
	Exemptions from Position Limits	*Rule 308*	*As Needed.*
	Liquidating Positions	*Rule 311*	*As Needed.*
Nasdaq	Position Limits	Ch. III, Sect. 7	Daily.
	Exemptions from Position Limits	Ch. III, Sect. 8	As Needed.
	Liquidati[ng]*on* Positions	Ch. III, Sect. 11	As Needed.
Nasdaq BX	Position Limits	Ch. III, Sect. 7	Daily.
	Exemptions from Position Limits	Ch. III, Sect. 8	As Needed.
	Liquidati[ng]*on* Positions	Ch. III, Sect. 11	As Needed.
Nasdaq PHLX	Position Limits	Rule 1001	Daily.
	Liquidation of Position	Rule 1004	As Needed.
NYSE Arca	Position Limits	Rule 6.8-*O*	Daily.
	Liquidation of Position	Rule 6.7-*O*	As Needed.
NYSE [MKT]*American*	Position Limits	Rule 904	Daily.
	Liquidating Positions	Rule 907	As Needed.

VIOLATION III: LARGE OPTIONS POSITION REPORT (LOPR)—FOR LISTED AND FLEX EQUITY OPTIONS AND ETF OPTIONS

SRO	Description of Rule (for review as they apply to LOPR)	Exchange Rule No.	Frequency of review
[Bats]*BZX*	Reports Related to Position Limits	Rule 18.10	Yearly.
BOX	Reports Related to Position Limits	Rule 3150	Yearly.
C2	Reports Related to Position Limits	Rule 4.13(a)	Yearly.
	Reports Related to Position Limits	Rule 4.13(b)	Yearly.
	Reports Related to Position Limits	Rule 4.13(d)	Yearly.
[CBOE]*Cboe*	Reports Related to Position Limits	Rule 4.13(a)	Yearly.
	Reports Related to Position Limits	Rule 4.13(b)	Yearly.
	Reports Related to Position Limits	Rule 4.13(d)	Yearly.
EDGX	Reports Related to Position Limits	Rule 18.10	Yearly.
FINRA	Options	Rule 2360(b)(5)	Yearly.
ISE	Reports Related to Position Limits	Rule 415	Yearly.
[ISE Gemini] *GEMX*	Reports Related to Position Limits	Rule 415	Yearly.
[ISE Mercury] *MRX*	Reports Related to Position Limits	Rule 415	Yearly.
MIAX	Reports Related to Position Limits	Rule 310	Yearly.
MIAX PEARL	Reports Related to Position Limits	Rule 310	Yearly.
MIAX Emerald	*Reports Related to Position Limits*	*Rule 310*	*Yearly.*
Nasdaq	Reports Related to Position Limits	Ch. III, Sect. 10	Yearly.
Nasdaq BX	Reports Related to Position Limits	Ch. III, Sect. 10	Yearly.
Nasdaq PHLX	Reporting of Options Positions	Rule 1003	Yearly.
NYSE Arca	Reporting of Options Positions	Rule 6.6-*O*	Yearly.
NYSE [MKT]*American*	Reporting of Options Positions	Rule 906	Yearly.

VIOLATION IV: OPTIONS CLEARING CORPORATION (OCC)—ADJUSTMENT PROCESS

SRO	Description of Rule (as they apply to OCC Adjustments/By-laws Article V, Section 1 .01(a) and .02))	Exchange Rule No.	Frequency of review
[Bats]*BZX*	Adherence to Law	Rule 18.1	Yearly.
BOX	Adherence to Law	Rule 3010	Yearly.
C2	Adherence to Law	Rule 4.2	Yearly.
[CBOE]*Cboe*	Adherence to Law	Rule 4.2	Yearly.
EDGX	Adherence to Law	Rule 18.1	Yearly.
FINRA	Violation of By-Laws and Rules of FINRA or The OCC.	Rule 2360(b)(21)	Yearly.
ISE	Adherence to Law	Rule 401	Yearly.
[ISE Gemini] *GEMX*	Adherence to Law	Rule 401	Yearly.
[ISE Mercury] *MRX*	Adherence to Law	Rule 401	Yearly.
MIAX	Adherence to Law	Rule 300	Yearly.
MIAX PEARL	Adherence to Law	Rule 300	Yearly.
MIAX Emerald	*Adherence to Law*	*Rule 300*	*Yearly.*
Nasdaq	Adherence to Law	Ch. III, Sect. 1	Yearly.
Nasdaq BX	Adherence to Law	Ch. III, Sect. 1	Yearly.
Nasdaq PHLX	Violation of By-Laws And Rules Of OCC.	Rule 1050	Yearly.
NYSE Arca	Adherence to Law and Good Business Practice.	Rule 11.1	Yearly.
NYSE [MKT]*American*	Business Conduct	Rule 16	Yearly.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 e-mail to *rule-comments@sec.gov.* Please include File Number 4–551 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 4–551. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of NYSE American, BZX, C2, Cboe, EDGX, Gemini, ISE, Mercury, FINRA, Arca, Nasdaq, BOX, BX, PHLX, MIAX, MIAX PEARL, and MIAX Emerald. 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 4–551 and should be submitted on or before March 12, 2019.

V. Discussion

The Commission continues to believe that the Plan, as proposed to be amended, is an achievement in cooperation among the SRO participants. The Plan, as amended, will reduce unnecessary regulatory duplication by allocating to the designated SRO the responsibility for certain options-related market surveillance matters that would otherwise be performed by multiple SROs. The Plan promotes efficiency by reducing costs to firms that are members of more than one of the SRO participants. In addition, because the SRO participants coordinate their regulatory functions in accordance with the Plan, the Plan promotes, and will continue to promote, investor protection. Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to add MIAX Emerald as a Participant and to reflect the name changes of certain Participating Organizations. By declaring it effective today, the amended Plan can become effective and be implemented without undue delay.[21] In addition, the Commission notes that the prior version of this Plan was published for comment, and the Commission did not receive any comments thereon.[22] Finally, the Commission does not believe that the amendment to the Plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the amended Plan submitted to the Commission that is contained in File No. 4–551.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Plan, as amended by and between NYSE American, BZX, C2, Cboe, EDGX, Gemini, ISE, Mercury, FINRA, Arca, Nasdaq, BOX, BX, PHLX, MIAX, MIAX PEARL, and MIAX Emerald filed with the Commission pursuant to Rule 17d-2 on January 8, 2019 is hereby approved and declared effective.

It is further ordered that those SRO participants that are not the DOSR as to a particular common member are relieved of those regulatory responsibilities allocated to the common member's DOSR under the amended Plan to the extent of such allocation.

[21] On December 20, 2018, the Commission approved MIAX Emerald's application for registration as a national securities exchange. *See* Securities Exchange Act Release No. 84891, 83 FR 67421 (December 28, 2018).

[22] *See* Securities Exchange Act Release No. 79930 (February 2, 2017), 82 FR 9807 (February 8, 2017) (File No. 4–551).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02595 Filed 2–15–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85114; File No. SR–CBOE–2019–006]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Financial Incentive Program for Lead Market-Makers Appointed in MSCI EAFE Index (MXEA) Options and MSCI Emerging Markets Index (MXEF) Options

February 12, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its financial incentive program for Lead Market-Makers appointed in MSCI EAFE Index (MXEA) options and MSCI Emerging Markets Index (MXEF) options. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[23] 17 CFR 200.30–3(a)(34).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to amend its financial incentive program for Lead Market-Makers (''LMMs'') appointed in MSCI EAFE Index (MXEA) options and MSCI Emerging Markets Index (MXEF) options (collectively, MSCI options), effective February 1, 2019. By way of background, the Exchange recently adopted a program which provided through December 31, 2018, a financial incentive to any Market-Maker that was appointed as a LMM in MXEA and/or MXEF (''MSCI LMM'') and met a heightened quoting standard, which is set forth in the Fees Schedule.[3] MSCI LMM(s) that meet the heightened quoting standard, receive $20,000 per month/per product. The LMM receives $20,000 per month/per class if it provides continuous electronic quotes that meet or exceed a the heightened quoting standard set forth in the Fees Schedule in at least 90% of the MXEA and/or MXEF series it must quote pursuant to Rule 8.15(b) 90% of the time in a given month.

The Exchange first proposes to renew the MSCI program. Particularly, as noted above, the Fees Schedule currently provides that LMM(s) appointed in MXEA and MXEF will receive a payment of $20,000 per class when they meet prescribed heightened quoting standards in a given month and provides that the program will be in place through December 31, 2018. In order to continue to encourage LMM(s) in MXEA and MXEF to provide significant liquidity in these options, the Exchange proposes to renew this program through June 30, 2019.

Next, the Exchange proposes to increase the payment per class for the month of February 2019. Specifically, the Exchange proposes to provide that LMM(s) appointed in MXEA and MXEF will receive a payment of $40,000 per class when it meets prescribed heightened quoting standards in the month of February 2019. For the months of March 2019 through June 2019, the payment would be $20,000 per class per month.

Lastly, the Exchange proposes to amend the program to reduce the amount of time a MSCI LMM needs to quote. Particularly, the Exchange proposes to provide that in order to receive the financial benefit, a MSCI LMM must meet the heightened quoting standard set forth in the Fees Schedule in at least 90% of the MXEA and/or MXEF series it must quote pursuant to Rule 8.15(b) 80% of the time in a given month (instead of 90% of the time in a given month). Particularly, the Exchange notes that if there is extreme volatility in the market during a given month, it may become more difficult for a MSCI LMM to satisfy the heightened quoting standard for 90% of the time in that given month. As such, the Exchange proposes to provide the LMM more flexibility by slightly reducing the amount of time it must meet the heightened quoting standard. The Exchange believes the proposed change is still commensurate with the financial benefit offered and that the MSCI LMM financial program still encourages a MSCI LMM to provide significant liquidity in MSCI options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

First, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to renew the compensation plan for LMM(s) appointed in MXEA and MXEF because the Exchange wants to ensure it continues incentivizing the LMM(s) in these products to provide liquid and active markets in these products to encourage its growth. The Exchange notes that it had anticipated extending the MSCI Program for the month of January 2019 as well, but due to the government shutdown, was unexpectedly unable to do so.[7] The Exchange also notes that the current MSCI LMM met the heightened quoting standard for January 2019, but because the Exchange was unable to extend the program as anticipated, the LMM will not be receiving a payment under the program for the month of January. In light of not being able to compensate the LMM for the month of January, notwithstanding the LMM's continued commitment to providing liquid and active markets in the MSCI products, the Exchange believes it's reasonable to offer a payment of $40,000 per class to the MSCI LMM for the month of February 2019, provided it meets the heightened quoting standard for February 2019. The Exchange believes it is equitable and not unfairly discriminatory to only offer this financial incentive to the MSCI LMM because it benefits all market participants trading in MSCI options to encourage the MSCI LMM to satisfy the heightened quoting standard, which may increase liquidity and provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that the LMM provides a crucial role in providing quotes and the opportunity for market participants to trade MSCI products, which can lead to increased volume, thereby providing a robust market. The Exchange also notes that the MSCI LMM may have added costs each month that it needs to undertake in order to satisfy that heightened quoting standard (*e.g.,* having to purchase additional bandwidth).

The Exchange believes the proposed change to reduce the quoting time

[3] MSCI LMMs serve as MSCI LMMs during the RTH session only.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(4).

[7] *See* Cboe Options Notice, ''Cboe Options Exchange Fee Schedule Changes Effective January 2, 2019'' Reference ID: C2018122000.

requirement is reasonable as it only slightly reduces the amount of time a MSCI LMM must meet the heightened quoting standard in a month. Moreover, the Exchange believes reducing the amount of time a MSCI LMM must meet the heightened quoting standard is reasonable as extreme volatility in the market during a given month may make it more difficult for a MSCI LMM to meet the heightened quoting standard for the amount of time currently required. The proposed change, therefore, provides a MSCI LMM more flexibility in meeting the heightened quoting standard, even in extremely volatile months. Indeed, the Exchange wishes to ensure a MSCI LMM is adequately incentivized to provide liquid and active markets in the MSCI products to encourage its growth. Additionally, if a MSCI LMM does not satisfy the heightened quoting standard for the duration of the required time, even as amended, then it simply will not receive the offered per class payment for that month. The Exchange believes reducing the amount of time the LMM(s) needs to quote is still commensurate with the financial benefit offered. The Exchange believes that the program, even as amended, will continue to encourage increased quoting to add liquidity in MSCI products, thereby protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it applies uniformly to any MSCI LMM, which market participant plays a crucial role in providing active and liquid markets in the MSCI products. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because MSCI options are proprietary products that will only be traded on Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and paragraph (f) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–006 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–CBOE–2019–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–006 and should be submitted on or before March 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02611 Filed 2–15–19; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85108; File No. SR–CboeBZX–2019–002]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Exchange's Eighth Amended and Restated Bylaws (the "Exchange Bylaws") the Fourth Amended and Restated Bylaws (the "Parent Bylaws") of Its Parent Corporation, Cboe Global Markets, Inc. ("Cboe" or the "Parent")

February 12, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2019, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial''

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend the Exchange's Eighth Amended and Restated Bylaws (the ''Exchange Bylaws'') the Fourth Amended and Restated Bylaws (the ''Parent Bylaws'') of its parent corporation, Cboe Global Markets, Inc. (''Cboe'' or the ''Parent''). The text of the proposed amendments to the Exchange Bylaws is included in Exhibit 5A, and the text of the proposed amendments to the Parent Bylaws is included in Exhibit 5B.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the Exchange Bylaws to (1) amend the provision regarding which offices may be held by the same person and (2) amend the description of the duties of President of the Exchange. The proposed rule change also amends the Parent Bylaws to (1) amend the description of the duties of President of the Parent, (2) amend language relating to the definition of ''director independence,'' and (3) make a non-substantive update to the zip code for the registered office the Corporation.

Offices Held by Same Person

Section 5.1(b) of the Exchange Bylaws currently provides that two or more offices may be held by the same person, except the offices of Chief Executive Officer and President.[5] The Exchange proposes to amend Section 5.1(b) of the Exchange Bylaws to eliminate this restriction, and thus permit the same person to hold the offices of Chief Executive Officer and President. This proposal will provide the Exchange with the flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of both Chief Executive Officer and the President.

Description of President

Section 5.3 of the Parent Bylaws and Section 5.3 of the Exchange Bylaws each provide that the President of the Parent or Exchange, as applicable, shall be the chief operating officer of the Parent or Exchange, as applicable. The Exchange proposes to amend Section 5.3 of each of the Parent Bylaws and Section 5.3 of the Exchange Bylaws to provide that the President of the Parent or Exchange, as applicable, may be the chief operating officer of the Parent or Exchange, as applicable. Pursuant to this proposed change, the President of the Parent or Exchange may also serve as the chief operating officer,[6] but, rather than requiring that one individual serve in both capacities, Parent and the Exchange will each have flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of the President and duties of a chief operating officer. In either case, Parent and the Exchange each will have one or more persons performing the necessary duties of each role.

Definition of Director Independence

Cboe recently determined to remove from listing its common stock, par value $0.01 per share (the ''Common Stock''), on the Nasdaq Stock Market LLC (''Nasdaq'') and to designate BZX as the primary listing venue for Parent's Common Stock, which became effective in September 2018. In connection with the delisting and primary listing venue designation, the Exchange proposes to update certain corporate governance documents, including the Parent Bylaws. Particularly, the Exchange proposes to amend Section 3.3 of the Parent Bylaws to change the definition of director independence from referencing the listing standards of the New York Stock Exchange and Nasdaq to language referencing the listing standards of each national securities exchange on which the common stock of Parent is listed.

Registered Office Zip Code

The Exchange proposes to amend Section 1.1 of the Parent Bylaws to update the zip code of the Parent's registered agent from 19805 to 19801. This change is in accordance with an update from the U.S. Postal Service.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[8] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the Exchange believes the proposed changes are not material and will have a de minimis impact on the governance, ownership, or operations of the Exchange.

The proposed rule change to permit the same person to hold the offices of Chief Executive Officer and President of the Exchange will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, because it will provide the Exchange with flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of both Chief Executive Officer and the President. The Exchange will continue to have a Chief Executive Officer and President—the proposed change merely permits a single person rather than multiple people to hold these offices. This will ensure continued orderly operation of the Exchange in a

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Section 5.1(b) also prohibits the Chief Executive Officer and President from also being the Secretary or Assistant Secretary, which prohibition the proposal does not substantively amend.

[6] This is consistent with the provision in each of the Parent Bylaws and Exchange Bylaws that provide that two or more offices may be held by the same person, subject to certain exceptions. *See* Section 5.1 of the Parent Bylaws and Section 5.1 of the Exchange Bylaws.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

manner the Exchange deems most appropriate.[9]

The proposed rule change to permit each of Parent and the Exchange to appoint different persons to serve as President and chief operating officer of each entity will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, because it will provide each entity with flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of President and a chief operating officer. Parent and the Exchange each will continue to have the necessary duties of each role performed—the proposed change merely permits multiple people rather than a single person to perform these duties. This will ensure continued orderly operation of the Exchange in a manner Parent and the Exchange deem most appropriate.

The Exchange believes in light of the delisting of Parent's Common Stock from Nasdaq, it is appropriate to remove the requirement to comply with the independence requirements contained in the listing standards of Nasdaq, as well as the independence requirements contained in the listing standards of NYSE. The Exchange notes that the independence requirements of BZX are substantially similar to the independence requirements contained in the listing standards of Nasdaq and NYSE.

The Exchange believes that by ensuring its parent company's governance documents accurately reflect the correct legal address of Parent's registered office, the proposed rule change would reduce potential investor or market participant confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with updating the Parent Bylaws and Exchange Bylaws to reflect the changes described above.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that proposal may become operative upon filing. The Exchange states that the proposed changes relating to the ability of the same person to hold multiple officer titles and the amended independence requirements are consistent with other national securities exchanges and will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, including protecting investors and the public interest. Further, the proposed change of updating the zip code of the Parent's registered office does not raise any regulatory issues. For the foregoing reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, the Commission designates the proposed rule change to be operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for

[9] The proposed change also conforms this provision to the corresponding provision in Parent's Bylaws. *See* Section 5.1 of Parent's Bylaws.

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] *Id.*

[13] *Id.*

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–002 and should be submitted on or before March 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02605 Filed 2–15–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85111; File No. SR–NASDAQ–2019–005]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Rules of the Rule 7000A Series Concerning the Order Audit Trail System

February 12, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain rules of the Rule 7000A Series concerning the Order Audit Trail System to make conforming and technical changes. The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend certain rules of the Rule 7000A Series concerning FINRA's Order Audit Trail System (''OATS'') to make conforming and technical changes. The Exchange's Rule 7000A Series imposes an obligation on Exchange members to record in electronic form and report to FINRA on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members in Nasdaq-listed stocks. OATS captures this order information and integrates it with quote and transaction information to create a time-sequenced record of orders, quotes, and transactions. This information is used by FINRA staff to conduct surveillance and investigations of members for potential violation of Exchange rules, federal securities laws, and FINRA rules. As such, the Exchange and its sister exchanges, Nasdaq BX, Inc. (''BX'') and Nasdaq PHLX LLC (''PHLX''), endeavor to keep their OATS rules consistent with FINRA's OATS rules, as well as with each other's.

BX and PHLX recently updated and harmonized their respective OATS rules with those of the Exchange and FINRA. Through this process, several technical issues were identified with the Exchange's OATS rules that require a rule change. This proposed rule change makes those changes.[3]

First, the Exchange is proposing to amend Rule 7410A, which defines terms used in the OATS rules. The Exchange is proposing to change the reference to the Rule 7400A Series immediately under the title of the Rule to instead reference the Rule 7000A Series, which is the correct citation. The Exchange is also proposing to amend the definition of ''Nasdaq Market Center'' under Rule 7410A(d). Nasdaq has a more comprehensive definition of the ''Nasdaq Market Center'' under Rule 4701(a). As a consequence, the Exchange is proposing to amend Rule 7410A(d) to note that the term ''Nasdaq Market Center'' has the same meaning as that term has under Rule 4701(a). The Exchange is adding an omitted hyphen to the term ''over-the-counter'' within the definition of ''Electronic Communication Network.'' The Exchange is also proposing to delete the defined term ''NMS stock'' from paragraph (j) of the rule, and re-letter the remaining rules accordingly. The term ''NMS stock'' is not used in Nasdaq's OATS rules. The term is used in FINRA Rule 7410(k), defining ''Order Audit Trail System, whereas the Exchange instead references Nasdaq listed securities under Rule 7410A(l). Moreover, neither BX nor PHLX defines the term in its respective OATS rules. Thus, the Exchange believes that the defined term is not needed for purposes of its OATS rules, and is accordingly deleting the definition and re-lettering the subparagraphs that follow. The Exchange is proposing to apply lower case letters to the term bona fide hedge transaction within the definition of ''Order'' under re-lettered paragraph (j). The Exchange notes that it currently capitalizes the term ''Bona Fide Hedge Transaction'' under the rule, although the term is not defined in Nasdaq's rules. The Exchange believes that capitalizing the term was an error and is therefore not capitalizing the term in Rule 7410A(j). The Exchange notes that neither BX nor PHLX chose to capitalize the term for purposes of their [sic] OATS rules. The Exchange is proposing to move text within the definition of ''Reporting Member'' to conform it to how BX and PHLX present the subparagraphs within their definition of ''Reporting Member'' and ''Reporting Member Organization,'' respectively. Last, the Exchange is proposing to amend Rule 7410A(o) to cross-reference the definition of [sic] term ''customer'' under Rule 7410A(c) instead of cross-referencing the definition under Rule 0120(g), which is equivalent to the definition under Rule 7410A(c).

Second, the Exchange is proposing to amend Rule 7440A to delete a sentence from Rule 7440A(a), which notes that members are complying with these rules by complying with the related FINRA rules 7440(a). The Exchange believes these sentences are duplicative of the

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange is making a technical change to the rule numbering under the Rule 7000A Series to add a period after the individual rule numbers under the Series.

first sentence of Rule 7440A(a), which states that Nasdaq members and persons associated with a member shall comply with FINRA Rule 7440 as if such Rule were part of Nasdaq's rules. The Exchange notes that neither BX nor PHLX chose to incorporate that sentence into their [sic] related OATS rules.

Third, the Exchange is proposing to amend Rule 7450A(b) to include the term ''associated persons.'' Rule 7450A concerns order data transmission requirements, and paragraph (b) thereunder provides the requirements applicable to proprietary trading firms. Both BX and PHLX apply their related rules to both proprietary trading firms and their associated persons. The Exchange believes that it was an omission to not include associated persons under the rule and is therefore including associated persons thereunder.

Last, the Exchange is proposing to clarify under Rules 7440A and 7450A that certain rules cited thereunder are FINRA rules. The Exchange is also clarifying under Rules 7440A(a) and 7450A(a) that the regulatory services contract noted under the rule is an agreement with FINRA. These clarifying changes will also harmonize the pertinent parts of Rules 7440A and 7450A with the respective rules of BX and PHLX.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by harmonizing the Exchange's OATS rules with those of BX and PHLX, with which they should materially match. Consequently, the proposed change will promote consistent regulatory standards with respect to rules that FINRA enforces pursuant to its Regulatory Services Agreements with the Exchange, BX and PHLX. With respect to the proposed technical corrections to the rules, the Exchange believes that these changes are consistent with the Act because they will prevent investor confusion that may be caused by inconsistencies and vagueness in the Rules.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change align [sic] the Exchange's rules with those of BX and PHLX, which will assist FINRA in its oversight work done pursuant to a regulatory services agreement with the Exchange. The proposed changes also provide uniform standards with which market participants must comply. Consequently, the Exchange does not believe that the proposed changes implicate competition at all.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[8] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. Waiver of the operative delay would allow the Exchange to update its rules without delay to make technical changes that would improve clarity and simplify FINRA's work under the Regulatory Services Agreements with the Exchange, BX, and PHLX. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[10]

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public

[10] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–005 and should be submitted on or before March 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02608 Filed 2–15–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85113; File No. SR–NASDAQ–2019–004]

Self-Regulatory Organizations; the Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt a New MIDP Routing Option Under Rule 4758 and Make a Conforming Change to Rule 4703(e)

February 12, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new MIDP routing option under Rule 4758 and make a conforming change to Rule 4703(e).

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt MIDP, a new order routing[3] option under Rule 4758(a)(1)(A). The Exchange provides a variety of routing options under Rule 4758(a)(1). Routing options may be combined with all available Order Types and Times-in-Force, with the exception of Order Types and Times-in-Force whose terms are inconsistent with the terms of a particular routing option. The MIDP routing option would allow members to seek midpoint liquidity on Nasdaq and other markets on the System routing table.[4] Specifically, the MIDP routing option may be assigned only to a Non-Displayed Order Type[5] with a Midpoint Pegging Order Attribute.[6] An Order with MIDP will check the System for available shares and then the remaining shares are routed to destinations on the System routing table[7] that support midpoint eligible orders with a limit price that is at the lesser (greater) of: (1) The current NBO (NBB); or (2) the Order's entered limit price (if applicable).[8] If shares remain unexecuted after routing, the Order returns to Nasdaq and will check the System for available shares, with remaining shares posted on the Nasdaq Book[9] as a Non-Displayed Order with a Midpoint Pegging Order Attribute.[10]

A member may specify a Minimum Quantity Order Attribute upon entry.[11] Minimum Quantity is an Order Attribute that allows a Participant to provide that an Order will not execute unless a specified minimum quantity of shares can be obtained.[12] If at any point during the routing process, but prior to returning to post on the Nasdaq Book (unless an IOC), the remaining size of the Order becomes less than the specified minimum quantity, the Order will be cancelled back to the member. This will avoid an execution of a member's Order that is inconsistent with its minimum quantity instructions. If shares remain unexecuted after routing, they return to Nasdaq and check the System for available shares with remaining shares posted on the Nasdaq Book as a Non-Displayed Order with a Midpoint Pegging Order Attribute and the minimum quantity condition specified by the member upon entry of the Order. For example, if the National Best Bid and Offer (''NBBO'') is $5.00 × $5.01 and a member enters a Non-Displayed Order with a Midpoint Pegging Order Attribute to buy 500

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Routing is an Order Attribute that allows a Participant to designate an Order to employ one of several Routing Strategies (also called ''routing options'') offered by Nasdaq, as described in Rule 4758; such an Order may be referred to as a ''Routable Order.'' Upon receipt of an Order with the Routing Order Attribute, the System will process the Order in accordance with the applicable Routing Strategy. In the case of a limited number of Routing Strategies, the Order will be sent directly to other market centers for potential execution. For most other Routing Strategies, including MIDP, the Order will attempt to access liquidity available on Nasdaq in the manner specified for the underlying Order Type and will then be routed in accordance with the applicable Routing Strategy. Shares of the Order that cannot be executed are then returned to Nasdaq, where they will (i) again attempt to access liquidity available on Nasdaq and (ii) post to the Nasdaq Book or be cancelled, depending on the Time-in- Force of the Order. *See* Rule 4703(f).

[4] The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. Nasdaq reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. *See* Rule 4758(a)(1)(A).

[5] *See* Rule 4702(b)(3).

[6] Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the ''Midpoint''). *See* Rule 4703(d).

[7] The Order is routed sequentially to the various venues on the System routing table in the full amount. An Order with MIDP and a Minimum Quantity Order Attribute will similarly route to the venues sequentially.

[8] If the entered limit price of a buy (sell) Order entered with MIDP is less (greater) than the current Midpoint price, the Order will not be routed but will instead be posted on the Nasdaq Book as a Midpoint Peg Order (if not an IOC). Once on the Nasdaq Book, if the NBBO moves and the Order's limit price is equal to or greater (less) than the NBO (NBB), the Order would not subsequently route.

[9] *See* Rule 4701(a).

[10] An Order with the MIDP routing option will only be accepted with a Time-in-Force of Market Hours DAY or IOC and may not be flagged to participate in any of the Nasdaq Crosses. Unexecuted shares of an order with the MIDP routing option will be cancelled after routing if the order has a Time-in-Force of IOC.

[11] If upon entry the Order size is less than the minimum quantity designated by the member the Order will be rejected.

[12] *See* Rule 4703(e).

shares with a TIF of Day, a limit of $5.01 and no minimum quantity, the System will first attempt to execute the Order on Nasdaq at the midpoint of the NBBO and if no shares are executed, the Order will be routed as a midpoint order to destinations on the System routing table that support midpoint eligible orders. If the Order does not receive an execution at the venues to which it was routed, the Order would return to Nasdaq and check the System for available shares, with remaining shares posted to the Nasdaq Book at the midpoint price of $5.005. If, however, the Order also had a minimum quantity of 300 shares and received an execution of 300 shares at a venue on the System routing table, instead of continuing to route or post to the Nasdaq Book, the Order will instead be cancelled back to the member, consistent with the minimum quantity instruction.

The Exchange does not currently allow an Order with Minimum Quantity to also have a Routing Order Attribute.[13] Historically, the Exchange System has been unable to support Minimum Quantity and Routing due to limitations in the System. The Exchange has made technical changes to the System to allow for Minimum Quantity and MIDP, and Minimum Quantity would only be available for MIDP. Thus, the Exchange is making a conforming change to Rule 4703(e) to allow Minimum Quantity with MIDP. Should Participants request Minimum Quantity for other Routing strategies, the Exchange would consider making the technical changes to allow for such Routing and submit a rule change proposal to the Commission.

The Exchange will implement the proposal in the second quarter of 2019, subject to approval by the Commission. The Exchange will provide notice of the implementation date at least 30 days prior to implementation via an Equity Trader Alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing members additional control over the execution of their Orders so that they may source Midpoint liquidity from venues other than Nasdaq. Midpoint Orders allow participants to receive price improvement by executing against other non-displayed liquidity at the midpoint of the NBBO. An entirely optional routing option, MIDP will help maximize the potential that members will receive Midpoint executions for their Orders. In addition, the proposed functionality is currently offered by competitor exchanges.[16] The Exchange believes that allowing Minimum Quantity to be an Order Attribute to an Order with MIDP is consistent with the Act because it provides market participants with greater flexibility and control over their Orders. As noted above, the Exchange has not allowed Orders with both Minimum Quantity and Routing for technical reasons. The Exchange has made technical changes that will allow Minimum Quantity with Routing solely for MIDP, although it may make the change for other Routing strategies based on market participant interest.[17] For these reasons, the Exchange believes that the proposed rule change is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed change is pro-competitive because it may make the Exchange a more attractive venue to market participants, which may incent other exchanges and trading venues to adopt similar routing functionality. In this regard, the proposed change does not create any competitive barriers or in any way preclude competitor exchanges and other trading venues from implementing similar functionality. As noted above, the proposed functionality copies, in part, existing functionality available on competitor exchanges. In addition, to the extent other exchanges and other trading venues do not support minimum quantity and routing, they are free to make the changes to their systems to allow for such. Thus, the proposed change is reflective of competition among trading venues, and does not impose any burden thereon.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[13] *Id.*

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] BYX Rule 11.13(b)(3)(Q) and EDGA Rule 11.11(g)(13). These rules provide that RMPT and RMPL routing strategies may be used with a Mid-Point Peg Order to check the exchanges' respective Systems for available shares and any remaining shares are then sent to destinations on their routing tables that support midpoint eligible orders. Any shares remaining unexecuted after routing are posted on the exchanges' respective books as a Mid-Point Peg Order, unless otherwise instructed by the exchange participant. It is unclear to the Exchange if market participants may associate a minimum quantity attribute with RMPT or RMPL. As a consequence, MIDP may differ from RMPT and/or RMPL in this way.

[17] Subject to submission of a rule change filing with the Commission.

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–004, and should be submitted on or before March 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02610 Filed 2–15–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85107; File No. SR–CboeBYX–2019–001]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Exchange's Eighth Amended and Restated Bylaws (the "Exchange Bylaws") the Fourth Amended and Restated Bylaws (the "Parent Bylaws") of Its Parent Corporation, Cboe Global Markets, Inc. ("Cboe" or the "Parent")

February 12, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2019, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') proposes to amend the Exchange's Eighth Amended and Restated Bylaws (the ''Exchange Bylaws'') the Fourth Amended and Restated Bylaws (the ''Parent Bylaws'') of its parent corporation, Cboe Global Markets, Inc. (''Cboe'' or the ''Parent''). The text of the proposed amendments to the Exchange Bylaws is included in Exhibit 5A, and the text of the proposed amendments to the Parent Bylaws is included in Exhibit 5B.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the Exchange Bylaws to (1) amend the provision regarding which offices may be held by the same person and (2) amend the description of the duties of President of the Exchange. The proposed rule change also amends the Parent Bylaws to (1) amend the description of the duties of President of the Parent, (2) amend language relating to the definition of ''director independence,'' and (3) make a non-substantive update to the zip code for the registered office the Corporation.

Offices Held by Same Person

Section 5.1(b) of the Exchange Bylaws currently provides that two or more offices may be held by the same person, except the offices of Chief Executive Officer and President.[5] The Exchange proposes to amend Section 5.1(b) of the Exchange Bylaws to eliminate this restriction, and thus permit the same person to hold the offices of Chief Executive Officer and President. This proposal will provide the Exchange with the flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of both Chief Executive Officer and the President.

Description of President

Section 5.3 of the Parent Bylaws and Section 5.3 of the Exchange Bylaws each provide that the President of the Parent or Exchange, as applicable, shall be the chief operating officer of the Parent or Exchange, as applicable. The Exchange proposes to amend Section 5.3 of each of the Parent Bylaws and Section 5.3 of the Exchange Bylaws to provide that the President of the Parent or Exchange, as applicable, may be the chief operating officer of the Parent or Exchange, as applicable. Pursuant to this proposed change, the President of the Parent or Exchange may also serve as the chief operating officer,[6] but, rather than requiring that one individual serve in both capacities, Parent and the Exchange will each have flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of the President and duties of a chief operating officer. In either case, Parent and the Exchange each will have one or more persons performing the necessary duties of each role.

Definition of Director Independence

Cboe recently determined to remove from listing its common stock, par value $0.01 per share (the ''Common Stock''), on the Nasdaq Stock Market LLC (''Nasdaq'') and to designate BZX as the primary listing venue for Parent's Common Stock, which became effective in September 2018. In connection with the delisting and primary listing venue designation, the Exchange proposes to

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Section 5.1(b) also prohibits the Chief Executive Officer and President from also being the Secretary or Assistant Secretary, which prohibition the proposal does not substantively amend.

[6] This is consistent with the provision in each of the Parent Bylaws and Exchange Bylaws that provide that two or more offices may be held by the same person, subject to certain exceptions. *See* Section 5.1 of the Parent Bylaws and Section 5.1 of the Exchange Bylaws.

update certain corporate governance documents, including the Parent Bylaws. Particularly, the Exchange proposes to amend Section 3.3 of the Parent Bylaws to change the definition of director independence from referencing the listing standards of the New York Stock Exchange and Nasdaq to language referencing the listing standards of each national securities exchange on which the common stock of Parent is listed.

Registered Office Zip Code

The Exchange proposes to amend Section 1.1 of the Parent Bylaws to update the zip code of the Parent's registered agent from 19805 to 19801. This change is in accordance with an update from the U.S. Postal Service.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[8] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the Exchange believes the proposed changes are not material and will have a de minimis impact on the governance, ownership, or operations of the Exchange.

The proposed rule change to permit the same person to hold the offices of Chief Executive Officer and President of the Exchange will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, because it will provide the Exchange with flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of both Chief Executive Officer and the President. The Exchange will continue to have a Chief Executive Officer and President—the proposed change merely permits a single person rather than multiple people to hold these offices. This will ensure continued orderly operation of the Exchange in a manner the Exchange deems most appropriate.[9]

The proposed rule change to permit each of Parent and the Exchange to appoint different persons to serve as President and chief operating officer of each entity will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, because it will provide each entity with flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of President and a chief operating officer. Parent and the Exchange each will continue to have the necessary duties of each role performed—the proposed change merely permits multiple people rather than a single person to perform these duties. This will ensure continued orderly operation of the Exchange in a manner Parent and the Exchange deem most appropriate.

The Exchange believes in light of the delisting of Parent's Common Stock from Nasdaq, it is appropriate to remove the requirement to comply with the independence requirements contained in the listing standards of Nasdaq, as well as the independence requirements contained in the listing standards of NYSE. The Exchange notes that the independence requirements of BZX are substantially similar to the independence requirements contained in the listing standards of Nasdaq and NYSE.

The Exchange believes that by ensuring its parent company's governance documents accurately reflect the correct legal address of Parent's registered office, the proposed rule change would reduce potential investor or market participant confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with updating the Parent Bylaws and Exchange Bylaws to reflect the changes described above.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that proposal may become operative upon filing. The Exchange states that the proposed changes relating to the ability of the same person to hold multiple officer titles and the amended independence requirements are consistent with other national securities exchanges and will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, including protecting investors and the public interest. Further, the proposed change of updating the zip code of the Parent's registered office does not raise any regulatory issues. For the foregoing reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, the Commission designates the proposed rule change to be operative upon filing.[14]

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

[9] The proposed change also conforms this provision to the corresponding provision in Parent's Bylaws. *See* Section 5.1 of Parent's Bylaws.

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] *Id.*

[13] *Id.*

[14] For purposes only of waiving the 30-day operative delay, the Commission has also

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeBYX–2019–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBYX–2019–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBYX–2019–001 and should be submitted on or before March 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02604 Filed 2–15–19; 8:45 am]

BILLING CODE 8011–01–P

considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–401; OMB Control No. 3235–0459]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 3a–4

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 3a–4 (17 CFR 270.3a–4) under the Investment Company Act of 1940 (15 U.S.C. 80a) (''Investment Company Act'' or ''Act'') provides a nonexclusive safe harbor from the definition of investment company under the Act for certain investment advisory programs. These programs, which include ''wrap fee'' programs, generally are designed to provide professional portfolio management services on a discretionary basis to clients who are investing less than the minimum investments for individual accounts usually required by the investment adviser but more than the minimum account size of most mutual funds. Under wrap fee and similar programs, a client's account is typically managed on a discretionary basis according to pre-selected investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially similar securities in their accounts. Because of this similarity of management, some of these investment advisory programs may meet the definition of investment company under the Act.

In 1997, the Commission adopted rule 3a-4, which clarifies that programs organized and operated in accordance with the rule are not required to register under the Investment Company Act or comply with the Act's requirements.[1] These programs differ from investment companies because, among other things, they provide individualized investment advice to the client. The rule's provisions have the effect of ensuring that clients in a program relying on the rule receive advice tailored to the client's needs.

For a program to be eligible for the rule's safe harbor, each client's account must be managed on the basis of the client's financial situation and investment objectives and in accordance with any reasonable restrictions the client imposes on managing the account. When an account is opened, the sponsor[2] (or its designee) must obtain information from each client regarding the client's financial situation and investment objectives, and must allow the client an opportunity to impose reasonable restrictions on managing the account.[3] In addition, the sponsor (or its designee) must contact the client annually to determine whether the client's financial situation or investment objectives have changed and whether the client wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions. The sponsor (or its designee) must also notify the client quarterly, in writing, to contact the sponsor (or its designee) regarding changes to the client's

[1] Status of Investment Advisory Programs Under the Investment Company Act of 1940, Investment Company Act Rel. No. 22579 (Mar. 24, 1997) [62 FR 15098 (Mar. 31,1997)] (''Adopting Release''). In addition, there are no registration requirements under section 5 of the Securities Act of 1933 for programs that meet the requirements of rule 3a–4. *See* 17 CFR 270.3a–4, introductory note.

[2] For purposes of rule 3a–4, the term ''sponsor'' refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program.

[3] Clients specifically must be allowed to designate securities that should not be purchased for the account or that should be sold if held in the account. The rule does not require that a client be able to require particular securities be purchased for the account.

financial situation, investment objectives, or restrictions on the account's management.

Additionally, the sponsor (or its designee) must provide each client with a quarterly statement describing all activity in the client's account during the previous quarter. The sponsor and personnel of the client's account manager who know about the client's account and its management must be reasonably available to consult with the client. Each client also must retain certain indicia of ownership of all securities and funds in the account.

The Commission staff estimates that 19,618,731 clients participate each year in investment advisory programs relying on rule 3a–4.[4] Of that number, the staff estimates that 3,531,372 are new clients and 16,087,359 are continuing clients.[5] The staff estimates that each year the investment advisory program sponsors' staff engage in 1.5 hours per new client and 1 hour per continuing client to prepare, conduct and/or review interviews regarding the client's financial situation and investment objectives as required by the rule.[6] Furthermore, the staff estimates that each year the investment advisory program sponsors' staff spends 1 hour per client to prepare and mail quarterly client account statements, including notices to update information.[7] Based on the estimates above, the Commission estimates that the total annual burden of the rule's paperwork requirements is 41,003,148 hours.[8]

[4] These estimates are based on an analysis of the number of individual clients from Form ADV Item 5D(a)(1) and (b)(1) of advisers that report they provide portfolio management to wrap programs as indicated in Form ADV Item 5I(2)(b) and (c), and the number of individual clients of advisers that identify as internet advisers in Form ADV Item 2A(11). From analysis comparing reported individual client assets in Form ADV Item 5D(a)(3) and 5D(b)(3) to reported wrap portfolio manager assets in Form ADV Item 5I(2)(b) and (c), we discount the estimated number of individual clients of non-internet advisers providing portfolio management to wrap programs by 10%.

[5] These estimates are based on the number of new clients expected due to average year-over-year growth in individual clients from Form ADV Item 5D(a)(1) and (b)(1) (about 8%) and an assumed rate of yearly client turnover of 10%.

[6] These estimates are based upon consultation with investment advisers that operate investment advisory programs that rely on rule 3a–4.

[7] The staff bases this estimate in part on the fact that, by business necessity, computer records already will be available that contain the information in the quarterly reports.

[8] This estimate is based on the following calculation: (16,087,359 continuing clients × 1 hour) + (3,531,372 new clients × 1.5 hours) + (19,618,731 total clients × (0.25 hours × 4 statements)) = 41,003,148 hours. We note that the breakdown of burden hours between professional and staff time discussed below may not equal the estimate of total burden hours due to rounding.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov* ; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 12, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02646 Filed 2–15–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85110; File No. SR–NYSEArca–2018–67]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend NYSE Arca Rule 5.2–E(j)(6) Relating to Equity Index-Linked Securities Listing Standards Set Forth in NYSE Arca Rule 5.2–E(j)(6)(B)(I)

February 12, 2019.

On September 10, 2018, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend listing standards set forth in NYSE Arca Rule 5.2–E(j)(6)(B)(I) relating to criteria applicable to components of an index underlying an issue of Equity Index-Linked Securities. The proposed rule change was published for comment in the **Federal Register** on October 1, 2018.[3]

On November 13, 2018, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On December 19, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6]

On February 8, 2019, NYSE Arca withdrew the proposed rule change (SR–NYSEArca–2018–67).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02607 Filed 2–15–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 84279 (Sept. 25, 2018), 83 FR 49437.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 84576, 83 FR 58315 (Nov. 19, 2018).

[6] *See* Securities Exchange Act Release No. 84863, 83 FR 66787 (Dec. 27, 2018).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 10677]

Notice of Public Meeting

As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of State gives notice of a meeting of the Advisory Committee on International Postal and Delivery Services. This Committee will meet on Thursday, March 14, 2019, from 1:00 p.m. to 5:00 p.m. Eastern Time in the American Institute of Architects Board Room at 1735 New York Avenue NW, Washington, DC 20006.

Any member of the public interested in providing input to the meeting should contact Ms. Shereece Robinson, whose contact information is listed below (see the ''for further information'' section of this notice). Each individual providing oral input is requested to limit his or her comments to five minutes. Requests to be added to the speakers list must be received in writing (letter or email) prior to the close of business on Thursday, March 7, 2019; written comments from members of the public for distribution at this meeting must reach Ms. Robinson by letter or email on this same date. A member of the public requesting reasonable accommodation should also make his/

her request to Ms. Robinson by March 7. Requests received after that date will be considered but might not be able to be fulfilled.

The agenda of the meeting will include discussion of the announced U.S. withdrawal from the Universal Postal Union, and efforts underway that might allow the United States to meet the goals articulated in the October 17, 2018 White House announcement while remaining in the Organization.

For Further Information Contact: Please contact Ms. Shereece Robinson of the Office of Specialized and Technical Agencies (IO/STA), Bureau of International Organization Affairs, U.S. Department of State, at tel. (202) 663–2649, by email at *RobinsonSA2@state.gov,* or by mail at IO/STA, Suite L–409 SA–1; U.S. Department of State; Washington, DC 20522.

Joseph P. Murphy,

Designated Federal Officer, Advisory Committee on International Postal and Delivery Services, Office of Specialized and Technical Agencies, Bureau of International Organization Affairs, Department of State.

[FR Doc. 2019–02670 Filed 2–15–19; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Notice.

SUMMARY: By **Federal Register** notice on July 31, 2018 the National Park Service (NPS) and the Federal Aviation Administration (FAA) invited interested persons to apply to fill one current and three future openings on the National Parks Overflights Advisory Group (NPOAG) to represent air tour operator concerns, general aviation, and Native American interests. This notice informs the public of the selection made for the vacancies representing air tour operator concerns and Native American interests and invites persons interested in serving on the NPOAG to apply for current openings representing Native American concerns and general aviation.

DATES: Persons interested in applying for the NPOAG openings representing Native American concerns and general aviation interests need to apply by March 22, 2019.

FOR FURTHER INFORMATION CONTACT: Keith Lusk, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, 727 S Aviation Boulevard, Suite #150, El Segundo, CA 90245, telephone: (424) 405–7017, email: *Keith.Lusk@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181, and subsequently amended in the FAA Modernization and Reform Act of 2012. The Act required the establishment of the advisory group within one year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating one-year terms as chairman of the advisory group.

In accordance with the Act, the advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Membership

The current NPOAG is made up of one member representing general aviation, three members representing the commercial air tour industry, four members representing environmental concerns, and two members representing Native American interests. Members serve 3-year terms. Current members of the NPOAG are as follows:

One open seat to represent general aviation; Eric Lincoln and Matt Zuccaro representing commercial air tour operators with one open seat; Les Blomberg, Rob Smith, John Eastman, and Dick Hingson representing environmental interests; and two open seats to represent Native American interests.

Selection

Alan Stephen of Grand Canyon Airlines has been selected for the current open seat to represent commercial air tour operators. Carl Slater of the Navajo Nation Division of Transportation has been selected for one of the current open seats to represent Native American interests. These NPOAG members 3 year terms commence on the publication date of this **Federal Register** notice. No selections were made for the additional opening to represent Native American interests as well as general aviation.

The FAA and NPS invite persons interested in applying for the two remaining openings on the NPOAG to contact Mr. Keith Lusk (contact information is written above in **FOR FURTHER INFORMATION CONTAC**T). Requests to serve on the NPOAG must be made to Mr. Lusk in writing and postmarked or emailed on or before March 22, 2019. The request should indicate whether or not you are a member of an association or group related to Native American concerns or general aviation or have another affiliation with issues relating to aircraft flights over national parks. The request should also state what expertise you would bring to the NPOAG as related to issues and concerns with aircraft flights over national parks. The term of service for NPOAG members is 3 years. Current members may re-apply for another term.

On August 13, 2014, the Office of Management and Budget issued revised guidance regarding the prohibition against appointing or not reappointing federally registered lobbyists to serve on advisory committees (79 FR 47482).

Therefore, before appointing an applicant to serve on the NPOAG, the FAA and NPS will require the prospective candidate to certify that they are not a federally registered lobbyist.

Issued in El Segundo, CA, on January 28, 2019.

Keith Lusk

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2019–02680 Filed 2–15–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2018–0082]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Suspected Unapproved Parts Report

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collected on the FAA Form 8120–11 is reported voluntarily by manufacturers, repair stations, aircraft owner/operators, air carriers, and the general public who wish to report suspected unapproved parts to the FAA for review. The report information is collected and correlated by the FAA, Aviation Safety Hotline Program Office, and used to determine if an unapproved part investigation is warranted.

DATES: Written comments should be submitted by April 22, 2019.

ADDRESSES: Send comments to the FAA at the following address: Joseph Palmisano, Federal Aviation Administration, AIR–600, 800 Independence Avenue SW, Washington, DC 20591.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Joseph Palmisano by email at: *Joseph.Palmisano@faa.gov;* phone: 202–267–1638.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0552.

Title: Suspected Unapproved Parts Report.

Form Numbers: FAA Form 8120–11.

Type of Review: Renewal of an information collection.

Background: The information collected on the FAA Form 8120–11 is reported voluntarily by manufacturers, repair stations, aircraft owner/operators, air carriers, and the general public who wish to report suspected unapproved parts to the FAA for review. The report information is collected and correlated by the FAA, Aviation Safety Hotline Program Office, and used to determine if an unapproved part investigation is warranted. When unapproved parts are confirmed that are likely to exist on other products or aircraft of the same or similar design or are being used in other facilities, the information is used as a basis for an aviation industry alert or notification. Alerts are used to inform industry of situations essential to the prevention of accidents, if the information had not been collected. The consequence to the aviation community would be the inability to determine whether or not unapproved parts are being offered for sale or use for installation on type-certificated products.

Procedures and processes relating to the SUP program and associated reports are found in FAA Order 8120.16A, Suspected Unapproved Parts Program, and AC 21–29, Detecting and Reporting Suspected Unapproved Parts. When unapproved parts are identified, the FAA notifies the public by published Field Notifications (FN), disseminated using Unapproved Parts Notifications (UPN), Aviation Maintenance Alerts, Airworthiness Directives (AD), entry into an issue of the Service Difficulty Reporting Summary, a Special Airworthiness Information Bulletin, a display on an internet site, or direct mailing. Reporting of information is strictly voluntary. The information is requested from any individual or facility suspecting an unapproved part. Any burden is minimized by requesting only necessary information to warrant an investigation.

Respondents: Anyone may fill out and send a Form 8120–11 into the FAA.

Frequency: Whenever anyone discovers or suspects they have received an unapproved part.

Estimated Average Burden per Response: About 30 minutes to read and disposition each form.

Estimated Total Annual Burden: The FAA collects approximately 208 forms from the public per year.

Issued in Washington, DC.

Joy Wolf,

Aviation Safety, Directives & Forms Management Officer (DMO/FMO), Aircraft Certification Service.

[FR Doc. 2019–02644 Filed 2–15–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0214; FMCSA–2014–0215]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for five individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2014–0214; FMCSA–2014–0215, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC

20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. 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,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On November 23, 2018, FMCSA published a notice announcing its decision to renew exemptions for five individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (83 FR 59444). The public comment period ended on December 24, 2018, and no comments were received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the five renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8).

As of October 24, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, Jeffrey M. Phillips (SC) has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (83 FR 59444).

This driver was included in docket number FMCSA–2014–0214. The exemption is applicable as of October 24, 2018, and will expire on October 24, 2020.

As of October 15, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (83 FR 59444):

Thomas Avery, Jr. (NY)
Philip Stewart (CA)
Alan T. VonLintel (KS)
Keith T. White (PA)

The drivers were included in docket number FMCSA–2014–0215. Their exemptions are applicable as of October 15, 2018, and will expire on October 15, 2020.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: February 8, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–02653 Filed 2–15–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–2013–0108; FMCSA–2014–0382; FMCSA–2015–0322; FMCSA–2015–0323; FMCSA–2016–0008]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for nine individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on December 21, 2018. The exemptions expire on December 21, 2020. Comments must be received on or before March 21, 2019.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0108; FMCSA–2014–0382; FMCSA–2015–0322; FMCSA–2015–0323; FMCSA–2016–0008 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this

notice (Docket No. FMCSA–2013–0108; FMCSA–2014–0382; FMCSA–2015–0322; FMCSA–2015–0323; FMCSA–2016–0008), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2013–0108; FMCSA–2014–0382; FMCSA–2015–0322; FMCSA–2015–0323; FMCSA–2016–0008, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on 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.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2013–0108; FMCSA–2014–0382; FMCSA–2015–0322; FMCSA–2015–0323; FMCSA–2016–0008, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. 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,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for up to five years if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

The nine individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315, each of the nine applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The nine drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System (CDLIS) and the Motor Carrier Management Information System (MCMIS) are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency (SDLA). These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

As of December 21, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Stephen L. Amell (VT)
Mark W. Beery (OH)
Douglas Cantwell (TN)
Kenneth B. Elder (KY)
Ronnie D. Moody (NC)
Michael S. Shumake (VA)
Douglas J. Simms, Jr. (NC)
Shaen C. Smith (MN)
Tara VanHorne (PA)

The drivers were included in docket number FMCSA–2013–0108; FMCSA–2014–0382; FMCSA–2015–0322; FMCSA–2015–0323; FMCSA–2016–0008. Their exemptions are applicable as of December 21, 2018, and will expire on December 21, 2020.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the two-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical

examination by a certified Medical Examiner, as defined by 49 CFR 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based on its evaluation of the nine exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: February 8, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–02662 Filed 2–15–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0059]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its decision to deny applications from 32 individuals who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2018–0059, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. 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,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

FMCSA received applications from 32 individuals who requested an exemption from the FMCSRs prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a CMV from operating CMVs in interstate commerce.

FMCSA has evaluated the eligibility of these applicants and concluded that granting these exemptions would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(8).

III. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for five years if it finds such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the eligibility criteria, the terms and conditions for Federal exemptions, and an individualized assessment of each applicant's medical information provided by the applicant.

IV. Conclusion

The Agency has determined that these applicants do not satisfy the eligibility criteria or meet the terms and conditions of the Federal exemption and granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(8). Therefore, the 32 applicants in this notice have been denied exemptions from the physical qualification standards in 49 CFR 391.41(b)(8).

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitutes final action by the Agency. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 31 applicants do not meet the minimum time requirement for being seizure-free, either on or off of anti-seizure medication:

Van D. Allen (VT)
Lance Bacile (LA)
Joseph W. Benton (LA)
William C. Berkley (NJ)
Joseph A. Burckhalter (NC)
Francisco Burila (ME)
Victor Cox (NC)
Larry A. Giese (WI)
John Giraldo-Palau (NJ)
Martin Glipsie (OH)
David Gunzenhauser (NJ)
Cynthia Harris (IN)
Christopher Jurich (PA)
Mark L. Kaiser (CO)
David Kerr (NM)
Ashley Liebler (CA)
Dan Liners (MN)
Alexandria R. Lockhart (PA)

Luis Lozado (NJ)
Victor Martinez (CA)
Matthew Nelson (NV)
Lance Payne (NV)
Bryian Peterson (OR)
Robert Polsifer Jr. (CA)
Monico Ramirez (IL)
Greg Reninger (IL)
Daniel Ricker (OR)
Devyn Roberts (KY)
Trenton A. Romig (PA)
Dewitt Stafford (WI)
Joshua Trainum (PA)

The following applicant does not meet the minimum time requirement for a stable anti-seizure medication dosage: Scott McElmury (MN)

Issued on: February 8, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–02652 Filed 2–15–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0140]

Hours of Service of Drivers: Application for Exemption; American Pyrotechnics Association

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant the American Pyrotechnics Association (APA) an exemption from the hours-of-service (HOS) regulations that require a motor carrier to install and require each of its drivers to use an electronic logging device (ELD) to record the driver's HOS. APA requested the exemption for APA member companies currently holding an exemption from the HOS 14-hour rule during the Independence Day season. These member companies will continue to use paper records of duty status (RODS) in lieu of an ELD during the designated Independence Day periods. FMCSA has determined that the terms and conditions of the exemption ensure a level of safety equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: The exemption is effective from June 28 through July 8, at 11:59 p.m. local time, in 2019 and 2020.

ADDRESSES:

Docket: For access to the docket to read background documents or comments, go to *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 Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. LaTonya Mimms, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366–9220, Email: *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

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2018–0140'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4225. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

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

The APA reports that it is a national safety and trade association of the U.S. fireworks industry, representing manufacturers, importers, distributors, wholesalers, retailers, suppliers and professional display companies. APA has over 250 member companies. Along with their subsidiaries, APA's member companies are responsible for nearly 90 percent of the fireworks manufactured, imported, distributed and professionally displayed in the United States.

The Agency published a notice of APA's exemption application on April 24, 2018 (83 FR17877). APA sought a limited exemption from the ELD requirements to allow member companies currently holding an exemption from the 14-hour rule to continue to maintain paper RODs in lieu of ELDs. Various APA members have held 2-year exemptions during Independence Day periods from 2005 through 2014. On May 9, 2016, the current exemption for APA members was extended to July 8, 2020, pursuant to section 5206(b)(2)(A) of the Fixing America's Surface Transportation (FAST) Act (81 FR 28115).

APA asserted that granting this exemption would be appropriate because there is no basis to believe that continuing to allow paper record keeping for this limited subset of the regulated community, and for a limited period of time, would impact operational safety in any regard. In addition, due to the unique nature of the fireworks industry, requiring the use of

ELDs for this limited seasonal delivery period would impose a substantial financial burden on members because it would require them to purchase/lease ELD systems for use for only a short period every year.

APA explained that its members rely upon intermittent casual drivers periodically throughout the year and particularly during the busy Independence Day season when the industry depends upon short-term rental trucks. The fireworks industry is unique in that it rents or leases approximately 90% of its vehicles throughout the year for less than 30 days at a time. However, most rental companies require a minimum rental period of 14 to 21 days, although APA member companies may only use the trucks in commerce for up to 11 days. The mix of vehicles rented includes pick-up trucks, cargo vans, city vans and straight trucks with a GVW of less than 26,000 pounds. The industry relies heavily upon short-term rental trucks to transport and deliver 98% of the 16,000 Independence Day fireworks displays nationwide. This exemption would only apply when the carriers designated in the APA HOS exemption, including revisions, are operating within the specified Independence Day periods.

IV. Public Comments

The Agency received 27 comments in response to the application published on April 24. The Owner-Operator Independent Drivers Association (OOIDA) and 20 individuals supported the exemption. The Advocates for Highway and Auto Safety (Advocates) and four individuals opposed it. One individual took no position on the exemption request.

OOIDA stated that ''the current ELD marketplace does not adequately support the needs of the entire trucking industry. Since the December 2017 implementation, professional drivers have shared the real-world problems they have experienced because of malfunctioning devices, lack of connectivity in rural areas, and false claims made by ELD vendors. For these reasons, along with APA's prior exemption history, FMCSA should grant the exemption request.''

The Advocates said ''the application does not meet the statutory and regulatory requirements for the exemption. The application fails to consider practical alternatives, justify the need for the exemption, provide an analysis of the safety impacts the requested exemption may cause, and provide information on the specific countermeasures to be undertaken to ensure that the exemption will achieve an equivalent or greater level of safety than would be achieved absent the exemption.''

V. FMCSA Decision

FMCSA has determined that granting an ELD exemption to APA for a limited period of 11 days during Independence Day celebrations will achieve a level of safety equivalent to or greater than the level that compliance with the ELD rule would ensure. Prior to publishing the **Federal Register** notice announcing the receipt of APA's application request for the exemption, FMCSA ensured that each APA member currently holding a limited exemption from the 14-hour rule possessed an active USDOT registration, minimum required levels of insurance, and was not subject to any ''imminent hazard'' or other out-of-service (OOS) orders. The Agency conducted a comprehensive investigation of the safety performance history of each of those motor carriers. As part of this process, FMCSA reviewed its Motor Carrier Management Information System safety records, including inspection and accident reports submitted to FMCSA by State agencies.

With regard to safety statistics, none of the carriers was under an imminent hazard or OOS order, had any alerts in the Safety Management System (SMS), or was under investigation by the Pipeline and Hazardous Materials Safety Administration. All had ''satisfactory'' safety ratings based on compliance reviews, and all had valid Hazardous Materials Safety Permits.

VI. Terms and Conditions of the Exemption

Period of the Exemption

The exemption from 49 CFR 395.8(a)(1)(i) is effective from June 28 through July 8, at 11:59 p.m. local time, in 2019 and 2020, for the 53 carriers identified in the appendix to this notice.

Terms and Conditions of the Exemption

This exemption from the ELD provisions in 49 CFR 395.8(a)(1)(i) is restricted to drivers employed by the APA motor carriers already covered by the multi-year exemption from the Agency's 14-hour rule listed in the appendix table of this notice. Drivers covered by the exemption may continue to use paper logs to record their record of duty status instead of using an ELD. Motor carriers and drivers must comply with all other requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399) and Hazardous Materials Regulations (49 CFR parts 105–180).

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

FMCSA Notification

Exempt motor carriers are required to notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving their CMVs operating under this exemption. The notification must be by email to *MCPSD@DOT.GOV* and include the following information:

a. Name of the Exemption: ''APA ELD''

b. Date of the accident,

c. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,

d. Driver's name and driver's license State, number, and class,

e. Co-Driver's name and driver's license State, number, and class,

f. Vehicle company number and power unit license plate State and number,

g. Number of individuals suffering physical injury,

h. Number of fatalities,

i. The police-reported cause of the accident,

j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and

k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

In addition, if there are any injuries or fatalities, the carrier must forward the police accident report to *MCPSD@DOT.GOV* as soon as available.

Termination

The FMCSA does not believe the motor carriers and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions. Exempt motor carriers and

drivers are subject to FMCSA monitoring while operating under this exemption.

Issued on: February 8, 2019.

Raymond P. Martinez,

Administrator.

APPENDIX TO NOTICE OF APPLICATION FOR APPROVAL OF MOTOR CARRIERS TO UTILIZE AMERICAN PYROTECHNICS ASSOCIATION'S (APA) EXEMPTION FROM THE ELD RULE IN HOURS OF SERVICE FOR DRIVERS REGULATIONS FOR INDEPENDENCE DAY PERIODS

[June 28 through July 8, 2020]

Motor carrier	Street address	City, state, zip code	DOT No.
1. American Fireworks Company	7041 Darrow Road	Hudson, OH 44236	103972
2. American Fireworks Display, LLC	P.O. Box 980	Oxford, NY 13830	2115608
3. AM Pyrotechnics, LLC	2429 East 535th Rd	Buffalo, MO 65622	1034961
4. Arthur Rozzi Pyrotechnics	6607 Red Hawk Ct	Maineville, OH 45039	2008107
5. Artisan Pyrotechnics, Inc	82 Grace Road	Wiggins, MS 39577	1898096
6. Atlas PyroVision Entertainment Group, Inc	136 Old Sharon Rd	Jaffrey, NH 03452	789777
7. Central States Fireworks, Inc	18034 Kincaid Street	Athens, IL 62613	1022659
8. East Coast Pyrotechnics, Inc	4652 Catawba River Rd	Catawba, SC 29704	545033
9. Entertainment Fireworks, Inc	13313 Reeder Road SW	Tenino, WA 98589	680942
10. Falcon Fireworks	3411 Courthouse Road	Guyton, GA 31312	1037954
11. Fireworks & Stage FX America	12650 Hwy 67S., Suite B	Lakeside, CA 92040	908304
12. Fireworks by Grucci, Inc	20 Pinehurst Drive	Bellport, NY 11713	324490
13. Flashing Thunder Fireworks dba Legal Aluminum King Mfg.	700 E Van Buren Street	Mitchell, IA 50461	420413
14. J&J Computing dba Fireworks Extravaganza	174 Route 17 North	Rochelle Park, NJ 07662	2064141
15. Gateway Fireworks Displays	PO Box 39327	St Louis, MO 63139	1325301
16. Great Lakes Fireworks	24805 Marine	Eastpointe, MI 48021	1011216
17. Hamburg Fireworks Display, Inc	2240 Horns Mill Road SE	Lancaster, OH	395079
18. Hawaii Explosives & Pyrotechnics, Inc	17–7850 N. Kulani Road	Mountain View, HI 96771	1375918
19. Hollywood Pyrotechnics, Inc	1567 Antler Point	Eagan, MN 55122	1061068
20. Homeland Fireworks, Inc	P.O. Box 7	Jamieson, OR 97909	1377525
21. J&M Displays, Inc	18064 170th Ave	Yarmouth, IA 52660	377461
22. Lantis Fireworks, Inc	130 Sodrac Dr., Box 229	N. Sioux City, SD 57049	534052
23. Legion Fireworks Co., Inc	10 Legion Lane	Wappingers Falls, NY 12590	554391
24. Miand Inc. dba Planet Productions (Mad Bomber)	PO Box 294, 3999 Hupp Road R31.	Kingsbury, IN 46345	777176
25. Martin & Ware Inc. dba Pyro City Maine & Central Maine Pyrotechnics.	P.P. Box 322	Hallowell, ME 04347	734974
26. Melrose Pyrotechnics, Inc	1 Kingsbury Industrial Park	Kingsbury, IN 46345	434586
27. Montana Display Fireworks, Inc	9480 Inspiration Road	Missoula, MT 59808	1030231
28. Precocious Pyrotechnics, Inc	4420–278th Ave NW	Belgrade, MN 56312	435931
29. Pyro Shows, Inc	115 N 1st Street	LaFollette, TN 37766	456818
30. Pyro Shows of Alabama, Inc	3325 Poplar Lane	Adamsville, AL 35005 55063	2859710
31. Pyro Shows of Texas, Inc	6601 9 Mile Azle Rd	Fort Worth, TX 76135	2432196
32. Pyro Engineering Inc., dba/Bay Fireworks	400 Broadhollow Rd., Ste #3	Farmingdale, NY 11735	530262
33. Pyro Spectaculars, Inc	3196 N Locust Ave	Rialto, CA 92376	029329
34. Pyro Spectaculars North, Inc	5301 Lang Avenue	McClellan, CA 95652	1671438
35. Pyrotechnic Display, Inc	8450 W. St. Francis Rd	Frankfort, IL 60423	1929883
36. Pyrotecnico (S. Vitale Pyrotechnic Industries, Inc.)	302 Wilson Rd	New Castle, PA 16105	526749
37. Pyrotecnico FX	6965 Speedway Blvd. Suite 115.	Las Vegas, NV 89115	1610728
38. Rainbow Fireworks, Inc	76 Plum Ave	Inman, KS 67546	1139643
39. RES Specialty Pyrotechnics	21595 286th St	Belle Plaine, MN 56011	523981
40. Rozzi's Famous Fireworks, Inc	11605 North Lebanon Rd	Loveland, OH 45140	0483686
41. Sky Wonder Pyrotechnics, LLC	3626 CR 203	Liverpool, TX 77577	1324580
42. Skyworks, Ltd	13513 W. Carrier Rd	Carrier, OK 73727	1421047
43. Sorgi American Fireworks Michigan, LLC	935 Wales Ridge Rd	Wales, MI 48027	2475727
44. Spielbauer Fireworks Co, Inc	220 Roselawn Blvd	Green Bay, WI 54301	046479
45. Spirit of 76	6401 West Hwy 40	Columbia, MO 65202	2138948
46. Starfire Corporation	682 Cole Road	Carrolltown, PA 15722	554645
47. Vermont Fireworks Co., Inc./Northstar Fireworks Co., Inc	2235 Vermont Route 14 South	East Montpelier, VT 05651	310632
48. Western Display Fireworks, Ltd	10946 S. New Era Rd	Canby, OR 97013	498941
49. Western Enterprises, Inc	PO Box 160	Carrier, OK 73727	203517
50. Wolverine Fireworks Display, Inc	205 W Seidlers	Kawkawlin, MI	376857
51. Young Explosives Corp	P.O. Box 18653	Rochester, NY 14618	450304
52. Zambelli Fireworks MFG, Co., Inc	PO Box 1463	New Castle, PA 16103	033167
53. ZY Pyrotechnics, LLC dba Skyshooter Displays, Inc	1014 Slocum Road	Wapwallopen, PA 18660	1030231

[FR Doc. 2019–02661 Filed 2–15–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2018–0057]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt eight individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on January 9, 2019. The exemptions expire on January 9, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2018–0057, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. 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,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On November 27, 2018, FMCSA published a notice announcing receipt of applications from eight individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (83 FR 60940). The public comment period ended on December 27, 2018, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section *H. Epilepsy: § 391.41(b)(8),* paragraphs 3, 4, and 5.]

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption for up to five years from the epilepsy and seizure disorder prohibition in 49 CFR 391.41(b)(8) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

In reaching the decision to grant these exemption requests, FMCSA considered the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The January 15, 2013, **Federal Register** notice (78 FR 3069) provides the current MEP recommendations which is the criteria the Agency uses to grant seizure exemptions.

The Agency's decision regarding these exemption applications is based on an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System (CDLIS) for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System (MCMIS). For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA). A summary of each applicant's seizure history was discussed in the November 27, 2018, **Federal Register** notice (83 FR 60940) and will not be repeated in this notice.

These eight applicants have been seizure-free over a range of 34 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last two years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

[1] See *http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171.a* and *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

Consequently, FMCSA finds that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in 49 CFR 391.41(b)(8) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must remain seizure-free and maintain a stable treatment during the two-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified Medical Examiner, as defined by 49 CFR 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the eight exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition, 49 CFR 391.41(b)(8), subject to the requirements cited above:

Kevin L. Addington (PA)
Miodrag Djukanovic (OR)
Daniel R. Gast (KS)
David R. Johnston (MN)
Sheldon R. Martin (NY)
Brian L. McDaniel (MO)
Kevin D. Wiggins (KY)
Robert R. Woods, Jr. (CT)

In accordance with 49 U.S.C. 31315(b)(1), each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: February 8, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–02660 Filed 2–15–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0010]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of Title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated December 14, 2018, Canadian National Railway Company (CN) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2019–0010.

Applicant: Canadian National Railway Company, Mr. Tom Hilliard, Assistant Chief S&C—Southern Region, 17641 S Ashland Avenue, Homewood, IL 60430.

The U.S.-based operating railroad subsidiary of CN, Wisconsin Central Limited requests approval to suspend testing and permanently remove the signal components between Mile Post (MP) 1.8 and the end of track MP 0.0 on the Lakefront Subdivision, near Chicago, IL.

CN states the reason for the proposed change is that the track connection with the Lakefront Subdivision has been retired so the continuation of the track towards 94th Street CSL Interlocking and Bridge 710 is inaccessible. This makes the signal components unnecessary for a track that cannot be used. The hand-throw turnout beside 95th Street has been removed and the Calumet River Bridge is fixed in the upright position for vessels with no rail traffic.

There is no change in method of operation. The inaccessible track has not been used and does not have train operations.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by April 5, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2019–02630 Filed 2–15–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0003]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that on November 26, 2018, Canadian National Railway Company (CN) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 232.305, *Single car air brake tests.* Specifically, CN requests relief from § 232.305(b)(2), regarding the requirement to conduct a single car air brake test (SCT) on a car when it is placed on a repair track for any reason, and the car has not had a SCT in the previous 12 months.

CN seeks this relief for its operation in Fulton, KY, a purpose-built facility that would utilize a drop table to safely and efficiently replace defective wheelsets while keeping the train intact. CN's proposed in-train wheelset replacement program would identify and replace wheelsets with minor defects falling between Association of American Railroads standards and FRA requirements, which will assist in reducing the number of wheel, bearing, impact, and broken rail-caused derailments, as well as associated injuries.

CN states that rigid enforcement of 49 CFR 232.305(b)(2) threatens the viability of CN's in-train wheelset replacement initiative because CN cannot feasibly perform SCTs on all cars receiving wheelset replacements or all cars that are placed on that track which have not received a SCT in the previous 12 months. CN provides an example of how rigid enforcement would impact this operation: a train made up of 100 cars that have received a SCT 24 months ago would be required to have all 100 cars receive a SCT simply because they are on a track where wheelset change-outs are conducted. The wheelset can be changed out in 10 minutes; however, the SCT would be a minimum of 45 minutes per car.

CN notes that FRA has recognized SCTs associated with in-train wheelset replacements are not always critical to ensuring railcar and braking system safety, as:

—FRA regulations do not require SCTs for cars undergoing wheelset replacements less than 12 months following their previous SCT;

—FRA requires a SCT only once every five or eight years for rail cars that do not undergo repairs;

—FRA does not require SCTs following wheelset changes on cars at intermodal loading ramps; and

—FRA has granted this relief to other railroads (*see* Docket Number FRA–2007–28454).

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by April 5, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2019–02629 Filed 2–15–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

Notice of OFAC Actions

On February 13, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Entities

1. NEW HORIZON ORGANIZATION (a.k.a. THE INTERNATIONAL INSTITUTE OF INDEPENDENT THINKERS AND ARTISTS), 1st Floor, No. 91, East 2nd Aseman St., Aseman St., Ketab Sq., Tehran, Iran; website newhorizon.ir; Additional Sanctions Information—Subject to Secondary Sanctions [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

Designated pursuant to section 1(d)(i) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for assisting in, sponsoring, or providing financial, material, or technological support for, or financial or other services to or in support of, Iran's ISLAMIC REVOLUTIONARY GUARD CORPS–QODS FORCE (IRGC–QF), a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. NET PEYGARD SAMAVAT COMPANY (a.k.a. NET PEYGARD SAMAVAT (IN SEC) COMPANY), No. 11, 16 Alley, Shahid Zanhari Street, Shokoufeh Street, Abdol Abbad, Tehran 1894157315, Iran; Additional Sanctions Information—Subject to Secondary Sanctions; National ID No. 14004021920 (Iran); Business Registration Number 453542 (Iran) [HRIT–IR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS ELECTRONIC WARFARE AND CYBER DEFENSE ORGANIZATION).

Designated pursuant to section 1(a)(ii)(C) of Executive Order 13606 of April 22, 2012, ''Blocking the Property and Suspending Entry Into the United States of Certain Persons With Respect to Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology'' (E.O. 13606) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's ISLAMIC REVOLUTIONARY GUARD CORPS–ELECTRONIC WARFARE AND CYBER DEFENSE ORGANIZATION (IRGC–EWCD), a person whose property and interests in property are blocked pursuant to E.O. 13606.

Individuals

1. ABBASI, Hossein (a.k.a. ALAVI, Hossein), Iran; DOB 06 Dec 1986; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [HRIT–IR] (Linked To: NET PEYGARD SAMAVAT COMPANY).

Designated pursuant to section 1(a)(ii)(D) of E.O. 13606 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, NET PEYGARD SAMAVAT COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13606.

2. GHASHGHAVI, Hamed, Iran; DOB 23 Apr 1989; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [SDGT] [IFSR] (Linked To: NEW HORIZON ORGANIZATION).

Designated pursuant to section 1(c) of E.O. 13224 for acting for or on behalf of Iran's NEW HORIZON ORGANIZATION, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. MASOUMPOUR, Mojtaba, Iran; DOB 1988; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [HRIT–IR] (Linked To: NET PEYGARD SAMAVAT COMPANY).

Designated pursuant to section 1(a)(ii)(D) of E.O. 13606 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, NET PEYGARD SAMAVAT COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13606.

4. MESRI, Behzad (a.k.a. ''Skote Vahshat''), Iran; DOB 26 Aug 1988; alt. DOB 27 Aug 1988; POB Naghadeh, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [HRIT–IR] [CYBER2] (Linked To: NET PEYGARD SAMAVAT COMPANY).

Designated pursuant to section 1(a)(ii)(D) of E.O. 13606 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, NET PEYGARD SAMAVAT COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13606.

5. MIRZABEYGI, Milad, Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 3370084457 (Iran) (individual) [HRIT–IR] (Linked To: NET PEYGARD SAMAVAT COMPANY).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13606 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, NET PEYGARD SAMAVAT COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13606.

6. MONTAZAMI, Gholamreza, Iran; DOB 1955; POB Mashhad, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [SDGT] [IFSR] (Linked To: NEW HORIZON ORGANIZATION).

Designated pursuant to section 1(c) of E.O. 13224 for acting for or on behalf of Iran's NEW HORIZON ORGANIZATION, a person whose property and interests in property are blocked pursuant to E.O. 13224.

7. ORDOUBADI, Nader Talebzadeh, Iran; DOB 1954; POB Tehran, Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [SDGT] [IFSR] (Linked To: NEW HORIZON ORGANIZATION).

Designated pursuant to section 1(c) of E.O. 13224 for acting for or on behalf of Iran's NEW HORIZON ORGANIZATION, a person whose property and interests in property are blocked pursuant to E.O. 13224.

8. PARVAR, Hossein, Iran; DOB 21 Nov 1992; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [HRIT–IR] (Linked To: NET PEYGARD SAMAVAT COMPANY).

Designated pursuant to section 1(a)(ii)(D) of E.O. 13606 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, NET PEYGARD SAMAVAT COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13606.

9. SHIRINKAR, Mohammad Bagher (a.k.a. TEHRANI, Mojtaba), Iran; DOB 21 Sep 1979; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 0067948431 (Iran) (individual) [HRIT–IR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS ELECTRONIC WARFARE AND CYBER DEFENSE ORGANIZATION).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13606 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's IRGC–EWCD, a person whose property and interests in property are blocked pursuant to E.O. 13606.

10. TALEBZADEH, Zeinab Mehanna (a.k.a. MEHANNA, Zeinab Naiem); DOB 19 Oct 1969; nationality Iran; alt. nationality Lebanon; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Female (individual) [SDGT] [IFSR] (Linked To: NEW HORIZON ORGANIZATION).

Designated pursuant to section 1(c) of E.O. 13224 for acting for or on behalf of Iran's NEW HORIZON ORGANIZATION, a person whose

property and interests in property are blocked pursuant to E.O. 13224.

Dated: February 13, 2019.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2019–02659 Filed 2–15–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple IRS Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before March 21, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Quintana by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Geographic Availability Statement.

OMB Control Number: 1545–0973.

Type of Review: Extension without change of a currently approved collection.

Description: This form is used to collect information from applicants for the Senior Executive Service Candidate Development Program and other executive positions. The form states an applicant's minimum area of availability and is used for future job placement.

Form: Form 8569.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 500.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 500.

Estimated Time per Response: .17 hours per response.

Estimated Total Annual Burden Hours: 84.

Title: Revenue Procedure 2006–10, Acceptance Agents.

OMB Control Number: 1545–1499.

Type of Review: Extension without change of a currently approved collection.

Description: Revenue Procedure 2006–10 describes application procedures for becoming an acceptance agent and the requisite agreement that an agent must execute with IRS.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 8,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 260,325.

Estimated Time per Response: .1 hour per response.

Estimated Total Annual Burden Hours: 24,960.

Title: Entity Classification Election.

OMB Control Number: 1545–1516.

Type of Review: Extension without change of a currently approved collection.

Description: An eligible entity uses Form 8832 to elect how it will be classified for federal tax purposes, as a corporation, a partnership, or an entity disregarded as separate from its owner. An eligible entity is classified for federal tax purposes under the default rules unless it files Form 8832 or Form 2553, Election by a Small Business Corporation. The IRS will use the information entered on this form to establish the entity's filing and reporting requirements for federal tax purposes.

Form: 8832.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 5,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 5,000.

Estimated Time per Response: 7.18 hours per response.

Estimated Total Annual Burden Hours: 35,900.

Title: TD 8769 (Final)—Permitted Elimination of Pre-retirement Optional Forms of Benefit.

OMB Control Number: 1545–1545.

Type of Review: Extension without change of a currently approved collection.

Description: The previously approved final regulations permit taxpayers to amend qualified plans to eliminate plan provisions for benefit distributions before retirement but after age 70½, if certain conditions are satisfied.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 135,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 135,000.

Estimated Time per Response: .36 hour per response.

Estimated Total Annual Burden Hours: 48,800.

Title: Waiver of Right to Consistent Agreement of Partnership Items and Partnership-Level Determinations as to Penalties, Additions to Tax, and Additional Amounts.

OMB Control Number: 1545–1969.

Type of Review: Extension without change of a currently approved collection.

Description: Per the IRS Global Settlement Initiative, the information requested on Form 13751 will be used to determine the eligibility for participation in the settlement initiative of taxpayers related through TEFRA (Tax Equity and Fiscal Responsibility Act of 1982) partnerships to ineligible applicants. Such determinations will involve partnership items and partnership-level determinations, as well as the calculation of tax liabilities resolved under this initiative, including penalties and interest.

Form: 13751.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 100.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 100.

Estimated Time per Response: 1 hour per response.

Estimated Total Annual Burden Hours: 100.

Title: Qualified Plug-in Electric Drive Motor Vehicle Credit.

OMB Control Number: 1545–2137.

Type of Review: Revision of a currently approved collection.

Description: The notice sets forth guidance relating to the qualified plug-in electric drive motor vehicle credit

under § 30D of the Internal Revenue Code, as in effect for vehicles acquired after December 31, 2009. For tax years beginning after 2008, Form 8936 is used to figure the credit for qualified plug-in electric drive motor vehicles placed in service during the tax year. The credit attributable to depreciable property (vehicles used for business or investment purposes) is treated as a general business credit. Any credit not attributable to depreciable property is treated as a personal credit.

Form: 8936.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 500.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 500.

Estimated Time per Response: 5.35 hours per response.

Estimated Total Annual Burden Hours: 2,675.

Title: Notice of Expatriation and Waiver of Treaty Benefits.

OMB Control Number: 1545–2138.

Type of Review: Extension without change of a currently approved collection.

Description: Information used by taxpayer to notify payer of expatriation so that proper tax treatment is applied by payer. The taxpayer is required to file this form to obtain any benefit accorded by the statute.

Form: W–8CE.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 500.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 500.

Estimated Time per Response: 5.68 hours per response.

Estimated Total Annual Burden Hours: 2,840.

Title: Identity Theft Affidavit and Business Identity Theft Affidavit.

OMB Control Number: 1545–2139.

Type of Review: Revision of a currently approved collection.

Description: The primary purpose of these forms is to provide a method of reporting identity theft issues to the IRS so that the IRS may document situations where individuals or businesses are or may be victims of identity theft. Additional purposes include the use in the determination of proper tax liability and to relieve taxpayer burden. The information may be disclosed only as provided by 26 U.S.C 6103.

Form: 14039, 14039–B.

Affected Public: Individuals or Households, Businesses or other for-profits.

Estimated Number of Respondents: 402,433.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 402,433.

Estimated Time per Response: .696 hour per response.

Estimated Total Annual Burden Hours: 514,836.

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

Dated: February 12, 2019.

Jennifer P. Quintana,

Treasury PRA Clearance Officer.

[FR Doc. 2019–02573 Filed 2–15–19; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF VETERANS AFFAIRS

Creating Options for Veterans Expedited Recovery (COVER) Commission; Notice of Meeting

In accordance with the Federal Advisory Committee Act, the Creating Options for Veterans Expedited Recover (COVER) Commission gives notice that a meeting will be held March 5, 2019 COVER Commission Duty Workgroup Virtual Out Briefs.

The purpose of the COVER Commission is to examine the evidence-based therapy treatment model used by the Department of Veterans Affairs (VA) for treating mental health conditions of Veterans and the potential benefits of incorporating complementary and integrative health approaches as standard practice throughout the Department.

On March 5, 2019, the open meeting will be held virtually from 1:00–4:00 p.m. EST via a dedicated phone line for the COVER Commission and a listening line for the public to call in. These meetings are for Commissioners to summarize the COVER Commission subcommittee's activities and findings since the open session updates on January 15, 2019 and to further discuss applicability to the charter and legislative requirements.

The listening line number for the public for the open session for subcommittee updates on March 5, 2019 is 800–767–1750; access code 48664#. The line will be activated 10 minutes before the call-in session. Listeners are asked to acknowledge themselves as being present will be asked to sign in virtually with an email to *COVERCommission@va.gov.* Members of the public are invited to open sessions. Any member of the public seeking additional information should email *COVERCommission@va.gov.* The Designated Federal Officer for the Commission is Mr. John Goodrich. He and the staff will be monitoring and responding to questions or comments sent to this email box. The Committee will also accept written comments which may be sent to the same email box. In the public's communications with the COVER Commission, the writers must identify themselves and state the organizations, associations, or persons they represent.

Dated: February 12, 2019.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–02582 Filed 2–15–19; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 84 Tuesday,

No. 33 February 19, 2019

Part II

Securities and Exchange Commission

17 CFR Parts 201 and 240

Applications by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons To Effect or Be Involved in Effecting Security-Based Swaps; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 201 and 240

[Release No. 34–84858; File No. S7–14–15]

RIN 3235–AL76

Applications by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons To Effect or Be Involved in Effecting Security-Based Swaps

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: Pursuant to Section 15F(b)(6) of the Securities Exchange Act of 1934 (''Exchange Act''), as added by Section 764(a) of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), the Securities and Exchange Commission (''Commission'') is adopting Rule of Practice 194. Rule of Practice 194 provides a process for a registered security-based swap dealer or major security-based swap participant (collectively, ''SBS Entity'') to make an application to the Commission for an order permitting an associated person that is a natural person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the SBS Entity. Rule of Practice 194 also provides an exclusion for an SBS Entity from the prohibition in Exchange Act Section 15F(b)(6) with respect to associated persons that are not natural persons. Finally, Rule of Practice 194 provides that, subject to certain conditions, an SBS Entity may permit an associated person that is a natural person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on its behalf, without making an application pursuant to the rule, where the Commission, the Commodity Futures Trading Commission (''CFTC''), a self-regulatory organization (''SRO''), or a registered futures association has granted a prior application or otherwise granted relief from the statutory disqualification with respect to that associated person.

DATES: Effective April 22, 2019.

FOR FURTHER INFORMATION CONTACT: Natasha Vij Greiner, Assistant Chief Counsel, Devin Ryan, Senior Special Counsel, and Edward Schellhorn, Special Counsel at 202–551–5550, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

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I. Background

Exchange Act Section 15F(b)(6), as added by Section 764(a) of the Dodd-Frank Act, makes it unlawful for an SBS Entity to permit an associated person [1] who is subject to a statutory disqualification [2] to effect or be involved in effecting security-based swaps on behalf of the SBS Entity if the SBS Entity knew, or in the exercise of reasonable care should have known, of the statutory disqualification, ''[e]xcept to the extent otherwise specifically provided by rule, regulation, or order of the Commission.'' [3] In this regard, Exchange Act Section 15F(b)(6) gives the Commission the discretion to determine, by order, that a statutorily disqualified associated person may effect or be involved in effecting security-based swaps on behalf of an SBS Entity, and/or to establish rules concerning the statutory prohibition in Exchange Act Section 15F(b)(6). [4]

[1] Exchange Act Section 3(a)(70) generally defines the term ''person associated with'' an SBS Entity to include (i) any partner, officer, director, or branch manager of an SBS Entity (or any person occupying a similar status or performing similar functions); (ii) any person directly or indirectly controlling, controlled by, or under common control with an SBS Entity; or (iii) any employee of an SBS Entity. *See* 15 U.S.C. 78c(a)(70). The definition generally excludes persons whose functions are solely clerical or ministerial. *Id.* The definition of ''person'' under Exchange Act Section 3(a)(9) is not limited to natural persons, but extends to both entities and natural persons. *See* 15 U.S.C. 78c(a)(9) (''The term 'person' means a natural person, company, government, or political subdivision, agent, or instrumentality of a government.'').

[2] The term statutory disqualification as used in Exchange Act Section 15F(b)(6) parallels the definition of statutory disqualification in Exchange Act Section 3(a)(39)(A) through (F), 15 U.S.C. 78c(a)(39)(A) through (F). *See* Applications by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons To Effect or Be Involved in Effecting Security-Based Swaps, Exchange Act Release No. 75612 (Aug. 5, 2015), 80 FR 51684, 51686, n.16 (Aug. 25, 2015) (''Proposing Release'' or ''proposal'').

[3] Exchange Act Section 15F(b)(6) provides: ''Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant, if the security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.'' 15 U.S.C. 78o–10(b)(6). The statutory prohibition in Exchange Act Section 15F(b)(6), 15 U.S.C. 78o–10(b)(6), is parallel to a statutory provision for a swap dealer or major swap participant (collectively ''Swap Entities'') set forth in Section 4s(b)(6) of the Commodity Exchange Act (''CEA''), 7 U.S.C. 6s(b)(6).

[4] On June 15, 2011, the Commission issued an order that, among other things, granted temporary relief from compliance with Exchange Act Section

On August 5, 2015,[5] the Commission proposed Rule of Practice 194 to establish a process by which an SBS Entity could apply to the Commission to permit an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the SBS Entity.[6] As discussed in the Commission's proposal,[7] the federal securities laws provide various procedural avenues that allow certain registered entities to associate, where warranted, with persons subject to a statutory disqualification or other bar, including the Commission's Rule of Practice 193 [8] and the Financial Industry Regulatory Authority's (''FINRA'') eligibility proceedings (under the process set forth in Exchange Act Rule 19h–1).[9] The Commission modeled proposed Rule of Practice 194 on these existing processes where persons can make an application to reenter the industry despite previously being barred by the Commission or subject to a statutory disqualification with respect to membership or participation in, or association with a member of, an SRO.[10] Accordingly, the Commission proposed to establish a procedural framework that is similar to processes that are familiar to market participants.[11]

The Commission requested comment on all aspects of the proposal as well as two alternative approaches,[12] and received comments in response.[13]

II. Summary of Final Rule of Practice 194

The Commission is adopting Rule of Practice 194 largely as proposed, with certain modifications.[14] As adopted, Rule of Practice 194 provides a process by which an SBS Entity may apply to the Commission for an order permitting an associated person to effect or be involved in effecting security-based swaps on behalf of the SBS Entity where the associated person that is a natural person who is subject to a statutory disqualification and is thereby otherwise prohibited from effecting or being involved in effecting security-based swaps on behalf of an SBS Entity under Exchange Act Section 15F(b)(6). Rule of Practice 194 also provides an exclusion for an SBS Entity from the prohibition in Exchange Act Section 15F(b)(6) with respect to associated persons that are not natural persons (defined herein as ''associated person entities'').

In particular, as explained more fully in Section III below, the Commission is adopting the following provisions in Rule of Practice 194:

- Paragraph (a) of Rule of Practice 194, which defines the scope of the rule and provides a process for submitting applications by an SBS Entity seeking an order of the Commission to permit an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the SBS Entity.
- Paragraph (b) of Rule of Practice 194, which specifies the required showing for an application. For the Commission to issue an order granting relief under Rule of Practice 194, an SBS Entity is required to make a showing that it would be consistent with the public interest to permit the associated person to effect or be involved in effecting security-based swaps on behalf of the SBS Entity, notwithstanding the statutory disqualification.

15F(b)(6) for persons subject to a statutory disqualification who were, as of July 16, 2011, associated with an SBS Entity and who effected or were involved in effecting security-based swaps on behalf of such SBS Entity and allowed such persons to continue to be associated with an SBS Entity until the date upon which rules adopted by the Commission to register SBS Entities became effective. *See* Temporary Exemptions and Other Temporary Relief, Together With Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps, Exchange Act Release No. 64678 (June 15, 2011), 76 FR 36287, 36301, 36305–07 (June 22, 2011) (''June 2011 Temporary Exemptions Order''). *See also* Order Extending Certain Temporary Exemptions and a Temporary and Limited Exception Related to Security-Based Swaps, Exchange Act Release No. 75919 (Sept. 15, 2015), 80 FR 56519 (Sept. 18, 2015) (extending the June 2011 Temporary Exemptions Order).

[5] Concurrent with the issuance of the Rule of Practice 194 proposal, the Commission adopted registration requirements for SBS Entities, including certain rules relating to the statutory prohibition in Exchange Act Section 15F(b)(6). *See* Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 75611 (Aug. 5, 2015), 80 FR 48964 (Aug. 14, 2015) (''Registration Adopting Release''). *See also* 17 CFR 240.15Fb6–1 (providing that an SBS Entity, when it files an application to register with the Commission, may permit an associated person that is not a natural person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on the SBS Entity's behalf, provided that the statutory disqualification(s) occurred prior to the compliance date set forth in the Registration Adopting Release and that the SBS Entity identifies each such associated person on its registration form); 17 CFR 240.15Fb6–2 (requiring a Chief Compliance Officer of an SBS Entity to certify that it has performed background checks on all of its associated persons that are natural persons who effect or are involved in effecting security-based swaps on its behalf, and neither knows, nor in the exercise of reasonable care should have known, that any of its associated persons that effect or are involved in effecting security-based swaps on its behalf are subject to a statutory disqualification, unless otherwise specifically provided by rule, regulation, or order of the Commission). As discussed in Section III.K below, the Commission is making a technical amendment that deletes Rule 15Fb6–1 as well as Schedule C to Forms SBSE, SBSE–A and SBSE–BD and also conforms the instructions in those forms to take into account the associated person entity exclusion that the Commission is adopting in final Rule of Practice 194(c).

[6] *See* Proposing Release, 80 FR 51684–722.

[7] *See id.* at 51687–89.

[8] 17 CFR 201.193. Rule of Practice 193 provides a process by which individuals that are associated with entities that are not regulated by an SRO (*e.g.,* employees of an investment adviser, an investment company, or a transfer agent) can seek to reenter the securities industry despite previously being barred by the Commission. *See* Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 65543 (Oct. 12, 2011), 76 FR 65784, 65797 (Oct. 24, 2011) (''Registration Proposing Release''). *See also* Applications by Barred Individuals for Consent to Associate With a Registered Broker, Dealer, Municipal Securities Dealer, Investment Adviser or Investment Company, Exchange Act Release No. 20783, Investment Company Act Release No. 13839, Investment Advisers Act Release No. 903, 49 FR 12204 (Mar. 29, 1984).

[9] 17 CFR 240.19h–1. The FINRA Rule 9520 Series sets forth procedures for a person to become or remain associated with a member, notwithstanding the existence of a statutory disqualification, and for a current member or person associated with a member to obtain relief from the eligibility or qualification requirements of the FINRA By-Laws and rules. A member (or new member applicant) seeking to associate with a natural person subject to a statutory disqualification must seek approval from FINRA by filing a Form MC–400 application. *See* FINRA Form MC–400, *Membership Continuance Application, http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/industry/p011542.pdf.* Members (and new member applicants) that are themselves subject to a disqualification that wish to obtain relief from the eligibility requirements are required to submit a Form MC–400A application. *See* FINRA Form MC–400A, *Membership Continuance Application: Member Firm Disqualification Application, http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/industry/p013339.pdf.* Where required, FINRA sends a notice or notification to the Commission of its proposal to admit or continue the membership of a person or association with a member notwithstanding statutory disqualification in accordance with Exchange Act Rule 19h–1.

[10] ''Self-regulatory organization'' is defined in Section 3(a)(26) of the Exchange Act, 15 U.S.C. 78c(a)(26), as ''any national securities exchange, registered securities association, or registered clearing agency, or (solely for the purposes of sections 19(b), 19(c) and 23(b) of [the Exchange Act]) the Municipal Securities Rulemaking Board established by section 15B of this title.''

[11] In the proposal, the Commission also discussed, for example, the CFTC's approach with respect to the statutory prohibition for swap dealers or major swap participants (collectively ''Swap Entity'') as set forth in CEA Section 4s(b)(6), 7 U.S.C. 6s(b)(6). *See* Proposing Release, 80 FR at 51688–89. The CFTC, with respect to statutorily disqualified associated persons of Swap Entities, limits the definition of associated persons of Swap Entities to natural persons. *See* 17 CFR 1.3(aa). As a result, the prohibition in CEA Section 4s(b)(6), 7 U.S.C. 6s(b)(6), applies to natural persons (not entities) associated with a Swap Entity. For further discussion on the CFTC's approach to Swap Entities, see Section II.B.3 of the Proposing Release, 80 FR at 51688–89.

[12] *See* Proposing Release, 80 FR at 51701–05.

[13] These comment letters are available at: *https://www.sec.gov/comments/s7-14-15/s71415.shtml.*

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

• Paragraph (c) of Rule of Practice 194, which establishes an exclusion from the general prohibition in Exchange Act Section 15F(b)(6) with respect to all associated person entities.[15]

• Paragraphs (d) and (e) of Rule of Practice 194, which specify the form of the application with respect to an associated person that is a natural person and the items to be addressed in the written statement within the application.

• Paragraph (f) of Rule of Practice 194, which requires an applicant to provide as part of any application any order, notice or other applicable document reflecting the grant, denial or other disposition (including any dispositions on appeal) of any prior application concerning the associated person under Rule of Practice 194 and other similar processes.

• Paragraph (g) of Rule of Practice 194, which provides for notice to the applicant in cases where the Commission staff anticipates making an adverse recommendation to the Commission with respect to an application made pursuant to this rule. In such cases, the applicant will be provided with a written statement of the reasons for the Commission staff's preliminary recommendation, and the applicant will have 30 days to submit a written statement in response.

• Paragraph (h) to Rule of Practice 194, which provides that, where certain conditions are met, an SBS Entity does not need to file an application under Rule of Practice 194 to permit a statutorily disqualified associated person to effect or be involved in effecting security-based swaps on behalf of the SBS Entity. Specifically, paragraph (h) of Rule of Practice 194 allows an SBS Entity, subject to certain conditions, to permit a statutorily disqualified associated person to effect or be involved in effecting security-based swaps on behalf of the SBS Entity without making an application to the Commission, where the Commission, CFTC, an SRO (*e.g.,* FINRA) or a national securities exchange), or a registered futures association (*e.g.,* the National Futures Association (''NFA'')) has granted a prior application or otherwise granted relief from a statutory disqualification with respect to that associated person. In such cases where an SBS Entity meets the requirements of paragraph (h), the SBS Entity will be permitted to file a notice with the Commission (in lieu of an application).

III. Discussion

A. Rule of Practice 194(a)—Scope of the Rule

Proposed Rule of Practice 194 would have defined the scope of the rule, namely providing a process for an SBS Entity to seek relief from the Commission to permit an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the SBS Entity or to seek relief to change the terms and conditions of a previously issued Commission order pursuant to Rule of Practice 194.[16] The Commission proposed to allow an SBS Entity to voluntarily submit an application to the Commission to request an order where an associated person of an SBS Entity is subject to a statutory disqualification and consequently prohibited from effecting or being involved in effecting security-based swaps on behalf of the SBS Entity under Exchange Act Section 15F(b)(6).[17]

Although no commenters specifically commented on this provision of proposed Rule of Practice 194, the Commission received general comments regarding the scope of the rule as proposed.[18]

A commenter suggested that rather than permit SBS Entities to voluntarily submit an application to the Commission to request an order providing relief from Exchange Act Section 15F(b)(6), the Commission should instead reaffirm what the commenter viewed as the Congressional mandate by issuing a rule that prohibits, on a blanket basis, associated persons that are subject to a statutory disqualification from effecting or being involved in effecting security-based swaps on behalf of SBS Entities.[19]

Section 15F(b)(6) of the Exchange Act provides that, except where otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for an SBS Entity to permit any person associated with the SBS Entity who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the SBS Entity, if the SBS Entity knew, or in the exercise or reasonable care should have known, of the statutory disqualification.[20] Thus, while Exchange Act Section 15F(b)(6) makes it unlawful for an SBS Entity to permit an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the SBS Entity, it also gives the Commission the discretion to determine (by rule, regulation, or order) that a statutorily disqualified associated person may effect or be involved in effecting security-based swaps on behalf of an SBS Entity.[21] The Commission has determined to exercise its statutory authority under Exchange Act Section 15F(b)(6) to assess on a case-by-case basis whether to grant relief from the statutory prohibition because there may be instances where it is consistent with the public interest to permit an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the SBS Entity. Additionally, the commenter's approach[22] would deviate from the Commission's current practice in other contexts, which permits associated persons to apply to reenter the securities industry notwithstanding the existence of a statutory disqualification.[23] In that respect, adopting the commenter's approach could lead to the anomalous result where an applicant may be permitted to engage in securities transactions with members of the retail public—for example, as an associated person of a broker-dealer or investment adviser—but prohibited from effecting or being involved in effecting security-based swap transactions with significantly more sophisticated institutional clients as an associated person of an SBS Entity.[24] Although we acknowledge that security-based swaps may also be more complex and opaque than equities or bonds, thus increasing information asymmetries between SBS Entities and their clients, we believe that institutional clients may be more informed and may process disclosures more efficiently than retail investors in parallel settings.

The Commission also believes that a process for granting relief with respect to a statutory disqualification should be formalized, as suggested by one commenter.[25] Exchange Act Section

[15] In conjunction with adopting in Rule of Practice 194(c), the Commission is also making technical amendments to: (1) Delete Exchange Act Rule 15Fb6–1; (2) remove Schedule C to Forms SBSE, SBSE–A and SBSE–BD; and (3) remove all references to Schedule C in the instructions in the above-mentioned forms. *See* Section III.K, *infra,* for a further discussion of the technical amendments.

[16] *See* Proposing Release, 80 FR at 51689, 51719; proposed Rule of Practice 194(a).

[17] 15 U.S.C. 78o–10(b)(6); *see* proposed Rule of Practice 194(a).

[18] *See* Letter from Americans for Financial Reform, dated October 26, 2015 (''Americans for Financial Reform Letter''), at 1. *See also* Letter from Robert E. Rutkowski, dated October 27, 2015 (''Rutkowski Letter''). The Rutkowski Letter requested only that the Commission seriously consider the recommendations set forth in the Americans for Financial Reform Letter.

[19] Letter from Bartlett Naylor, Public Citizen, dated October 26, 2015 (''Public Citizen Letter''), at 1–2.

[20] *See* Note 3, *supra.*

[21] 15 U.S.C. 78o–10(b)(6).

[22] *See* Public Citizen Letter, at 1–2.

[23] *See, e.g.,* 17 CFR 240.19h–1; 17 CFR 201.193. *See also* Section I and Notes 8, 9, *supra.*

[24] *See* Proposing Release, 80 FR at 51698.

[25] *See* Americans for Financial Reform Letter, at 1. The commenter noted that without proposed Rule of Practice 194, SBS Entities would still be able to apply to the Commission for relief from the prohibition in Exchange Act Section 15F(b)(6); however, the commenter supported the Commission's efforts to formalize a process for seeking relief from the statutory prohibition of Exchange Act Section 15F(b)(6) to increase accountability and transparency into the application process.

15F(b)(6) provides the Commission with discretion to determine whether a statutorily disqualified associated person may effect or be involved in effecting security-based swaps on behalf of an SBS Entity. However, it does not specify what information should be provided to the Commission when an SBS Entity seeks relief, nor does it set forth the standard under which the Commission would evaluate requests for relief. Rule of Practice 194 specifies the information and documents that SBS Entities should provide to the Commission, as well as the applicable procedures and standard of review, for seeking relief from the statutory prohibition in Exchange Act Section 15F(b)(6). By articulating the materials to be submitted, the items to be considered, and the standard of review, Rule of Practice 194 provides a clear process for SBS Entities.[26] Therefore, the Commission is adopting paragraph (a) of Rule of Practice 194, which defines the scope of the rule, as proposed.

B. Rule of Practice 194(b)—Required Showing

Proposed Rule of Practice 194 provided that the applicant would be required to show that it would be consistent with the public interest to permit the associated person of the SBS Entity who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the SBS Entity.[27]

The Commission received one comment concerning the required showing set forth in the proposal. The commenter stated that, in assessing whether it is in the public interest to permit an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of an SBS Entity, the Commission should also consider whether the deterrent effect of disqualification would be diluted.[28] Specifically, the commenter stated that, to be granted relief, the SBS Entity should be required to show that granting relief ''would actually enhance the deterrent effect.'' [29]

In assessing whether it is consistent with the public interest to permit an associated person that is a natural person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of an SBS Entity, the Commission may consider deterrence, among other factors.[30] However, the Commission does not agree with the commenter that the ''applicant should be required to show that an exemption would actually enhance the deterrent effect'' [31] or that any petitioner for an exemption from disqualification should have to prove that the implicit deterrence impact of disqualification is not diluted by receiving a waiver from penalties from criminal misbehavior.[32] Either standard could preclude the Commission from granting relief even where the public interest otherwise warrants doing so—*i.e.,* raising deterrence above all other public interest considerations. Moreover, it is not clear that any applicant could meet either standard proposed by the commenter. The Commission does believe, however, consistent with the proposal,[33] that the applicant should bear the burden of showing that permitting the associated person to effect or be involved in effecting security-based swaps on behalf of the SBS Entity is consistent with the public interest.

The Commission believes that the public interest standard is appropriate and consistent with Section 15F(b)(6) of the Exchange Act [34] and is adopting the standard as proposed.

Exchange Act Section 15F(b)(6) is designed to limit the potential that associated persons who have engaged in certain types of ''bad acts'' will be able to negatively affect the security-based swap market and the participants in that market by prohibiting an SBS Entity from allowing a statutorily disqualified associated person to effect or be involved in effecting security-based swap transactions, absent Commission relief. However, Section 15F(b)(6) also specifically provides that the Commission can allow SBS Entities to permit such statutorily disqualified associated persons to effect or be involved in effecting security-based swap transactions. The public interest standard is intended to capture those situations where the risk of the associated person engaging in security-based swap activity that may harm the market or the participants in the market is mitigated. Thus, as stated in the proposal, the Commission believes that it may grant relief in cases where the terms or conditions of association and the procedures proposed for supervision of the statutorily disqualified associated person are reasonably designed to mitigate the potential harm to the market or participants in the market.[35]

The Commission also notes that the items set forth in the proposal [36] and adopted in final Rule of Practice 194(e), such as other misconduct in which the associated person may have engaged, the nature of the conduct that resulted in the statutory disqualification and disciplinary history of the associated person and SBS Entity requesting such relief, and the supervision to be accorded the associated person, would be relevant to the Commission's consideration of whether the risks of permitting such associated persons that are natural persons to effect or be involved in effecting security-based swaps on behalf of the SBS Entity are sufficiently mitigated. Therefore, the Commission is adopting paragraph (b) of Rule of Practice 194 as proposed.[37]

C. Rule of Practice 194(c)—Exclusion for Other Persons

The Commission is adopting Rule of Practice 194(c), which provides an exclusion for an SBS Entity from the prohibition in Exchange Act Section 15F(b)(6) with respect to associated person entities.

Proposed Rule of Practice 194(i) would have provided temporary relief, subject to certain conditions,[38] from the

[26] *See* Proposing Release, 80 FR at 51712.

[27] *See id.* at 51689, 51719; proposed Rule of Practice 194(b). *See* Exchange Act Section 3(a)(39)(A) through (F), 15 U.S.C. 78c(a)(39)(A) through (F), for a description of statutorily disqualifying events. *See also* Note 2, *supra.*

[28] Public Citizen Letter, at 1, 4.

[29] *Id.* at 4. The commenter additionally stated that the entity requesting the waiver should be required to prove that ''the implicit deterrence impact of disqualification is not diluted'' by receiving a waiver from penalties resulting from criminal misbehavior. *Id.* at 1.

[30] In this regard, the Commission noted in the Proposing Release that statutory disqualification and an inability to continue associating with SBS Entities may create a disincentive against underlying misconduct for associated persons. *See* Proposing Release, 80 FR at 51689, 51716–17.

[31] Public Citizen Letter, at 4.

[32] *See id.* at 1. Non-criminal conduct also may result in a statutory disqualification. *See* 15 U.S.C. 78c(a)(39).

[33] *See* Proposing Release, 80 FR at 51689.

[34] A public interest standard also is consistent with the standard in Rule of Practice 193. *See* 17 CFR 201.193(c).

[35] *See* Proposing Release, 80 FR at 51689.

[36] *See id.* at 51691–93, 51719–20; proposed Rule of Practice 194(d).

[37] Where the Commission determines that it would be consistent with the public interest to permit the associated person that is a natural person of the SBS Entity to effect or be involved in effecting security-based swaps on behalf of the SBS Entity, the Commission will issue an order granting relief. Where the Commission does not or cannot make the determination that it is in the public interest to permit the associated person that is a natural person of the SBS Entity to effect or be involved in effecting security-based swaps on behalf of the SBS Entity, the Commission will issue an order denying the application. *See* Proposing Release, 80 FR at 51694.

[38] The Commission proposed two general limitations on the applicability of the temporary exclusion, namely that the temporary exclusion would not be available where: (1) The Commission has otherwise ordered—for example, where the Commission, by order, has censured, placed

Continued

statutory prohibition in Exchange Act Section 15F(b)(6) with respect to associated person entities that are subject to a statutory disqualification.[39] The Commission proposed paragraph (i) of Rule of Practice 194 to address the situation where an operating SBS Entity becomes subject to the statutory prohibition in Exchange Act Section 15F(b)(6) with respect to an associated person that is not a natural person—either as a result of an associated person that effects or is involved in effecting security-based swaps on behalf of the SBS Entity becoming subject to a statutory disqualification, or as a result of a person who is subject to a statutory disqualification becoming an associated person effecting or involved in effecting security-based swaps on behalf of the SBS Entity.[40]

The Commission also solicited comment on two alternative approaches with respect to the temporary exclusion, as proposed, including one alternative that would provide relief from the general prohibition in Exchange Act Section 15F(b)(6) with respect to all associated person entities.[41] More specifically, the Commission requested comment on whether the Commission should instead provide an exclusion to permit an SBS Entity to allow associated person entities subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of SBS Entities.[42] The Commission received two comments on this alternative, both of which stated that the Commission should not provide an exclusion to permit associated person entities that are subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of SBS Entities.[43]

One commenter stated that adopting a temporary exclusion, as proposed, would be inconsistent with the language and Congressional intent of Exchange Act Section 15F(b)(6).[44] The commenter believes that the temporary exclusion provision addresses ''industry-focused concerns'' and would expose investors and markets to disruptive effects from unscrupulous conduct by associated person entities subject to a statutory disqualification.[45] The commenter also believes that in the event that an associated person entity is prohibited from effecting or being involved in effecting security-based swaps on behalf of an SBS Entity, other market participants may fill the void with minimal disruption, or the SBS Entity may adopt measures to mitigate any negative impacts as a result of the statutory prohibition.[46]

A second commenter provided similar objections to the temporary exclusion.[47] The commenter stated that disruption to an SBS Entity's business is not a sufficient justification for providing a temporary exclusion with respect to an associated person entity who is subject to a statutory disqualification. The commenter further stated that any statutory disqualification that may require an SBS Entity to move services (such as advisory, booking, cash or collateral management services) to another entity is not a ''market-moving event,'' and would not justify the adoption of a temporary exclusion with respect to associated person entities. The commenter, however, acknowledged that there may be limited cases where an immediate change in a service provider would cause significant disruptions. But, rather than provide an automatic temporary exclusion, as proposed, the commenter suggested, as an alternative, that the Commission could in those limited cases grant a temporary exclusion of up to 30 days where doing so is appropriate and necessary.[48]

The Commission received a related comment in response to a request for comment in connection with the proposed requirements for an SBS Entity to register with the Commission, which solicited comment on whether the Commission should consider excepting associated person entities from the statutory prohibition in Exchange Act Section 15F(b)(6).[49] The commenter stated that, based on the Commission's definition of the phrase ''involved in effecting,'' SBS Entities could have hundreds, if not thousands, of associated natural persons who will effect or will be involved in effecting security-based swaps.[50] Moreover, the commenter stated that the definition of ''associated person'' could be read to extend not just to natural persons, but also to non-natural persons (*e.g.,* entities) that are affiliates of SBS Entities.[51] As a result, the commenter stated, prohibiting statutorily disqualified entities from effecting or being involved in effecting security-based swaps could result in ''considerable'' business disruptions and other ramifications.[52] To address these concerns, the commenter stated that the Commission should narrow the scope of the associated persons considered to be effecting or involved in effecting security-based swaps, or, alternatively, exercise its statutory authority to grant exceptions to the general ban on an SBS Entity from associating with a person subject to a statutory disqualification.[53]

The Commission believes that adopting a rule providing for an exclusion for associated person entities is consistent with Exchange Act Section 15F(b)(6), which explicitly permits the

limitations on the activities or functions of the associated person, or suspended or barred such person from being associated with an SBS Entity; and (2) where the Commission, CFTC, an SRO or a registered futures association has previously denied membership, association, registration or listing as a principal with respect to the associated person that is the subject of the pending application. *See id.* at 51697. As discussed below, since the Commission is adopting the alternative that was set forth in the proposal, these limitations are no longer included in the rule. However, as discussed below, the Commission maintains its existing statutory authority to institute proceedings or bring an action against any associated person entities, and nothing in this provision affects the ability of the Commission, the CFTC, an SRO or the NFA to deny membership, association, registration or listing as a principal with respect to any associated person entity.

[39] *See* Proposing Release, 80 FR at 51694–98, 51721; proposed Rule of Practice 194(i).

[40] *See, e.g.,* Proposing Release, 80 FR at 51694.

[41] *See id.* at 51697–98. The other alternative proposed by the Commission related to the ultimate disposition of an application to the extent the Commission does not act within a specified time period. *See id.* at 51697.

[42] *See id.* at 51697–98, 51716. In addition, the Commission also provided an economic analysis on this proposed alternative. *See id.* at 51716.

[43] *See* Letter from Dennis M. Kelleher & Stephen W. Hall, Better Markets, Inc., dated October 26, 2015 (''Better Markets Letter''), at 5; Americans for Financial Reform Letter, at 3.

[44] *See* Better Markets Letter, at 5.

[45] *Id.*

[46] *See id.*

[47] *See* Americans for Financial Reform Letter, at 3.

[48] *See id.*

[49] In connection with proposing requirements for an SBS Entity to register with the Commission, the Commission solicited comment on potentially developing an alternative process, in accordance with Exchange Act Section 15F(b)(6), to establish exceptions to the statutory prohibition in Exchange Act Section 15F(b)(6). *See* Registration Proposing Release, 76 FR at 65797 (Question 90).

[50] *See* Letter from Kenneth E. Bentsen, Jr., Securities Industry and Financial Markets Association, dated December 16, 2011 (''12/16/2011 SIFMA Letter''), at 8, *available at https://www.sec.gov/comments/s7-40-11/s74011-4.pdf.* The Commission has stated that the term ''involved in effecting security-based swaps'' generally means engaged in functions necessary to facilitate the SBS Entity's security-based swap business, including, but not limited to the following activities: (1) Drafting and negotiating master agreements and confirmations; (2) recommending security-based swap transactions to counterparties; (3) being involved in executing security-based swap transactions on a trading desk; (4) pricing security-based swap positions; (5) managing collateral for the SBS Entity; and (6) directly supervising persons engaged in the activities described in items (1) through (5) above. *See* Proposing Release, 80 FR at 51686, n.19 (citing the Registration Adopting Release, at Section II.B.1.ii.).

[51] *See* 12/16/2011 SIFMA Letter.

[52] *See id.* The commenter did not provide supporting data to quantify the number of associated persons or the magnitude of any potential business disruptions.

[53] *See id.*

Commission to establish exceptions to that statutory prohibition by ''rule, regulation, or order.'' [54] In discussing the exclusion alternative, the Commission noted that it would take into consideration the extent to which this alternative approach would minimize potential disruptions to the business of SBS Entities that could lead to possible market disruption and how this approach would impact counterparty and investor protection.[55] We discuss each of those considerations below.

The Commission believes that granting an automatic exclusion for associated person entities could reduce potential disruptions to the business of SBS Entities that could lead to market disruption. The scope of the prohibition in Section 15F(b)(6) of the Exchange Act covers a wide range of actions, given the definitions of statutory disqualification and associated person, and the meaning of ''involved in effecting'' a security-based swap transaction.[56] Absent an exclusion, the statutory prohibition in Exchange Act Section 15F(b)(6) would apply immediately upon an associated person entity becoming subject to a statutory disqualification. Contrary to one commenter's general view that moving services to another entity is not a ''market-moving event,'' [57] the Commission continues to be concerned about the potential disruption to the security-based swap markets, including potential adverse effects to counterparties and other market participants, if SBS Entities engaged in the business must either cease operations, even temporarily, due to not being able to utilize the services of their associated person entities,[58] or move services to another entity that may not be as well-equipped to handle them pending a determination by the Commission on their application for relief under the proposed temporary exclusion or pending a determination by another regulator for similar relief.[59] For example, and as the Commission stated in the proposal, moving the cash and collateral management services from one entity to another would have a much more significant impact on the ability of the SBS Entity to operate—which, as noted above, could lead to possible market disruption—than assigning a different natural person to negotiate and execute security-based swap transactions.[60]

One commenter noted that other SBS Entities could potentially provide services to the market in the event that an associated person entity becomes subject to a statutory disqualification.[61] However, irrespective of whether other SBS Entities may be able to provide such services over time (which may not necessarily occur), there is nonetheless a potential for short-term disruptions where an associated person entity becomes immediately barred as a result of being subject to a statutory disqualification. In particular, absent relief, an SBS Entity that is associated with a statutorily disqualified entity would be required either to restructure immediately or to cease dealing activity temporarily, which could result in various costs, such as costs associated with replacing the statutorily disqualified associated person entity or a legal reorganization.[62] Such short-term disruptions could therefore adversely affect not just SBS Entities, but also counterparties or other market participants in the form of execution delays, potentially reduced liquidity or higher transaction costs.[63] In that respect, the exclusion is not limited to addressing ''industry-focused concerns'' [64] or concerns about disruptions to the SBS Entity's business alone.[65]

Although one commenter asserted that any short-term market disruptions could potentially be mitigated by the SBS Entity whose associated person entity becomes subject to a statutory disqualification, the commenter did not specify what measures could be taken by the SBS Entity to mitigate potential market dislocations.[66] It is not clear that any measures that an SBS Entity could potentially take to mitigate potential market disruptions—*e.g.,* the SBS Entity restructuring its business to use the services of another associated person entity that is not subject to a statutory disqualification—would in all instances be effective, feasible, or cost-effective. For example, there may be instances where a change in a service provider could cause significant disruptions in the security-based swap market.[67] These disruptions are augmented by the fact that, as discussed below, the Commission estimates that dealing activity in the security-based swap market is highly concentrated among a small number of dealers, with the top five dealer accounts intermediating approximately 55 percent of all SBS Entity transactions.[68]

In comparison to the proposed temporary exclusion approach, SBS Entities would be less constrained by the general statutory prohibition and would be able to associate with any and all statutorily disqualified associated person entities in any capacity without applying for relief under Exchange Act Section 15F(b)(6) or under Rule of Practice 194. This approach gives SBS Entities more certainty about their ability to permit statutorily disqualified associated person entities to effect or be involved in effecting security-based swaps, whereas the proposed temporary exclusion would have expired after 180 days, and SBS Entities would have 60 days to conform to the general statutory prohibition if the Commission, the CFTC, an SRO or a registered futures association does not render a decision on the application within that timeframe. Furthermore, SBS Entities associating with disqualified persons would not have to undergo business restructuring or apply for relief, thereby mitigating the risk of disruptions and avoiding the costs associated with such restructuring or application for relief, which may flow through to counterparties under the rule being adopted.

[54] 15 U.S.C. 78o–10(b)(6). In addition, Exchange Act Section 15F(b)(4) provides the Commission with authority (other than certain inapplicable exceptions specified in Exchange Act Section 15F(b)(4)(d) and (e)) to ''prescribe rules applicable to security-based swap dealers and major security-based swap participants.'' 15 U.S.C. 78o–10(b)(4).

[55] *See* Proposing Release, 80 FR at 51698.

[56] *See* Proposing Release, 80 FR at 51694. *See also* Registration Adopting Release, at Section III.B.1.i.

[57] Americans for Financial Reform Letter, at 3. The commenter also acknowledged when discussing the proposed temporary exclusion for associated person entities that there may be some limited cases where an immediate change in a service provider would cause significant disruptions.

[58] *See* Proposing Release, 80 FR at 51695–96.

[59] Final Rule of Practice 194(h) provides that, subject to certain conditions, an SBS Entity may permit an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on its behalf, without making an application pursuant to the proposed rule, where the Commission, CFTC, an SRO or a registered futures association has granted a prior application or otherwise granted relief from a statutory disqualification with respect to that associated person. *See* Rule of Practice 194(h) and Section III.H, *infra.*

[60] *See* Proposing Release, 80 FR at 51696, n.88 (citing the Registration Adopting Release, 80 FR at 48975, where the Commission noted that it was particularly concerned that SBS Entities ''may need to either cease operations, even temporarily, due to not being able to utilize these services of their associated person entities, or move these services to another entity that may not be as well positioned to handle them, which could have an impact on the security-based swap market'').

[61] *See* Better Markets Letter, at 5.

[62] *See also* Section V.C.1.c, *infra.*

[63] *See id.*

[64] *See* Better Markets Letter, at 5.

[65] *See* Americans for Financial Reform Letter, at 3.

[66] *See* Better Markets Letter, at 5.

[67] *See* Americans for Financial Reform Letter, at 3 (acknowledging the potential for disruption in the event of an immediate change).

[68] *See* Section V.A, *infra,* for further discussion.

As the Commission noted in the proposal, the overall effects on security-based swap markets of adopting the alternative approach are unclear. The proposal, in connection with estimating anticipated costs, noted that the alternative approach, which we are now adopting, could hinder the Commission's ability to make an individualized determination about whether permitting an associated person entity who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of an SBS Entity is consistent with the public interest, and that statutory disqualification and an inability to continue associating with SBS Entities creates disincentives against underlying misconduct for associated persons.[69] The Commission has also considered the potential impact on investors and the security-based swap markets from permitting associated person entities subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of SBS Entities. The Commission acknowledges, as it did in the proposal, that the counterparty and compliance risks under the entity exclusion approach may be somewhat greater than those under the proposed approach.[70] Nevertheless, the Commission recognizes, as it did in the proposal, that these risks and concerns are mitigated by the Commission's ability, in the appropriate case, to institute proceedings under Exchange Act Section 15F(l)(3) to determine whether the Commission should censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with an SBS Entity.[71] Therefore, the exclusion in final Rule of Practice 194(c) will neither limit nor otherwise affect the Commission's existing statutory authority to institute proceedings or bring an action against any associated person entities as outlined above.[72] In addition, the exclusion in final Rule of Practice 194(c) will also neither limit nor otherwise affect the ability of the Commission, the CFTC, an SRO or the NFA to deny membership, association, registration or listing as a principal with respect to any associated person entity.[73]

As also noted in the proposal,[74] this alternative approach would result in consistency with the CFTC's approach with respect to the statutory prohibition for Swap Entities as set forth in CEA Section 4s(b)(6).[75] The CFTC, with respect to statutorily disqualified associated persons of Swap Entities, limits the definition of associated persons of Swap Entities to natural persons.[76] As a result, the prohibition in CEA Section 4s(b)(6) applies to natural persons (not entities) associated with a Swap Entity.[77] Indeed, under the alternative approach, which we are now adopting, SBS Entities cross-registered as Swap Entities with the CFTC would experience potential economies of scope in associating with persons that are statutorily disqualified entities.

One commenter noted that the temporary exclusion provision may expose investors and markets to disruptive effects from unscrupulous conduct by associated person entities subject to a statutory disqualification.[78] As noted in the Proposing Release, however, the Commission continues to believe that this approach appropriately considers the potentially competing objectives of minimizing the likelihood for market disruption while remaining consistent with the public interest and maintaining investor protections.[79]

Given the adoption of the exclusion alternative for Rule of Practice 194(c), the Commission is not adopting a commenter's proposed alternative that the Commission could, on a case-by-case basis, provide a temporary exclusion of up to 30 days where doing so is necessary and appropriate. Under this alternative, pending approval by the Commission for such a temporary exclusion, an SBS Entity would be required to either (1) disassociate with the statutorily disqualified associated person entity immediately after the associated person entity became subject to a statutory disqualification, or (2) immediately have that associated person cease effecting or being involved in effecting security-based swaps on behalf of the SBS Entity. This result would defeat the intent and purpose of the temporary exclusion and could result in a risk of market disruption immediately after the associated person entity becomes subject to a statutory disqualification, but prior to the entry of any order granting a temporary exclusion.

For the reasons discussed above, the Commission is adopting paragraph (c) of Rule of Practice 194, which provides an exclusion for an SBS Entity from the prohibition in Exchange Act Section 15F(b)(6) with respect to associated person entities.

D. Rule of Practice 194(d)—Form of Application

Proposed Rule of Practice 194 would have specified the form of the application to be submitted under the rule for natural persons.[80] In particular, the Commission proposed that each application would be required to be supported by a written statement, signed by a knowledgeable person authorized by the SBS Entity, which addresses other items in proposed Rule of Practice 194.[81] The proposal would have required an applicant to provide certain exhibits to the written statement. For associated persons that are natural

[69] The Commission received comments supporting the potential deterrence effect of disqualification. *See, e.g.,* Public Citizen Letter; Better Markets Letter.

[70] *See, e.g.,* Better Markets Letter.

[71] *See* Proposing Release, 80 FR at 51698, n.98, 51716, n.194 (citing 15 U.S.C. 78o–10(l)(3)).

[72] *See* Proposing Release, 80 FR at 51698, n.98, 51716, n.194 (citing 15 U.S.C. 78o–10(l)(3)). *See, e.g.,* 15 U.S.C. 78u–3 (authorizing cease-and-desist proceedings).

[73] For example, under Exchange Act Section 15A(g)(2), 15 U.S.C. 78o–3(g)(2), where it is necessary or appropriate in the public interest or for the protection of investors, the Commission may, by order, direct the SRO to deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. Section 17(h) of the CEA provides for the CFTC to review certain NFA decisions, including the NFA's disciplinary actions and member responsibility actions, as do the CFTC's Part 171 Rules, 17 CFR 171.1–171.50.

[74] *See* Proposing Release, 80 FR at 51698.

[75] 7 U.S.C. 6s(b)(6).

[76] *See* 17 CFR 1.3(aa). Specifically, the CFTC amended CEA Regulation 1.3(aa), 17 CFR 1.3(aa), which generally defines the term ''associated person'' for purposes of entities registered with it, to cover Swap Entities. Consequently, with respect to Swap Entities, the definition reads, ''(aa) Associated Person. This term means any natural person who is associated in any of the following capacities with: . . . (6) A swap dealer or major swap participant as a partner, officer, employee, agent (or any natural person occupying a similar status or performing similar functions), in any capacity that involves: (i) The solicitation or acceptance of swaps (other than in a clerical or ministerial capacity); or (ii) The supervision of any person or persons so engaged.'').

[77] *See* 7 U.S.C. 6s(b)(6), which states, ''Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap participant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.''

[78] *See* Better Markets Letter, at 5.

[79] *See id.*

[80] *See id.* at 51689–91, 51719; proposed Rule of Practice 194(c). The proposal also specified the form of application to be submitted under the rule for associated person entities. *See* proposed Rule of Practice 194(e). Rule of Practice 194(c), as adopted, provides an exclusion for an SBS Entity from the prohibition in Exchange Act Section 15F(b)(6) with respect to associated persons entities. Accordingly, the corresponding provision, proposed Rule of Practice 194(e), which would have specified the form of such applications for entities, is not needed and is not being adopted.

[81] *See* Section III.E, *infra,* for a discussion of proposed Rule of Practice 194(d).

persons,[82] the Commission proposed that an SBS Entity provide: (1) A copy of the order or other applicable document that resulted in the associated person being subject to a statutory disqualification; [83] (2) an undertaking by the applicant to notify the Commission promptly in writing if any information submitted in support of the application becomes materially false or misleading while the application is pending; [84] (3) a copy of the questionnaire or application for employment specified in Exchange Act Rule 15Fb6–2(b); [85] and (4) a copy of any decision, order, or document issued with respect to any proceeding [86] resulting in the imposition of disciplinary sanctions or pending proceeding against the associated person by the Commission, CFTC, any federal or state or law enforcement regulatory agency, registered futures association, foreign financial regulatory authority, registered national securities association, or any other SRO, or commodities exchange, or any court, that occurred during the five years preceding the filing of the application pursuant to Rule of Practice 194.[87] The Commission also proposed that an application under Rule of Practice 194 would be filed pursuant to Rules of Practice 151, 152 and 153.[88]

The Commission did not receive any specific comments on the form of application and written statement in proposed Rule of Practice 194. However, one commenter stated that the Commission should require applicants to address disciplinary events going back ten years, not five years.[89] In support of a longer time period, the commenter stated that a ten-year time period would provide greater protections in accordance with the purpose of Exchange Act Section 15F(b)(6), and would be more consistent with other provisions of the securities laws dealing with statutory disqualification.[90]

The Commission is adopting renamed paragraph (d) of Rule of Practice 194 as proposed, including the five-year time period in the proposal, for the reasons discussed in the Proposing Release.[91] In determining to adopt the proposed five-year time period, the Commission carefully considered the burden that may be imposed by requiring SBS Entities to provide older materials and documents that may not be as readily available, as well as our need to evaluate the context and circumstances underlying the application.[92] Furthermore, we note that paragraph (d)(1) of the Rule as adopted requires that the application include a copy of the order or other applicable document that resulted in the associated person being subject to a statutory disqualification. Therefore, the orders or other applicable documents provided with the application may go back longer than five years.[93]

In addition, the Commission does not agree with the commenter that a ten-year time period would be more consistent with the current practice in similar contexts. Paragraph (d)(4) of the final rule requires a copy of any decision, order, or document issued with respect to any proceeding resulting in the imposition of disciplinary sanctions or pending proceeding against the associated person by the Commission, CFTC, any federal or state or law enforcement regulatory agency, registered futures association, foreign financial regulatory authority, registered national securities association, or any other SRO, or commodities exchange, or any court, that occurred during the five years preceding the filing of the application pursuant to Rule of Practice 194. FINRA's membership continuance applications require analogous disciplinary information for a five-year time period—not a ten-year time period.[94] For example, like paragraph (d)(4), FINRA Form MC–400, Section 4, Items 9 and FINRA Form MC–400A, Section 2, Item 4 request information within the past five years concerning ''any proceeding which has resulted in the imposition of disciplinary sanctions by FINRA, the U.S. Securities and Exchange Commission, the Commodity Futures Trading Commission, any federal or regulatory agency, foreign financial regulatory authority, any self-regulatory organization or commodities exchange, or any court or state agency.'' [95] Additionally, the Commission's Rule of Practice 193 only requires compliance and disciplinary history during the two years preceding the filing of a Rule 193 application.[96]

As with the proposed rule, under the terms of the final rule, the SBS Entity (rather than the associated person) will be required to submit the application, including the signed written statement under paragraph (d). Further, as specified below, the Commission is

[82] The Commission is making one technical change to the text of Rule of Practice 194(d) such that the phrase a ''person *that* is subject to a statutory disqualification'' (emphasis added) is being changed to read a ''person *who* is subject to a statutory disqualification'' (emphasis added). This technical change is intended to make the text of Rule of Practice 194 more closely track the language used in Exchange Act Section 15F(b)(6), which reads, in pertinent part, ''*who* is subject to a statutory disqualification'' (emphasis added). This technical change is also being made to Rule of Practice 194 (h)(1) and (h)(2).

[83] *See* proposed Rule of Practice 194(c)(1).

[84] *See id.* (c)(2).

[85] 17 CFR 240.15Fb6–2(b); *see* proposed Rule of Practice 194(c)(3).

[86] In connection with final Rule of Practice 194, applicants should look to the definition of ''proceeding'' in Form SBSE, which states that a ''proceeding'' includes ''a formal administrative or civil action initiated by a governmental agency, self-regulatory organization or a foreign financial regulatory authority; a felony criminal indictment or information (or equivalent formal charge); or a misdemeanor criminal information (or equivalent formal charge). Does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).'' *See* Registration Adopting Release, at Section III.G.1, and Form SBSE.

[87] *See* proposed Rule of Practice 194(c)(4).

[88] 17 CFR 201.151, 201.152, 201.153. Rule of Practice 151, 17 CFR 201.151, concerns the procedure for filing of papers with the Commission; Rule of Practice 152, 17 CFR 201.152, concerns the form of filing papers with the Commission; Rule of Practice 153, 17 CFR 201.153, concerns the signature requirement and effect of filing papers.

[89] *See* Better Markets Letter, at 6. Although the commenter did not specify a particular provision, the Commission did propose a five-year time period in proposed paragraph (c)(4). Proposed paragraph (c)(4) would require a copy of any decision, order, or document issued with respect to any proceedings resulting in the imposition of disciplinary sanctions or pending proceeding against the associated person by the Commission, CFTC, any federal or state or law enforcement regulatory agency, registered futures association, foreign financial regulatory authority, registered national securities association, or any other SRO, or commodities exchange, or any court, that occurred during the five years preceding the filing of the application pursuant to Rule of Practice 194. Proposed paragraphs (d)(6) and (d)(10) also contain similar requests for certain information for a five-year time period. *See* Section III.E, *infra.*

[90] *See* Better Markets Letter, at 6.

[91] Proposing Release, 80 FR at 51689–91, 51719; proposed Rule of Practice 194(c).

[92] We note that the Appendix paragraph (c) to Rule of Practice 194 states that, in addition to the information required by the rule, Commission staff may request supplementary information from the applicant to assist in the Commission's review. *See also* Proposing Release, 80 FR at 51689, n.54, 51722 (proposing the same requirement).

[93] For example, statutory disqualification may result where an associated person has committed ''any other felony within ten years.'' 15 U.S.C. 78c(a)(39)(F). *See also, e.g.,* 15 U.S.C. 80a–9(a) (ineligibility under Section 9(a) of the Investment Company Act of 1940 (''Investment Company Act'') may result where a person (or an affiliated person) within ten years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, investment adviser, or in other specified categories).

[94] *See* FINRA Form MC–400, Section 4, Items 9a, 11; FINRA Form MC–400A, Section 2, Items 4, 5.

[95] FINRA Form MC–400, Section 4, Item 9a; FINRA Form MC–400A, Section 2, Item 4.

[96] *See* 17 CFR 201.193(b)(4)(iii). However, and as noted above, although paragraph (d)(4) (and other provisions relating to information that an applicant must provide regarding an individual's disciplinary history) provide for a five-year time period, applicants will be required under paragraph (d)(1) of the final rule to provide the Commission with a copy of an order or other applicable document which subjects the individual to, a statutory disqualification irrespective of when the misconduct that gives rise to the statutory disqualification occurred (*e.g.,* even if outside the five-year time period).

requiring certain information (*e.g.,* concerning the supervision by the SBS Entity over the associated person) to be submitted with the application that is within the possession of the SBS Entity itself. An application under Rule of Practice 194, as proposed and adopted, will be filed pursuant to Rules of Practice 151, 152 and 153.[97] The Commission believes that filing pursuant to these rules will provide the Commission with the information that it needs to assess an application under Rule of Practice 194.

E. Rule of Practice 194(e)—Written Statement

Proposed Rule of Practice 194 would have set forth the items to be addressed for applications for natural persons.[98] In particular, the Commission proposed to require an applicant to address certain information in the written statement. For associated persons that are natural persons, an SBS Entity would be required to address: (i) The associated person's compliance with any order resulting in the statutory disqualification; [99] (ii) the associated person's employment during the period subsequent to the event giving rise to the statutory disqualification; [100] (iii) the capacity or position in which the associated person subject to a statutory disqualification proposes to be associated with the SBS Entity; [101] (iv) the terms and conditions of employment and supervision to be exercised over the associated person and, where applicable, by such associated person; [102] (v) the qualifications, experience, and disciplinary history [103] of the proposed supervisor(s) of the associated person; [104] (vi) the compliance and disciplinary history, during the five years preceding the filing of the application, of the SBS Entity; [105] (vii) the names of any other statutorily disqualified associated persons at the SBS Entity, and whether they are to be supervised by the associated person; [106] (viii) whether the associated person has taken any relevant courses, seminars, examinations or other actions subsequent to becoming subject to a statutory disqualification to prepare for his or her participation in the security-based swap business; [107] (ix) why the associated person should be permitted to effect or be involved in effecting security-based swaps on behalf of the SBS Entity; [108] (x) whether, during the five years preceding the filing of the application, the associated person has been involved in any litigation concerning investment or investment-related activities or whether there are there any unsatisfied judgments outstanding against the associated person concerning investment or investment-related activities; [109] and (xi) any other information that the applicant believes to be material to the application.[110]

The Commission did not receive any specific comments on the items to be addressed set forth in the proposal. However, as discussed in Section III.D above, the Commission received one general comment stating that the Commission should require applicants to address disciplinary events going back ten years, not five years.[111] For the same reasons set forth above in Section III.D, the Commission is adopting the five-year time period as proposed, and for the reasons discussed in the proposal,[112] the Commission is adopting renamed paragraph (e) of Rule of Practice 194, as proposed, with four minor technical changes.[113]

F. Rule of Practice 194(f)—Prior Applications or Processes

Proposed Rule of Practice 194 would have required an applicant to provide as part of the application any order, notice or other applicable document reflecting the grant, denial or other disposition (including any dispositions on appeal) of any prior application concerning the associated person under Rule of Practice 194 and other similar processes.[114] More specifically, the proposal would have required an applicant to provide any order, notice or other applicable document where an application has previously been made for the associated person: (1) Pursuant to Rule of Practice 194; [115] (2) pursuant to Rule of Practice 193; [116] (3) pursuant to Section 9(c) of the Investment Company Act; [117] (4) pursuant to Exchange Act Section 19(d),[118] Exchange Act Rule 19h–1 [119] or a proceeding by an SRO for a person to become or remain a member, or an associated person of a member, notwithstanding the existence of a statutory disqualification; and (5) by the CFTC or a registered futures association for registration, including as a principal, notwithstanding the existence of a statutory disqualification.[120] Proposed Rule of Practice 194 also addressed: (i) The exception in CFTC Regulation

[97] 17 CFR 201.151, 201.152, 201.153. *See also* Note 88, *supra.*

[98] *See* Proposing Release, 80 FR at 51691–93, 51719–20; proposed Rule of Practice 194(d). The proposal also set forth the items to be addressed for applications for associated person entities. *See* proposed Rule of Practice 194(f). Rule of Practice 194(c), as adopted, provides an exclusion for an SBS Entity from the prohibition in Exchange Act Section 15F(b)(6) with respect to associated persons entities; therefore, the corresponding provision with respect to associate person entities, proposed Rule of Practice 194(f), is not needed and is not being adopted.

[99] *See* proposed Rule of Practice 194(d)(1).

[100] *See id.* (d)(2).

[101] *See id.* (d)(3).

[102] *See id.* (d)(4).

[103] Disciplinary history would include, for example, the items contained in Exchange Act Rule 17a–3(a)(12)(i)(D) through (G), 17 CFR 240.17a–3(a)(12)(i)(D) through (G), which items are required to be collected by broker-dealers with respect to their associated persons and are required to be provided on Form U–4. Such items include, among other things, a record of any disciplinary action taken, or sanction imposed, upon the associated person by any federal or state agency, or national securities exchange or national securities association, a record of any permanent or temporary injunction entered against the associated person, or a record of any arrest or indictment for any felony or certain specified types of misdemeanors. *See also* Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194, 25205, 25308–09 (May 2, 2014).

[104] *See* proposed Rule of Practice 194(d)(5).

[105] *See id.* (d)(6).

[106] *See id.* (d)(7).

[107] *See id.* (d)(8).

[108] *See id.* (d)(9).

[109] *See id.* (d)(10). Applicants should look to the definition of ''investment or investment-related'' in Form SBSE, which states that ''investment or investment-related'' includes ''pertaining to securities, commodities, banking, savings association activities, credit union activities, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, investment adviser, futures sponsor, bank, security-based swap dealer, major security-based swap participant, savings association, credit union, insurance company, or insurance agency).'' *See* Registration Adopting Release, Form SBSE.

[110] *See* proposed Rule of Practice 194(d)(11).

[111] *See* Better Markets Letter, at 6. The commenter did not specify a particular provision of the proposal.

[112] *See* Proposing Release, 80 FR at 51691–93, 51719–20; proposed Rule of Practice 194(d).

[113] The technical changes are (1) updating an internal cross reference to subsection (c) in the proposal to reflect subsection (d) in final Rule of Practice 194; (2) moving the phrase ''notwithstanding the event resulting in statutory disqualification'' from an introductory phrase to later in the text of subparagraph (9) to clarify any possible ambiguity in subparagraph (9) without changing the scope of that provision; (3) updating the technical wording in subparagraph (e)(9) to more closely conform to the other provisions in subsection (e) by removing the phrase ''the applicant should provide;'' and (4) changing the term ''impact upon'' to ''affect'' to clarify any possible ambiguity in subparagraph (9) without changing the scope of the provision.

[114] *See* Proposing Release, 80 FR at 51693–94, 51720–21; proposed Rule of Practice 194(g).

[115] *See* proposed Rule of Practice 194(g)(1).

[116] 17 CFR 201.193; *see* proposed Rule of Practice 194(g)(2).

[117] 15 U.S.C. 80a–9(c); *see* proposed Rule of Practice 194(g)(3).

[118] 15 U.S.C. 78s(d); *see* proposed Rule of Practice 194(g)(4).

[119] 17 CFR 240.19h–1.

[120] *See* proposed Rule of Practice 194(g)(5).

23.22(b) [121] by requiring an SBS Entity to provide any order or other applicable document providing that the associated person may be listed as a principal, registered as an associated person of another CFTC registrant, or registered as a floor broker or floor trader, notwithstanding the statutory disqualification and (ii) the CFTC's and NFA's current process for granting relief from CEA Section 4s(b)(6),[122] the provision that is parallel to Exchange Act Section 15F(b)(6), with respect to persons that are not exempt from that provision pursuant to CFTC Regulation 23.22(b).[123]

Although the Commission did not receive any comments specifically addressing this provision of the proposal, one commenter stated that the Commission should take into account the views of other regulatory bodies that may have adjudicated similar issues with respect to the associated persons subject to a statutory disqualification.[124] Renamed paragraph (f) of Rule of Practice 194, as adopted, will facilitate the Commission's ability to take such views into account.

Paragraph (f) to Rule of Practice 194 is designed to inform the Commission when a similar application made with respect to the associated person has been granted or denied (or been subject to some other disposition).[125] Information concerning the grant or denial (or other disposition) of a prior application or other request for relief, and the reasons for the grant or denial, may inform the Commission's assessment as to whether it would be consistent with the public interest for the person to effect or be involved in effecting security-based swaps on behalf of an SBS Entity.

For example, in the event that a prior application has been granted, but the terms and conditions of the association with the other registrant are materially different than the proposed terms and conditions of the statutorily disqualified person's association with the SBS Entity, the Commission could consider whether the terms and conditions at the SBS Entity that are different may result in any greater risk of future misconduct.[126]

Accordingly, for reasons discussed in the proposal,[127] the Commission is adopting renamed Rule of Practice 194(f), as proposed, with one minor technical change to more accurately reflect the CFTC's and NFA's approach to statutory disqualification.

The proposal would have required an applicant to provide any order, notice or other applicable document reflecting the grant, denial or other disposition (including any dispositions on appeal) of any prior application or process concerning the associated person by the CFTC and NFA through their process for granting relief from CEA Section 4s(b)(6) [128] with respect to persons that are not exempt from that provision pursuant to CFTC Regulation 23.22(b).[129] Under the CEA and CFTC regulations, the consequences of an individual's statutory disqualification differ depending upon whether the individual is an associated person of a CFTC registrant or a principal of a CFTC registrant. An associated person of a CFTC registrant is required to register separately with the CFTC by filing his or her own application for registration. Therefore, if the associated person of a CFTC registrant has a statutory disqualification, the application for registration will be denied unless the associated person goes through the process established by NFA to be registered notwithstanding the statutory disqualification. However, a principal of a CFTC registrant does not apply, either for registration or to be listed as a principal. Rather, the entity of which the person is a principal is required to list that principal on the entity's application for registration with the CFTC. As a result, if the principal has a statutory disqualification, the entity's application for registration with the CFTC will be denied unless the entity goes through the process with NFA to be registered, notwithstanding having to list a statutorily disqualified principal.[130]

G. Rule of Practice 194(g)—Notification to Applicant and Written Statement

Proposed Rule of Practice 194 would have set forth the procedure where there is an adverse recommendation proposed by the Commission staff with respect to an application under proposed Rule of Practice 194.[131] Consistent with Rule of Practice 193(e),[132] the Commission proposed that where there would be an adverse recommendation, the applicant would be so advised and provided with a written statement by the Commission staff of the reasons for such recommendation, and the applicant would then have 30 days to submit to the Commission a written statement in response.[133]

The Commission did not receive comments concerning this provision of the proposal and, for the reasons discussed in the proposal, is adopting renamed paragraph (g) of Rule of Practice 194 as proposed.[134]

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[121] 17 CFR 23.22(b); *see* proposed Rule of Practice 194(g)(5)(i). Under that provision, the CFTC allows association with a Swap Entity with respect to a person who is already listed as a principal, registered as an associated person of another CFTC registrant, or registered as a floor broker or floor trader, notwithstanding that the person is subject to a statutory disqualification under section 8a(2) or 8a(3) (7 U.S.C. 12a(2), (3)) of the CEA. *See* Note 11, *supra.*

[122] 7 U.S.C. 6s(b)(6); *see* proposed Rule of Practice 194(g)(5)(ii). This provision requires the SBS Entity to submit any determination by NFA (the sole registered futures association, *see* CFTC Registration Release, 77 FR at 2624) with respect to that grant of no-action relief. The Commission is adopting the language in paragraph (f)(5)(ii) largely as proposed but with a minor technical modification to more accurately reflect the CFTC's and NFA's approach to statutory disqualification.

[123] 17 CFR 23.22(b).

[124] Letter from Elijah E. Cummings, Ranking Member, Committee on Oversight and Government Reform, U.S. House of Representatives, dated November 13, 2015 (''Cummings Letter''), at 2.

[125] As discussed in the Proposing Release, in cases where a statutorily disqualified person was formerly associated with another SBS Entity, an applicant should use reasonable efforts to obtain relevant documentation from the other SBS Entity.

[126] Notably, in circumstances where the prior application has been denied or where the terms and conditions of employment are not the same, an SBS Entity cannot avail itself of paragraph (h) of Rule of Practice 194, see Section III.H, *infra,* and therefore will be required to file an application under Rule of Practice 194 in order to permit an associated person subject to a statutory disqualification to be able to effect or be involved in effecting security-based swaps on behalf of an SBS Entity.

[127] *See* Rule of Practice 194 Proposing Release, 80 FR at 51693–94, 51720–21.

[128] 7 U.S.C. 6s(b)(6).

[129] 17 CFR 23.22(b). *See* Proposing Release, 80 FR at 51693–51694, 51721; proposed Rule of Practice 194(g)(5)(ii). Under the CFTC and NFA's process, available through no-action relief granted by CFTC staff, a Swap Entity may make an application to NFA to permit an associated person of a Swap Entity subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the Swap Entity. NFA will provide notice to a Swap Entity whether or not NFA would have granted the person registration as an associated person. As noted in the Proposing Release, and as adopted here as well, the rule requires the SBS Entity to submit any determination by NFA (the sole registered futures association) with respect to that grant of no-action relief. *See* CFTC Letter No. 12–15, at 5–8 (Oct. 11, 2012), available at *http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-15.pdf.*

[130] Accordingly, the Commission has adopted the following language with the new language underlined for subpart (ii): ''Any determination by a registered futures association (as provided in 7 U.S.C. 21) that had the associated person applied for registration as an associated person of a swap dealer or a major swap participant, *or had a swap dealer or major swap participant listed the associated person as a principal in the swap dealer's or major swap participant's application for registration,* notwithstanding statutory disqualification, the application *of the associated person or of the swap dealer or major swap participant, as the case may be,* would have been granted or denied.''

[131] *See* Proposing Release, 80 FR at 51694, 51721; proposed Rule of Practice 194(h).

[132] 17 CFR 201.193(e).

[133] *See* Proposing Release, 80 FR at 51694, 51721; proposed Rule of Practice 194(h).

[134] *See id.*

H. Rule of Practice 194(h)—Notice in Lieu of an Application

Proposed Rule of Practice 194 would have limited the applicability of the statutory prohibition in Exchange Act Section 15F(b)(6) by prescribing the conditions under which an SBS Entity could permit a person associated with it who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on its behalf without being required to file an application under Rule of Practice 194.[135] The Commission proposed to permit, subject to all of the conditions specified in proposed paragraph (j)(2) being met,[136] an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of SBS Entities where the Commission or other regulatory authority previously reviewed the matter and permitted the person subject to a statutory disqualification to be a member, associated with a member, registered or listed as a principal of a regulated entity notwithstanding the statutory disqualification.[137] The Commission also proposed that where an SBS Entity meets certain requirements the SBS Entity would be permitted to file notice with the Commission (in lieu of an application).[138]

The Commission received comments objecting generally to the proposal.[139] One commenter stated that the provision should not be adopted as proposed because FINRA's statutory disqualification process is ''typically designed for individuals'' and Exchange Act Section 15F(b)(4) creates a ''new statutory disqualification.'' As outlined above, FINRA member firms that are themselves subject to a statutory disqualification and wish to obtain relief from the eligibility requirements are required to seek approval from FINRA.[140] Furthermore, Exchange Act Section 15F(b)(4)[141] does not reference ''statutory disqualification'' or otherwise establish a category of conduct that would disqualify an associated person from effecting or being involved in effecting security-based swaps.[142]

The Commission also received comments arguing that allowing deference to SROs is inconsistent with current practice.[143] However, the Commission observes that Rule of Practice 194(h) is generally consistent with the current practice with respect to SROs and their members. For example, the information provided by the notice under adopted paragraph (h)(2)(iii) is consistent with the information that is currently required for a notification under Exchange Act Rule 19h–1(a)(4).[144] In the event that the views of the Commission were to diverge from the CFTC, an SRO or a registered futures association with respect to an associated person subject to a statutory disqualification under the statutory scheme of the Exchange Act, under Exchange Act Section 15F(l)(3), the Commission retains the authority to, by order, censure, place limitations on the activities or functions of the associated person, or suspend or bar such person from being associated with an SBS Entity.[145] As a result, even in cases where the CFTC, an SRO or a registered futures association has previously granted relief and an SBS Entity files a notice in lieu of an application under Rule of Practice 194(h), the Commission may, in the appropriate case, institute proceedings under Exchange Act Section 15F(l)(3) to determine whether the Commission should censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with an SBS Entity.[146] The Commission also believes that where the conditions set forth in paragraph (h) are met, it would not be necessary for the Commission (other than in cases where the person is subject to a Commission bar) to re-examine by means of a full application under Rule of Practice 194 an event for which relief has already been granted. Rather, the Commission believes that the better approach is to require an applicant to provide a notice under Rule of Practice 194(h) in lieu of a full application under Rule of Practice 194, which would alert the Commission to issues that could lead to the institution of proceedings pursuant to Exchange Act Section 15F(l)(3)[147] where doing so is appropriate.

Another commenter argued that the Commission should not ''delegate'' its authority to determine whether an exclusion from Exchange Act Section 15F(b)(6) is appropriate because regulators administer different statutory schemes and have different priorities.[148] This same commenter argued that this proposed subsection should not be adopted because, among other things, the Commission should exercise its own judgment in each case to ensure that the policies underlying the securities laws are fulfilled.[149]

The Commission acknowledges that other regulators administer different statutory schemes,[150] but it does not believe that the applicable standards that regulators identified in paragraph (h) use in their respective statutory disqualification processes are sufficiently different to warrant requiring SBS Entities to file a full application under Rule of Practice 194, as opposed to a notice in lieu of an application. In particular, the CFTC and

[135] Proposing Release, 80 FR at 51698–700, 51721–22; proposed Rule of Practice 194(j).

[136] As explained in the proposal, ''[a]n SBS Entity seeking to rely on proposed Rule of Practice (j)(1) would have to meet all of the conditions specified in proposed paragraph (j)(2).'' *Id.* at 51699. The same is true for adopted Rule of Practice 194(h).

[137] *See id.* at 51698–99 (discussing proposed paragraph (j)(1)(i) through (iv)). These same provisions are being adopted in Rule of Practice 194(h)(1)(i) through (iv). We note that Rule of Practice 194(h) would not be applicable in instances where the Commission itself has made an affirmative determination to bar or suspend the associated person. *See id.* at 51698 (explaining that, other than in cases where the person is subject to a Commission bar, the Commission did not believe it would be necessary to re-examine an event for which relief has already been granted by the CFTC, an SRO or a registered futures association).

[138] *See* Proposing Release, 80 FR at 51699–700; proposed Rule of Practice 194(j)(2)(iii), (iv).

[139] Americans for Financial Reform Letter, at 2; Better Markets Letter, at 3–4; Public Citizen Letter, at 4–5; Cummings Letter, at 2–3.

[140] *See* Note 9, *supra* (discussing FINRA Form MC–400A, Membership Continuance Application: Member Firm Disqualification Application, *http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/industry/p013339.pdf*).

[141] As noted above, *see* Note 54, *supra,* Exchange Act Section 15F(b)(4) provides the Commission with authority (other than certain inapplicable exceptions specified in Exchange Act Section 15F(b)(4)(d) and (e)) to ''prescribe rules applicable to security-based swap dealers and major security-based swap participants.'' 15 U.S.C. 78o–10(b)(4).

[142] Rather, Exchange Act Section 15F(b)(6) references ''statutory disqualification,'' and the Commission has previously stated that a ''statutory disqualification'' for purposes of Exchange Act Section 15F(b)(6) is not a new defined term (with additional categories), but rather is described (consistent with other contexts) in Exchange Act Sections 3(a)(39)(A) through (F). 15 U.S.C. 78c(a)(39)(A) through (F); *see also* Registration Adopting Release, 80 FR at 48972; 17 CFR 240.15Fb2–1(e); 17 CFR 240.15Fb6–1; 17 CFR 240.15Fb6–2.

[143] *See* Americans for Financial Reform Letter, at 2. *See also* Cummings Letter, at 2–3 (arguing that the Commission should not delegate its authority to interpret the Exchange Act to the CFTC, FINRA or a registered futures association, in part, because ''[n]one of the entities to which the proposed rule would grant the authority to issue a waiver has been granted that responsibility by statute.'').

[144] 17 CFR 240.19h–1(a)(4); proposed Rule of Practice 194(j)(2)(iii), (iv).

[145] 15 U.S.C. 78o–10(l)(3). *See also* Proposing Release, 80 FR at 51698 n.98.

[146] *See* 15 U.S.C. 78o–10(l)(3). *See also, e.g.,* 15 U.S.C. 15(b)(6).

[147] 15 U.S.C. 78o–10(l)(3).

[148] *See* Better Markets Letter, at 3–4.

[149] *See* Better Markets Letter, at 3–4 (arguing that this proposed subsection should not be adopted because the Commission should exercise its judgment in each case to ensure that the policies underlying the securities laws are fulfilled and because the proposal would not ensure that applications for an exemption from disqualification will be subject to strong, consistent, and relevant considerations under the securities laws).

[150] *See* Better Markets Letter, at 3–4; Cummings Letter, at 2–3.

NFA assess whether registration would not pose a substantial risk to the public despite the existence of the statutory disqualification.[151] Likewise, and as noted above, consistent with Exchange Act Section 15A(g)(2),[152] under Article 3, Section 3(d) of the FINRA By-Laws,[153] the FINRA Board may, in its discretion, approve the continuance in membership, and may also approve the association or continuance of association of any person, if the FINRA Board determines that such approval is consistent with the public interest and the protection of investors.[154] Although the CFTC or a registered futures association may not review ''considerations under the securities laws,'' [155] and may have ''different statutory schemes and . . . different priorities,'' [156] those regulators, and SROs, will generally assess whether it is consistent with the public interest to permit a person who is subject to statutory disqualification to be associated with (or a principal of) a registered entity. As a result, a review by the regulators provided for in paragraph (h) would substantially overlap with any review that the Commission would undertake in assessing whether an applicant has made a showing under Rule of Practice 194(b) that it would be consistent with the public interest to grant relief with respect to a statutorily disqualified associated person. And, as stated, the Commission will retain authority under Exchange Act Section 15F(l)(3) [157] to determine whether potential considerations under the securities law would warrant diverging from a decision of another regulator in a particular matter.

Similarly, the Commission received comments arguing that SROs are conflicted or do not otherwise have the impartiality necessary to make decisions regarding the best interests of the public.[158] While the Commission has carefully considered the concerns raised by these commenters, the Commission believes that the statutory and regulatory framework under which SROs operate (including the Commission's oversight function of SROs [159] and the CFTC's oversight of the NFA [160]), and the Commission's independent authority to, where appropriate, institute proceedings with respect to the statutorily disqualified associated person under Exchange Act Section 15F(l)(3), serves to mitigate commenters' concerns.[161] SROs are entrusted with quasi-governmental authority, and, subject to Commission oversight.[162] SROs must also be organized and have the capacity to carry out the purposes of the Exchange Act and to comply and enforce compliance by its members and persons associated with its members with the Exchange Act, the rules and regulations thereunder and the rules of the SRO.[163] The Exchange Act reflects a recognition of self-regulation as a fundamental component of the oversight and supervision of U.S. securities markets and their members.

The Commission likewise disagrees with a commenter's view that ''[n]one of the entities to which the proposed rule would grant the authority to issue a waiver has been granted that responsibility by statute.'' [164] To the extent that the commenter may be concerned that the Commission does not have the statutory authority to rely on prior determinations made by those regulators, as set forth in Rule of Practice 194(h), Exchange Act Section 15F(b)(6) expressly provides broadly and without limitation that the Commission can establish exceptions to that statutory prohibition by ''rule, regulation, or order.'' [165] Granting relief from the statutory prohibition to SBS Entities where the conditions set forth in Rule of Practice 194(h) are met, including the filing of a notice in lieu of an application, is within the scope of the statutory authority provided to the Commission under Exchange Act Section 15F(b)(6).[166] Moreover, the regulators identified in paragraph (j) are currently granted the authority under their own statutory and regulatory frameworks to provide relief from a statutory disqualification.[167] Paragraph (h) does not ''delegate [the Commission's] authority to interpret the Exchange Act'' [168] because such regulators only interpret their own statutory and regulatory frameworks with respect to persons subject to a statutory disqualification. The Commission believes that where the conditions set forth in paragraph (h) are met, it would not be necessary for the Commission (other than in cases where the person is subject to a Commission bar) to re-examine by means of a full application under Rule of Practice 194 an event for which relief has already been granted. Rather, the Commission believes that the better approach is to require an applicant to provide a notice under Rule of Practice 194(h) in lieu of a full application under Rule of Practice 194, which would alert the Commission to issues that could lead to the institution of proceedings pursuant to Exchange Act Section 15F(l)(3) [169] where doing so is appropriate.

Another commenter objected to the proposal on the grounds that the Commission should itself make a determination, rather than the CFTC, an SRO or a registered futures association, in part, because the proposal would ''render[ ] the [Commission] unaccountable to Congress.'' [170] The Commission also received a comment objecting to the proposal on the grounds that the Commission retains sole authority and responsibility to interpret and adjudicate the entire body of securities law in the public interest and any waiver decision should be reviewed by the Commission.[171] In all cases where paragraph (h) applies, although the Commission would not receive an application under Rule of Practice 194,

[151] *See* CEA Regulation 3.60(e)(1), (2), 17 CFR 3.60(e)(1)(2), NFA Registration 507(a)(1), (2).

[152] 15 U.S.C. 78o–3(g)(2).

[153] *See* FINRA By-Laws, Article III, Section 3(d), *http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4606. See also* Registration Proposing Release, 80 FR at 51687.

[154] *See also* FINRA Rules 9522(e), 9524(b)(1).

[155] *See* Better Markets Letter, at 3–4.

[156] *Id.*

[157] 15 U.S.C. 78o–10(l)(3).

[158] *See* Public Citizen Letter, at 4–5; Better Markets Letter, at 3–4; Cummings Letter, at 2; Americans for Financial Reform Letter, at 2.

[159] As stated in Note 9, *supra,* an SRO may be required to send a notice or notification to the Commission of its proposal to admit or continue the membership of a person or association with a member notwithstanding statutory disqualification in accordance with Exchange Act Rule 19h–1. *See* 17 CFR 240.19h–1. Under Exchange Act Section 15A(g)(2), 15 U.S.C. 78o–3(g)(2), where it is necessary or appropriate in the public interest or for the protection of investors, the Commission may, by order, direct the SRO to deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. *See also* 15 U.S.C. 78f(c)(2) (national securities exchange); 15 U.S.C. 78q–1(b)(4)(A) (registered clearing agency).

[160] The NFA is a registered futures association under section 17 of the CEA, 7 U.S.C. 21, and is the SRO for swap transactions. Section 17(h) of the CEA provides for CFTC review of certain NFA decisions, including the NFA's disciplinary actions and member responsibility actions, as do the CFTC's Part 171 Rules, 17 CFR 171.1–171.50. In addition, the CFTC may institute review of disciplinary actions taken by the NFA on its own motion. *See* 17 U.S.C. 21(h)(3). *See also* CFTC, Division of Clearing and Intermediary Oversight, *Review of the Disciplinary Program of National Futures Association,* July 2002, *https://www.cftc.gov/sites/default/files/files/tm/tmnfarer071102.pdf.*

[161] *See* 15 U.S.C. 78o–10(l)(3); Proposing Release, 80 FR at 51698 n.98.

[162] *See, e.g.,* 15 U.S.C. 78o–3 (registered securities associations); 15 U.S.C. 78s (registration, responsibilities, and oversight of SROs).

[163] *See, e.g.,* 15 U.S.C. 78o–3(b)(2).

[164] *See* Cummings Letter, at 2.

[165] 15 U.S.C. 78o–10(b)(6).

[166] *See* 5 U.S.C. 78o–10(b)(4). *See also* Note 54, *supra.*

[167] *See* Registration Adopting Release, 80 FR at 51687–89.

[168] *See* Cummings Letter, at 2.

[169] 15 U.S.C. 78o–10(l)(3).

[170] Public Citizen Letter, at 4–5.

[171] Cummings Letter, at 2–3.

the Commission would be able to review the facts of cases.[172] Nor is it the case that paragraph (h) of Rule of Practice 194 would ''render[ ] the [Commission] unaccountable to Congress'' [173] or divest the Commission of its ''sole authority and responsibility to interpret and adjudicate the entire body of securities law in the public interest,'' [174] because, as noted above, the Commission retains its statutory authority to bring an action under Exchange Act Section 15F(l)(3).

After careful consideration of the comments received, and for the reasons discussed in the proposal,[175] the Commission is adopting renamed paragraph (h) to Rule of Practice 194 as proposed, with five technical modifications. First, because Rule of Practice 194, as adopted, provides an exclusion for an SBS Entity from the prohibition in Exchange Act Section 15F(b)(6) with respect to associated persons entities, references in the proposed rule text to ''is a natural person'' [176] and one proposed subsection, which pertained to associated person entities only,[177] are no longer needed, and are not being adopted. Second, certain internal cross references to other provisions within this subsection are being revised to reflect renamed Rule of Practice 194(h).[178] Third, the phrase ''or otherwise by the Commission'' is being added to paragraph (h)(1)(ii) to address situations where the Commission has granted a natural person consent to associate or change the terms and conditions of association with a regulated entity even if that consent was not granted pursuant to Rule of Practice 193.[179] Fourth, the Commission is changing the phrase a ''person *that* is subject to a statutory disqualification'' (emphasis added) in paragraphs (h)(1) and (h)(2) to read a ''person *who* is subject to a statutory disqualification'' (emphasis added) to more closely track the language used in Exchange Act Section 15F(b)(6).[180] Finally, a reference to the Commission's Rules of Practice 151, 152 and 153 is being added to provide guidance on how the notice in Rule of Practice 194 (h)(2)(iii) should be filed with the Commission.[181]

I. Note to Rule of Practice 194

The Commission proposed adopting an accompanying Note to Rule of Practice 194, similar to the Preliminary Note to Rule of Practice 193.[182] The Commission received no comments concerning the Note to proposed Rule of Practice 194 and is adopting, for the reasons discussed in the proposal, the Note substantially as proposed.[183]

As adopted, the Note to Rule of Practice 194 provides that:

- An application made pursuant to the rule must show that it would be consistent with the public interest to permit the associated person of the SBS Entity to effect or be involved in effecting security-based swaps on behalf of the SBS Entity.[184]
- The nature of the supervision that an associated person will receive or exercise as an associated person with a registered entity is an important matter bearing upon the public interest.
- In meeting the burden of showing that permitting the associated person to effect or be involved in effecting security-based swaps on behalf of the SBS Entity is consistent with the public interest, the application and supporting documentation must demonstrate that the terms or conditions of association, procedures, or proposed supervision (if the associated person is a natural person), are reasonably designed to ensure that the statutory disqualification does not negatively affect the ability of the associated person to effect or be involved in effecting security-based swaps on behalf of the SBS Entity in compliance with the applicable statutory and regulatory framework. The Commission made one technical amendment in the Note to Rule of Practice 194 to change the term ''impact upon'' to ''affect'' in order to clarify any possible ambiguity without changing the scope of the provision.
- Normally, the applicant's burden of demonstrating that permitting the associated person to effect or be involved in effecting security-based swaps on behalf of the SBS Entity is consistent with the public interest will be difficult to meet where the associated person is to be supervised by, or is to supervise, another statutorily disqualified individual.
- The associated person may be limited to association in a specified capacity with a particular registered entity and may also be subject to specific terms and conditions.

Notably, the Commission proposed that where the associated person wishes to become the sole proprietor of a registered entity and thus is seeking that the Commission issue an order permitting the associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of an SBS Entity notwithstanding an absence of supervision, the applicant's burden will be difficult to meet.[185] The Commission has modified this sentence because the Commission does not anticipate that a registered SBS Entity will be formed as a sole proprietorship in light of the *de minimis* exception to the definition of ''security-based swap dealer'' [186] and the thresholds applicable to the definition of ''major security-based swap participant.'' [187] As modified, paragraph (i)(5) to the Note to Rule of Practice 194 provides that where there is an absence of supervision over the associated person who is subject to a statutory disqualification, the applicant's burden will be difficult to meet. The Commission is including this statement because, as stated, the Commission believes that there is a greater risk of harm where the associated person subject to a statutory disqualification is not subject to adequate supervision.

Finally, the Note discusses various procedural aspects of Rule of Practice 194, including the following:

- In addition to the information specifically required by the rule, applications with respect to natural persons should be supplemented, where appropriate, by written statements of individuals who are competent to attest to the associated person's character, employment performance, and other relevant information.
- In addition to the information required by the rule, the Commission staff may request additional information to assist in the Commission's review.
- Intentional misstatements or omissions of fact may constitute criminal violations of 18 U.S.C. 1001, *et seq.* and other provisions of law.
- The Commission will not consider any application that attempts to reargue or collaterally attack the findings that resulted in the statutory disqualification.

J. Confidentiality of Materials

In the proposal, the Commission stated that orders issued in accordance with Rule of Practice 194 would be made publicly available, but applications and supporting materials would be kept confidential subject to

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[172] *Contra* Americans for Financial Reform Letter, at 2.

[173] Public Citizen Letter, at 5.

[174] Cummings Letter, at 2.

[175] *See* Proposing Release, 80 FR at 51698–700, 51721–22.

[176] *See* proposed Rule of Practice 194(j)(1)(ii), (j)(2)(iii).

[177] *See id.* (j)(2)(iv).

[178] Internal cross references to subsection (j) in the proposal are being updated to reflect subsection (h) in final Rule of Practice 194. *See id.* (j)(1), (j)(2)(ii).

[179] This modification to paragraph (h)(1)(ii) is intended to address a regulatory gap with respect to Commission orders granting natural persons consent to associate with regulated entities that are not currently listed in Rule of Practice 193, such as, for example, natural persons associated with municipal advisors. Although Rule of Practice 193 does not currently mention municipal advisors, Rule 15Bc4–1 states that the Commission may ''consent'' to a person being associated with a municipal advisor. As a result, this modification will include Commission orders granting such consent within the scope of Rule 194.

[180] *See* Note 82, *supra* (discussing the same technical change to Rule of Practice 194(d)).

[181] *See* Note 88, *supra* (discussing the Commission's Rules of Practice 151, 152 and 153).

[182] *See* Proposing Release, 80 FR at 51700–01; proposed Rule of Practice 194, Appendix. *See also* 17 CFR 201.193, Preliminary Note.

[183] *See* Proposing Release, 80 FR at 51700–01.

[184] *See* Section III.B, *supra.*

[185] *See, e.g.,* Final Rule of Practice 194(e)(3). *See also* Proposing Release, 80 FR at 51700, 51722. *Accord* 17 CFR 201.193, Preliminary Note.

[186] *See* 17 CFR 240.3a71–2.

[187] *See, e.g.,* 17 CFR 240.3a67–1(a)(2), 240.3a67–3, 240.3a67–5, 3a67–9.

applicable law.[188] The Commission received three comments stating that the Commission should require all applications and supporting materials to be made public.[189] Specifically, one commenter stated that requiring all applications and supporting materials to be made public would: (i) Promote transparency; (ii) ensure that the public understands that the Commission's handling of such applications, thereby improving the public's confidence in the Commission's oversight of market participants more generally; and (iii) influence the application process under Rule of Practice 194 if it appears to be too lenient in favor of allowing disqualified persons to serve in the security-based swap markets.[190] Another commenter stated that that: (1) Applications and any supporting materials should be made public as soon as they are received to ensure public transparency in the application and accountability; and (2) should the Commission adopt the temporary exclusion in paragraph (i), the notice required to be sent to the Commission should be made public.[191] Another commenter noted that, although the Commission should make applications under Rule of Practice 194 public, the Commission should be able to make a good cause determination that such applicants remain under seal.[192]

The Commission has carefully considered the comments and has determined not to automatically make applications and supporting materials under Rule of Practice 194 public (*e.g.,* on the Commission's website). For the reasons set forth below and consistent with the Commission's current practice in other contexts (*e.g.,* applications and supporting materials under Rule of Practice 193), the Commission believes that, as proposed, it is appropriate to keep applications and supporting materials confidential, subject to the existing statutory and regulatory framework with respect to the public availability of such materials, including the Freedom of Information Act (''FOIA''),[193] the Exchange Act,[194] and applicable Commission rules.[195]

First, applications and supporting materials may contain information that is proprietary or otherwise confidential and not generally subject to disclosure under applicable law.[196] As one commenter acknowledged, good cause may exist not to disclose certain information contained in application materials.[197] The existing statutory and regulatory framework sets forth a detailed process for the Commission to make available application materials [198] to members of the public, upon request, but to keep certain information contained in those materials confidential, where appropriate.[199] FOIA, for example, contains express categories of statutory exemptions where public disclosure is not required [200]—*e.g.,* information that would invade an individual's personal privacy, or trade secrets or commercial or financial information that is confidential or privileged.[201] In addition to protecting the privacy interests of applicants and their associated persons, there is also a public interest in preserving the confidentiality of such materials to promote candor in applications so that the Commission may assess, based on all material facts, whether granting an application is consistent with the public interest.

The Commission believes that this existing statutory and regulatory framework, which provides for the public availability of certain materials, appropriately takes into consideration the applicants' interests in confidentiality with the concerns identified by commenters concerning accountability, transparency, appropriateness of decision-making, and public confidence in the Rule of Practice 194 application process (and the Commission's oversight of market participants more generally). Moreover, the Commission believes that relying on the existing statutory and regulatory framework with respect to application materials is preferable to a ''good cause'' standard of public disclosure, as suggested by one commenter,[202] for the same reasons noted above, as well as because the current statutory and regulatory framework is generally well-established and is routinely administered by Commission staff.

Second, in light of the information that the Commission intends to make publicly available, the Commission believes that there is minimal additional benefit in requiring all applications and supporting materials automatically to be made public—particularly given that the existing statutory and regulatory framework provides a process for members of the public to request application materials to be made available, consistent with the protections of the existing framework. Further, statutorily disqualified associated persons that are natural persons will not be permitted to effect or be involved in effecting security-based swaps on behalf of SBS Entities until an order is issued granting relief under Rule of Practice 194. Such orders will be made publicly available on the Commission's website, consistent with current practice,[203] and will provide notice to the public and identify for the benefit of counterparties and other market participants instances where a statutorily disqualified associated person that is a natural person has been permitted to effect or be involved in effecting security-based swaps on behalf of an SBS Entity.

K. Deleting Rule 15Fb6–1 and Schedule C to Forms SBSE, SBSE–A and SBSE–BD

Concurrent with the issuance of the Rule of Practice 194 proposal, the Commission adopted registration requirements for SBS Entities, including certain rules relating to the statutory prohibition in Exchange Act Section 15F(b)(6).[204] The Registration Adopting Release provided, among other things, that an SBS Entity, when it files an application to register with the Commission, may permit an associated person that is not a natural person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on the SBS Entity's behalf, provided that the statutory disqualification(s) occurred prior to the compliance date set forth in the Registration Adopting Release and that the SBS Entity identifies each such associated person on its registration form, namely Schedule C to Forms SBSE, SBSE–A and SBSE–BD.

Because Rule of Practice 194, as adopted, provides an exclusion for an SBS Entity from the prohibition in Exchange Act Section 15F(b)(6) with respect to associated persons entities, Rule 15Fb6–1 and its related Schedule C are no longer necessary. Accordingly, given the associated person entity exclusion that the Commission is

[188] *See* Proposing Release, 80 FR at 51694.

[189] Better Markets Letter, at 6; American for Financial Reform, at 3–4; Cummings Letter, at 3.

[190] Better Markets Letter, at 6.

[191] Americans for Financial Reform Letter, at 3–4.

[192] Cummings Letter, at 3.

[193] 5 U.S.C. 552, *et seq.*

[194] *See* 15 U.S.C. 78x.

[195] *See, e.g.,* 17 CFR 200.80; 17 CFR 201.190; 17 CFR 240.24b–2.

[196] *See* 5 U.S.C. 552; 17 CFR 200.80(b).

[197] *See* Cummings Letter, at 3.

[198] 15 U.S.C. 78x(a) (for purposes of 5 U.S.C. 552, ''the term 'records' includes all applications . . . notices, and other documents filed with or otherwise obtained by the Commission pursuant to the [Exchange Act] or otherwise'').

[199] *See, e.g.,* 17 CFR 200.80(a)(4), (b).

[200] *See* 5 U.S.C. 552(b). *See also* 17 CFR 200.80(b).

[201] *See* 5 U.S.C. 552(b)(4), (6). *See also* 17 CFR 200.80(b)(4), (b)(6).

[202] Cummings Letter, at 3.

[203] *See* 17 CFR 200.80(a)(2)(i), (3).

[204] *See* Registration Adopting Release, 80 FR at 48964. *See also, e.g.,* 17 CFR 240.15Fb6–1.

adopting in final Rule of Practice 194(c), the Commission is making technical amendments to: (1) Delete Exchange Act Rule 15Fb6–1; (2) remove Schedule C to Forms SBSE, SBSE–A and SBSE–BD; and (3) remove all references to Schedule C in the instructions in the above-mentioned forms.

L. Compliance Date

As noted above, the effective date of Rule of Practice 194, as adopted, is April 22, 2019. We note, however, that the compliance date for the SBS Entity registration rules set forth in the Registration Adopting Release is the later of: Six months after the date of publication in the **Federal Register** of a final rule release adopting rules establishing capital, margin and segregation requirements for SBS Entities; the compliance date of final rules establishing recordkeeping and reporting requirements for SBS Entities; the compliance date of final rules establishing business conduct requirements under Exchange Act Sections 15F(h) and 15F(k); or the compliance date for final rules establishing a process for a registered SBS Entity to make an application to the Commission to allow an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on the SBS Entity's behalf.[205]

IV. Paperwork Reduction Act

Rule of Practice 194 contains ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA''). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The Commission has submitted the information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The title of this collection is ''Rule of Practice 194.'' The collection of information was assigned OMB Control No. 3235–0733. The responses to the collection of information are required to obtain a benefit.

In the proposal, the Commission solicited comment on the collection of information requirements associated with proposed Rule of Practice 194.[206] In particular, pursuant to 44 U.S.C. 3505(c)(2)(B), the Commission asked commenters to evaluate whether the proposed collection is necessary for the proper performance of our functions, including whether the information shall have practical utility; to evaluate the accuracy of our estimate of the burden of the proposed collection of information; to determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and to evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. The Commission did not receive any comments on the collection of information requirements.

A. Summary of Collection of Information

Rule of Practice 194 provides a process by which an SBS Entity may apply to the Commission for an order permitting an associated person to effect or be involved in effecting security-based swaps on behalf of the SBS Entity notwithstanding a statutory disqualification. To make an application under Rule of Practice 194, the SBS Entity filing an application with respect to an associated person that is a natural person would provide to the Commission:

- Exhibits required by paragraph (d) to Rule of Practice 194, including a copy of the order or other applicable document that resulted in the associated person being subject to a statutory disqualification; an undertaking by the applicant to notify promptly the Commission in writing if any information submitted in support of the application becomes materially false or misleading while the application is pending; a copy of the questionnaire or application for employment specified in Rule 15Fb6–2(b),[207] with respect to the associated person; in cases where the associated person has been subject of any proceeding resulting in the imposition of disciplinary sanctions during the five years preceding the filing of the application or is the subject of a pending proceeding by the Commission, CFTC, any federal or state regulatory or law enforcement agency, registered futures association, foreign financial regulatory authority, registered national securities association, or any other SRO, or commodities exchange or any court, a copy of the related order, decision, or document issued by the court, agency or SRO.
- A written statement that includes the information specified in paragraphs (e) and (f) to Rule of Practice 194, including, but not limited to: The associated person's compliance with any order resulting in statutory disqualification; the capacity or position in which the person subject to a statutory disqualification proposes to be associated with the SBS Entity; the terms and conditions of employment and supervision to be exercised over such associated person and, where applicable, by such associated person; the compliance and disciplinary history, during the five years preceding the filing of the application, of the SBS Entity; information concerning prior applications or processes.

Under paragraph (g) to Rule of Practice 194, an applicant could submit a written statement in response to any adverse recommendation proposed by Commission staff with respect to an application under Rule of Practice 194.

An SBS Entity would not be required to file an application under Rule of Practice 194 with respect to certain associated persons that are subject to a statutory disqualification, as provided for in paragraph (h) of proposed Rule of Practice 194. To meet those requirements, however, the SBS Entity would be required to file a notice with the Commission. For associated persons that are natural persons, the notice in paragraph (h)(2)(iii) would set forth: (1) The name of the SBS Entity; (2) the name of the associated person subject to a statutory disqualification; (3) the name of the associated person's prospective supervisor(s) at the SBS Entity; (4) the place of employment for the associated person subject to a statutory disqualification; and (5) identification of any SRO or agency that has indicated its agreement with the terms and conditions of the proposed association, registration or listing as a principal.

The information sought in connection with Rule of Practice 194 would assist the Commission in determining whether allowing associated persons to effect or be involved in effecting security-based swaps on behalf of a SBS Entity, notwithstanding statutory disqualification, is consistent with the public interest.

The Commission has sought to minimize the burdens and costs associated with Rule of Practice 194. First, the Commission is not requiring an application under Rule of Practice 194 with respect to certain associated persons subject to a statutory disqualification previously granted relief (*i.e.,* by the Commission, the CFTC, an SRO, or a registered futures association). Rather, in such instances, SBS Entities would only be required to provide a notice to the Commission under Rule of Practice 194(h)(2)(iii). Second, Rule of Practice 194 generally requires information that is already

[205] *See* Registration Adopting Release, at 1. The Commission recently requested comment on, among things, whether a longer compliance period, such as 18 months after the date of publication of the last of four releases noted above in the **Federal Register**, would be more appropriate. *See* Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers, Exchange Act Release No. 34–84409 (Oct. 11, 2018), 83 FR 53007, 53019 (Oct. 19, 2018).

[206] *See* Proposing Release, 80 FR at 51708.

[207] 17 CFR 240.15Fb6–2(b).

required by Rule of Practice 193 [208] and FINRA Form MC400.[209] Because the requirements in Rule of Practice 194 are generally similar to pre-existing requirements in Rule of Practice 193 and FINRA Form MC–400 (and largely use the same terminology), Rule of Practice 194 should provide a familiar process for respondents.[210] Third, where appropriate, the Commission has limited the scope of certain requirements, including by limiting the time period for requested information (for example, paragraphs (d)(4), (e)(6), and (e)(10) to Rule of Practice 194) or the scope of information sought (for example, paragraph (e)(10) and to proposed Rule of Practice 194). Finally, the documents that are requested to be provided with the written statement in paragraph (d) of Rule of Practice 194 (*e.g.,* a copy of the order or other applicable document that resulted in statutory disqualification) should be readily available or accessible to the SBS Entity or to the associated person.

B. Proposed Use of Information

Information collected in connection with an application under Rule of Practice 194 will assist the Commission in determining whether an associated person of an SBS Entity should be permitted to effect or be involved in effecting security-based swaps on behalf of the SBS Entity, notwithstanding that the associated person is subject to a statutory disqualification. Although, absent the rule, an SBS Entity could nonetheless submit an application for an exemptive order directly under Exchange Act Section 15F(b)(6),[211] Rule of Practice 194 specifies the information the Commission needs to evaluate such an application, and under what standard the Commission will consider whether to grant such relief.

Information collected in connection with the notice provided by Rule of Practice 194(h)(2)(iii) will assist the Commission for examination purposes by identifying associated persons that are subject to a statutory disqualification (and other basic information).

C. Respondents

The Commission has previously stated that it believes that, based on data obtained from the Depository Trust & Clearing Corporation and conversations with market participants, approximately fifty entities may fit within the definition of security-based swap dealer and up to five entities may fit within the definition of major security-based swap participant—55 SBS Entities in total.[212]

With respect to associated persons that are natural persons, as discussed in Section V.B.2 below, the Commission has estimated that there will be 420 total associated persons that are natural persons at each SBS dealer and 62 total associated persons that are natural persons at each major participant, or 21,310 total associated persons that are natural persons. The Commission anticipates that, on an average annual basis, only a small fraction of the natural persons would be subject to a statutory disqualification. Between 2011 and June of 2018 FINRA received an average of 33 MC–400 applications with respect to individuals subject to a statutory disqualification seeking relief under the FINRA Rule 9520 Series.[213] Given that the Commission estimates that there will be far fewer associated persons of SBS Entities that are natural persons (21,310 total associated persons that are natural persons) than the approximately 267,000 registered representatives,[214] the Commission anticipates that SBS Entities will file for relief under Rule of Practice 194 with respect to substantially fewer associated persons that are natural persons.

In addition, to estimate the number of such persons, the Commission staff has conferred with NFA to assess how many associated persons of the 102 provisionally registered Swap Entities [215] have applied for relief from CEA 4s(b)(6) [216] (the analogous provision to Exchange Act Section 15F(b)(6) [217] for SBS Entities) for determination by NFA that, had the associated person applied for registration as an associated person of a Swap Entity, notwithstanding statutory disqualification, the application would have been granted.[218] NFA has informed Commission staff that, from October 11, 2012 to June 30, 2018, NFA determined that in 13 out of 15 requests NFA would have granted registration with respect to the associated person subject to a statutory disqualification.[219]

Accordingly, based on that available data, the Commission estimates that, on an average annual basis, SBS Entities will seek relief in accordance with Rule of Practice 194 for up to five natural persons subject to a statutory disqualification, and SBS Entities would provide notices pursuant to Rule of Practice 194(h)(2)(iii) for up to five natural persons.

Therefore, the Commission anticipates that, on an average annual basis, SBS Entities would file up to five applications under Rule of Practice 194 with respect to associated persons that are natural persons and five notices for natural persons under Rule of Practice 194(h)(2)(iii).

D. Total Burden Estimates Relating to Rule of Practice 194

It is likely that the time necessary to complete an application under Rule of Practice 194 will vary depending on the number of exhibits required to be submitted in accordance with Rule of Practice 194(d), and the amount of information that would need to be discussed in the written statement, as specified in Rule of Practice 194(e).

Based on the Commission staff's estimates and experience,[220] the Commission estimates that for associated persons that are natural persons it would take SBS Entities approximately 30 hours to research the questions, and complete and file an application under Rule of Practice 194. In addition, the Commission believes that the average time necessary for an SBS Entity to research the questions, complete and file a notice under Rule of

[208] 17 CFR 201.193; *see* Note 8, *supra.*

[209] *See* FINRA Form MC–400; *see* Note 9, *supra.*

[210] The Commission estimates that approximately 16 registered SBS Entities will be broker-dealers, and thus registered with FINRA. *See* Section V.B.

[211] 15 U.S.C. 78o–10(b)(6).

[212] *See* Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 77617, (April 14, 2016) 81 FR 30089 (May 13, 2016) (''Business Conduct Adopting Release'').

[213] *See* Section V.B, *infra.*

[214] Based on an analysis of regulatory filings, as of December 31, 2017, there are 3,523 broker-dealers that employed full-time registered representatives and were doing a public business; these broker-dealers each employed on average 75.8 registered representatives, or 267,043 in total. *See* Section V.B, *infra.*

[215] *See* CFTC Provisionally Registered Swap Dealers as of October 11, 2018, *https://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.html,* last accessed November 6, 2018.

[216] 7 U.S.C. 6s(b)(6).

[217] 15 U.S.C. 78o–10(b)(6); *see* Note 11, *supra.*

[218] *See* EasyFile AP Statutory Disqualification Form Submission, NFA, *https://www.nfa.futures.org/NFA-electronic-filings/easyFile-statutory-disqualification.HTML.*

[219] Of the 15 requests, for one, an application for registration was filed and subsequently withdrawn and for the other, the individual was no longer employed by the firm.

[220] For example, based on the experience relative to Form BD, the Commission has estimated the average time necessary for an SBS Entity to research the questions and complete and file a Form SBSE for an entity, including the accompanying schedules and disclosure reporting pages—which solicit information regarding statutory disqualification—to be approximately one work week, or 40 hours. However, the Commission has estimated that it would take an SBS Entity three-quarters of the time to make a similar application on behalf of a natural person, or in this case, 30 hours per natural person. *See* Proposing Release, 80 FR at 51707. Additionally, as noted above, Rule of Practice 194, as adopted, makes Schedule C to Forms SBSE, SBSE–A, and SBSE–BD unnecessary. The elimination of Schedule C with respect to those Forms is expected to separately reduce the time burden on SBS Entities unrelated to the time burdens otherwise associated with Rule of Practice 194.

Practice 194(h)(2)(iii) would be less than for a full application under Rule of Practice 194 and the Commission estimates that it would take approximately 6 hours.[221]

Given that the Commission estimates that, on an average annual basis, there will be up to five applications under Rule of Practice 194 with respect to associated persons that are natural persons, and up to five notices under Rule of Practice 194(h)(2)(iii), the Commission estimates the total burden associated with filing such applications and notices on average to be 180 hours on an annual basis.[222]

E. Confidentiality

As stated above, under both the proposed and adopted approach, orders and notices under Rule of Practice 194 will be made publicly available on the Commission's website, whereas applications and supporting materials will be kept confidential, subject to the existing statutory and regulatory framework with respect to the public availability of such materials, including the FOIA,[223] the Exchange Act,[224] and applicable Commission rules.[225]

V. Economic Analysis

A. Broad Economic Considerations

On August 5, 2015, the Commission adopted final rules and forms establishing the registration process for SBS Entities.[226] Those rules reference the events in the existing definition of ''statutory disqualification'' in Exchange Act Section 3(a)(39)(A) through (F) [227] and apply them to Exchange Act Section 15F(b)(6). This definition disqualifies associated persons from effecting or being involved in effecting security-based swaps for violations of the securities laws, but also for all felonies and certain misdemeanors, including felonies and misdemeanors not related to the securities laws and/or financial markets.[228] Once compliance with the registration process is required, registered SBS Entities will be unable, absent Commission action, to utilize any associated person, including entities and natural persons with potentially valuable capabilities, skills or expertise, to effect or be involved in effecting security-based swaps if the person has been disqualified for any reason, including for non-investment-related conduct that may not pose a risk to security-based swap market participants.[229]

Exchange Act Section 15F(b)(6) gives the Commission flexibility to address situations involving statutorily disqualified associated persons. Specifically, under this section, the prohibition with respect to statutorily disqualified persons applies ''[e]xcept to the extent otherwise specifically provided by rule, regulation, or order of the Commission.'' [230] This statutory provision gives the Commission discretion to determine that a statutorily disqualified person may effect or be involved in effecting security-based swaps on behalf of an SBS Entity. Exchange Act Section 15F(b)(6), however, does not specify what information must be provided to the Commission when an SBS Entity seeks relief, nor does it set forth the standard under which the Commission would evaluate requests for relief. Rule of Practice 194 is intended to establish a framework for SBS Entities seeking such relief from the statutory prohibition in Exchange Act Section 15F(b)(6).

We are mindful of the economic effects, including the costs and benefits, of our rule. Section 3(f) of the Exchange Act provides that whenever the Commission is engaged in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[231] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[232] Exchange Act Section 23(a)(2) also provides that the Commission shall not adopt any rule which would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In the Proposing Release, the Commission solicited comment on all aspects of the costs and benefits associated with the rule, including any effect the rule may have on efficiency, competition, and capital formation. The Commission has considered these comments, as discussed in greater detail in the sections that follow. The analysis below addresses the likely economic effects of the final Rule of Practice 194, including the benefits and costs of the final rule, and their potential impact on efficiency, competition, and capital formation.

In the Proposing Release, the Commission noted that the inability of a statutorily disqualified associated person to effect or be involved in effecting security-based swaps on behalf of an SBS Entity creates a disincentive against underlying misconduct by an associated person.[233] We continue to believe that limiting the involvement of statutorily disqualified associated persons in security-based swap markets on behalf of SBS Entities may lower compliance and counterparty risks arising from disqualification, facilitate competition among higher quality SBS Entities, and enhance counterparty protections, supervision and integrity of security-based swap markets.[234] However, we continue to recognize that limits on statutorily disqualified associated persons may require SBS Entities to undergo business restructuring in the event of disqualification or to apply with the Commission for relief, resulting in costs for SBS Entities, such as costs of searching for and initiating relationships with new associated persons or legal reorganization.

We also recognize that the above costs of SBS Entities may be passed on to counterparties in the form of higher transaction costs or reduced liquidity. Market participants may value bilateral relationships with SBS Entities and searching for and initiating bilateral relationships with new SBS Entities may involve additional direct costs for counterparties. For example, security-based swaps are long-term contracts that are often renegotiated and, in the absence of Rule of Practice 194, counterparties could price the potential future inability to modify a contract, widening spreads. The Commission

[221] Although the Commission did not receive any comments on the time burden for completing a notice under Rule of Practice 194, we have decided to increase the estimate of 3 hours per notice to 6 hours per notice to reflect that it may take an SBS Entity, especially one doing this for the first time, longer to research the questions, complete and file a notice than the proposed 3 hours per notice.

[222] This estimate is based on the following: [((30 hours) × (up to 5 SBS Entities applying with respect to associated persons that are natural persons)) + (6 hours) × (up to 5 SBS Entities filing notices under Rule of Practice 194(h)(2)(iii))] = 180 hours total.

[223] *See* 5 U.S.C. 552, *et seq.*

[224] *See* 15 U.S.C. 78x.

[225] *See, e.g.,* 17 CFR 200.80; 17 CFR 201.190; 17 CFR 240.24b–2.

[226] *See* Registration Adopting Release.

[227] *See* 15 U.S.C. 78o–10(b)(6)(A) through (F).

[228] 15 U.S.C. 78c(a)(39)(A) through (F).

[229] The final SBS Entity registration rules also require the Chief Compliance Officer of an SBS Entity, or his or her designee, to certify on its registration form that none of its associated persons that effect or are involved in effecting security-based swaps on its behalf are subject to a statutory disqualification. *See* Registration Adopting Release, at Section II.B.3.

[230] *See* 15 U.S.C. 78o–10(b)(6).

[231] *See* 15 U.S.C. 78c(f).

[232] *See* 15 U.S.C. 78w(a)(2).

[233] *See* Proposing Release, 80 FR at 51716.

[234] *See, e.g.,* Public Citizen Letter; Better Markets Letter.

continues to recognize that where SBS Entities must cease dealing activity with counterparties as a result of disqualification (pending reorganization or resolution of application under Rule of Practice 194), other SBS Entities may step in to intermediate transaction activity in security-based swap markets. The resulting effects on competition will depend on whether SBS Entities that capture the newly available market share are smaller participants, which could increase competition, or those that already enjoy a degree of market power and are able to consolidate their position while the disqualified SBS Entity is undergoing restructuring or awaiting a relief determination, which may decrease competition, at least temporarily.

Moreover, our economic analysis recognizes that information about the conduct that gave rise to statutory disqualification in the United States (*e.g.,* by SEC orders, FINRA actions etc.) is generally public. In addition, under the final SBS Entity registration rules, SBS Entities are required to provide disciplinary history (criminal, regulatory action, civil judicial and financial disclosures) information for SBS Entity control affiliates.[235]

While there is a dearth of evidence on misconduct in swap and security-based swap markets, our economic analysis recognizes research that shows, in some settings: [236] (i) Past misconduct may predict future misconduct risk, and some public disclosures may be informative of future misconduct risk; (ii) capital markets may penalize some disclosed misconduct, and market participants engaging in misconduct generally suffer reputational costs; (iii) entities may disassociate from employees engaging in misconduct, but there may be a significant amount of heterogeneity in the incidence of misconduct by natural persons across employer firms, and the match between natural associated person and SBS Entities tends to be endogenous; and (iv) the reduction in misconduct in a particular market can reduce the number of service providers, but high prevalence of misconduct can reduce capital market participation.[237]

While we seek to identify the closest parallel regulatory and market settings, we are cautious in interpreting these results. We recognize that the unique characteristics of security- based swap markets may reduce or strengthen these effects. For example, as shown in the economic baseline, security-based swap markets are dealer markets, with the overwhelming bulk of activity taking place among dealers and between dealers and non-dealer financial entities. The Commission estimates that dealing activity in security-based swap markets is highly concentrated among a small number of dealers, with the top five dealer accounts intermediating approximately 55 percent of all SBS Entity transactions,[238] and reaching hundreds and even thousands of counterparties. At the same time, a median non-dealer counterparty transacts in security-based swaps with two security-based swap dealers (''SBS Dealers'') in over-the-counter security-based swaps (and an average with three SBS Dealers), outside of registered exchanges or swap execution facilities. If several SBS Dealers with a large market share facing thousands of counterparties are disqualified at the same time and must immediately cease dealing activity, a risk of market-wide disruption may exist. However, the concentrated nature of security-based swap dealing activity limits the ability of customers to choose SBS Entity counterparties that do not rely on disqualified persons and corresponding reputational incentives. Moreover, security- based swaps may also be more complex and opaque than equity or bonds, increasing information asymmetries between SBS Entities and their clients. Nevertheless, institutional clients may be more informed and may process disclosures more efficiently than retail investors in parallel settings, reducing the impact of these asymmetries.

The Commission recognizes that the final rules may directly and indirectly impact SBS Entities, as well as counterparties of SBS Entities and other market participants. We have considered these economic effects as they pertain to individual provisions and rule alternatives. As we have noted above, Exchange Act Section 15F(b)(6) gives the Commission authority to provide relief from the statutory prohibition against associating with disqualified persons by rule, regulation, or order, and the Commission is not bound by any particular approach in exercising its discretion to provide relief. In particular, in the absence of a disqualification review process, SBS Entities would still be able to apply for relief from Exchange Act Section 15F(b)(6), and the Commission would be able to issue an order either granting or denying relief.

The Commission continues to believe that when determining whether to make an application for relief, SBS Entities will weigh the scarcity and value of the particular skills of an associated person against any application and reputational costs from associating with disqualified persons and their beliefs as to the likelihood of an approval or denial decision by the Commission. To the extent that the final Rule of Practice 194 (compared with the availability of and process for obtaining relief without the Rule) alters an SBS Entity's assessment of either application and reputational costs, its beliefs about likely outcomes, or its decision to apply with the Commission, economic costs and benefits may accrue to SBS Entities, their associated persons, and counterparties to SBS Entities.

The Commission believes that the primary benefits of the final approach include: (i) Providing SBS Entities clarity regarding the items to be addressed, the information and supporting documentation to be submitted, and the standard of review (affecting application costs and beliefs about likely outcomes); (ii) ensuring that the Commission has sufficient information to make a meaningful

[235] In conjunction with adopting Rule of Practice 194(c), the Commission is also removing Schedule C from Forms SBSE, SBSE–A and SBSE–BD. Importantly, this change does not eliminate questions 14A and 14B and corresponding disclosure reporting pages and related obligations, and such information will continue to be available to market participants. Under the final SBS Entity registration rules, SBS Entity applications on Forms SBSE, SBSE–A, and SBSE–BD (including the Schedules and disclosure reporting pages) filed with the Commission as required by Rule 15Fb2–1, will be made public. All amendments to SBS Entity applications, required by Rule 15Fb2–3, will be made public. SBS Entities' Form SBSE–C certifications, required by Rules 15Fb2–1 and 15Fb6–2 and filed as part of their applications, will be made public. *See* 80 FR at 48995.

[236] *See* Sections V.B and V.C.2, *infra.*

[237] We also recognize that there is a body of behavioral finance research, commonly focused on retail investor behavior, and a law and economics literature on compensatory and punitive damages, deterrence, moral heuristics, and related issues. For example, we have received comment citing Schkade et al. (1999), which presented evidence from two experiments designed to test whether individuals believe in optimal deterrence. They concluded that individuals may not spontaneously think in terms of optimal deterrence and their proposed punishments do not differ depending on the probability of deterrence. *See* Better Markets Letter at 2. *See also* David Schkade, Cass R. Sunstein, & Daniel Kahneman, *Do People Want Optimal Deterrence?* (John M. Olin Program in Law and Economics, Working Paper No. 77, 1999), *available at http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1173&context=law_and_economics*, last accessed Sept. 28, 2018. We believe the applicability of this body of literature to statutory disqualification in security-based swap markets is likely limited due to the unique features of these markets (such as dealer concentration increasing the role of dealer reputation, public nature of most misconduct, and institutional nature of the investor clientele).

[238] The Commission staff analysis of DTCC Derivatives Repository Limited Trade Information Warehouse transaction records indicates that approximately 99 percent of single-name CDS price-forming transactions in 2017 involved an ISDA-recognized dealer.

determination that allowing an SBS Entity to permit statutorily disqualified associated persons to effect or be involved in effecting security-based swaps is consistent with the public interest; (iii) streamlining the treatment of statutorily disqualified associated person entities across integrated swap and security-based swap markets; and (iv) mitigating the risk of business disruptions to SBS Entities and their counterparties from disqualification of associated person entities. We note that, regardless of the regulatory approach chosen, SBS Entities may find it less costly to disassociate with, or reassign, disqualified persons than to apply for relief, as discussed in greater detail in the Economic Baseline.

B. Economic Baseline

To assess the economic impact of Rule of Practice 194, the Commission is using as a baseline the regulation of SBS Entities as it exists at the time of this release, including applicable rules we have adopted, but excluding rules we have proposed but not yet finalized. The analysis includes the statutory and regulatory provisions that currently govern the security-based swap market pursuant to the Dodd-Frank Act, rules adopted in the Intermediary Definitions Adopting Release, the Cross-Border Adopting Release, and the SDR Rules and Core Principles Adopting Release. Additionally, our baseline includes rules that have been adopted but for which compliance is not yet required, including the Registration Adopting Release,[239] and the Business Conduct Adopting Release,[240] as these final rules—even if compliance is not yet required—are part of the existing regulatory landscape that market participants expect to govern their security-based swap activity.

There are currently no registered entities that are required to comply with either the statutory disqualification certifications in the final SBS Entity registration rules or the statutory prohibition in Exchange Act Section 15F(b)(6). However, to perform a meaningful assessment of the final Rule of Practice 194, our economic baseline presumes that compliance with the final SBS Entity registration rules is required as set forth in Exchange Act Rules 15Fb1–1 through 15Fb6–2,[241] the general prohibition in Exchange Act Section 15F(b)(6)[242] is in effect, and the Commission may use its authority under Exchange Act Section 15F(b)(6) to issue an order providing relief.

1. Security-Based Swap Market Activity and Participants

a. Available Data From the Security-Based Swap Market

The Commission's understanding of the market is informed, in part, by available data on security-based swap transactions, though the Commission acknowledges that limitations in the data limit the extent to which it is possible to quantitatively characterize the market.[243] Since these data do not cover the entire market, the Commission has analyzed market activity using a sample of transactions that includes only certain segments of the market. The Commission believes, however, that the data underlying this analysis provides reasonably comprehensive information regarding single-name credit default swap (''CDS'') transactions and the composition of the participants in the single-name CDS market.

Specifically, the analysis of the current state of the security-based swap market is based on data obtained from the DTCC Derivatives Repository Limited Trade Information Warehouse (''TIW''), especially data regarding the activity of market participants in the single-name CDS market during the period from 2006 to 2017.[244] Although the definition of security-based swaps is not limited to single-name CDS,[245] single-name CDS contracts make up a majority of security-based swaps, and we believe that the single-name CDS data are sufficiently representative of the market to inform our analysis of the current security-based swap market. According to data published by the Bank for International Settlements (''BIS''), the global notional amount outstanding in single-name CDS was approximately $4.6 trillion,[246] in multi-name index CDS was approximately $4.4 trillion, and in multi-name, non-index CDS was approximately $343 billion.[247] The total gross market value outstanding in single-name CDS was approximately $130 billion, and in multi-name CDS instruments was approximately $174 billion.[248] The global notional amount outstanding in equity forwards and swaps as of December 2017 was $3.21 trillion, with total gross market value of $197 billion.[249]

The Commission further notes that the data available from TIW does not encompass those CDS transactions that both: (i) Do not involve U.S. counterparties; [250] and (ii) are based on

[239] *See* Registration Adopting Release, 80 FR at 48997–9003.

[240] *See* Business Conduct Adopting Release, 81 FR at 29960.

[241] Notably, the final SBS Entity registration rules included Exchange Act Rule 15Fb6–1, 17 CFR 240.15Fb6–1. *See* Note 5, *supra,* for background on Exchange Act Rule 15Fb6–1.

[242] *See* 15 U.S.C. 78o–10(b)(6).

[243] The Commission also relies on qualitative information regarding market structure and evolving market practices provided by commenters and knowledge and expertise of Commission staff.

[244] In prior releases, the Commission has examined data for other time periods. For example, in the Business Conduct Standards Adopting Release, the Commission presented an analysis of TIW data for November 2006 through December 2014. While the exact numbers of various groups of transacting agents and account holders in that analysis differ from the figures reported in this section (for a longer time period), we do not observe significant structural differences in market participation. Compare 81 FR at 30102 (Tables 1 and 2) with Tables 1 and 2 below.

[245] While other repositories may collect data on transactions in total return swaps on equity and debt, we do not currently have access to such data for these products (or other products that are security-based swaps). Additionally, the Commission explains below that data related to single-name CDS provides reasonably comprehensive information for the purpose of this analysis.

[246] The global notional amount outstanding represents the total face amount used to calculate payments under outstanding contracts. The gross market value is the cost of replacing all open contracts at current market prices.

[247] *See* BIS, Semi-annual OTC derivatives statistics at December 2017, Table 10.1, *https://www.bis.org/statistics/d10_1.pdf,* last accessed May 18, 2018.

[248] *See id.*

[249] These totals include swaps and security-based swaps, as well as products that are excluded from the definition of ''swap,'' such as certain equity forwards. *See* OTC, Equity-Linked Derivatives Statistics, Table D8, *https://www.bis.org/statistics/d8.pdf,* last accessed May 18, 2018. For the purposes of this analysis, the Commission assumes that multi-name index CDS are not narrow-based index CDS and therefore, do not fall within the security-based swap definition. *See* 15 U.S.C. 78c(a)(68)(A). *See also* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208. The Commission also assumes that all instruments reported as equity forwards and swaps are security-based swaps, potentially resulting in underestimation of the proportion of the security-based swap market represented by single-name CDS. Therefore, when measured on the basis of gross notional outstanding single-name CDS contracts appear to constitute roughly 59% of the security-based swap market. Although the BIS data reflects the global OTC derivatives market, and not just the U.S. market, the Commission has no reason to believe that these ratios differ significantly in the U.S. market.

[250] Following publication of the Warehouse Trust Guidance on CDS data access, TIW surveyed market participants, asking for the physical address associated with each of their accounts (*i.e.,* where the account is organized as a legal entity). This physical address is designated the registered office location by TIW. When an account reports a registered office location, we have assumed that the registered office location reflects the place of domicile for the fund or account. When an account does not report a registered office location, we have assumed that the settlement country reported by the investment adviser or parent entity to the fund or account is the place of domicile. Thus, for purposes of this analysis, the Commission has classified accounts as ''U.S. counterparties'' when they have reported a registered office location in the United States. The Commission notes, however, that this classification is not necessarily identical in all cases

non-U.S. reference entities. Notwithstanding this limitation, the TIW single-name CDS data should provide sufficient information to permit the Commission to identify the types of market participants active in the security-based swap market and the general pattern of dealing within that market.[251]

b. Affected SBS Entities

Final SBS Entity registration rules have been adopted, but compliance is not yet required. Therefore, we do not have data on the actual number of SBS Entities that will register with the Commission, or the number of persons associated with registered SBS Entities. The Commission has elsewhere estimated that up to 50 entities may register with the Commission as security-based swap dealers, and up to five additional entities may register as major security-based swap participants,[252] and these estimates remain unchanged.

Firms that act as dealers play a central role in the security-based swap market. Based on an analysis of 2017 single-name CDS data in TIW, accounts of those firms that are likely to exceed the security-based swap dealer de minimis thresholds and trigger registration requirements intermediated transactions with a gross notional amount of approximately $2.9 trillion, with approximately 55 percent of the gross notional intermediated by the top five dealer accounts.[253]

These dealers transact with hundreds or thousands of counterparties. Approximately 21 percent of accounts of firms expected to register as security-based dealers and observable in TIW have entered into security-based swaps with over 1,000 unique counterparty accounts as of year-end 2017.[254] Another 25 percent of these accounts transacted with 500 to 1,000 unique counterparty accounts; 29 percent transacted with 100 to 500 unique accounts; and 25 percent of these accounts intermediated security-based swaps with fewer than 100 unique counterparties in 2017. The median dealer account transacted with 495 unique accounts (with an average of approximately 570 unique accounts). Non-dealer counterparties transacted almost exclusively with these dealers. The median non-dealer counterparty transacted with two dealer accounts (with an average of approximately three dealer accounts) in 2017.

c. Other Market Participants

In addition to dealers, thousands of other participants appear as counterparties to security-based swap contracts in our sample, and include, but are not limited to, investment companies, pension funds, private funds, sovereign entities, and industrial companies. We observe that most non-dealer users of security-based swaps do not engage directly in the trading of swaps, but trade through banks, investment advisers, or other types of firms acting as dealers or agents. Based on an analysis of the counterparties to trades reported to the TIW, there are 2,110 entities that engaged directly in trading between November 2006 and December 2017.[255]

As shown in Table 1, below, close to three-quarters of these entities (DTCC-defined ''firms'' shown in TIW, which we refer to here as ''transacting agents'') were identified as investment advisers, of which approximately 40 percent (about 30 percent of all transacting agents) were registered as investment advisers under the Advisers Act.[256] Although investment advisers are the vast majority of transacting agents, the transactions they executed account for only 12.8 percent of all single-name CDS trading activity reported to the TIW, measured by number of transaction-sides (each transaction has two transaction sides, *i.e.,* two transaction counterparties). The vast majority of transactions (83.3 percent) measured by number of transaction-sides were executed by ISDA-recognized dealers.

TABLE 1—THE NUMBER OF TRANSACTING AGENTS BY COUNTERPARTY TYPE AND THE FRACTION OF TOTAL TRADING ACTIVITY, FROM NOVEMBER 2006 THROUGH DECEMBER 2017, REPRESENTED BY EACH COUNTERPARTY TYPE

Transacting agents	Number	Percent	Transaction share (percent)
Investment Advisers	1,635	77.5	12.8
—SEC registered	*658*	*31.2*	*8.6*
Banks	262	12.4	3.4
Pension Funds	29	1.4	0.1
Insurance Companies	42	2.0	0.2
ISDA-Recognized Dealers [1]	17	0.8	83.3
Other	125	5.9	0.2

to the definition of U.S. person under Rule 3a71–3(a)(4).

[251] The challenges the Commission faces in estimating measures of current market activity stem, in part, from the absence of comprehensive reporting requirements for security-based swap market participants. The Commission has adopted rules regarding trade reporting, data elements, and public reporting for security-based swaps that are designed to, when fully implemented, provide the Commission with additional measures of market activity that will allow us to better understand and monitor activity in the security-based swap market. *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; Final Rule Amendments, Exchange Act Release No. 78321 (July 14, 2016), 81 FR 53545 (Aug. 12, 2016).

[252] *See, e.g.,* Registration Adopting Release, 80 FR at 49000.

[253] The Commission staff analysis of TIW transaction records indicates that approximately 99% of single-name CDS price-forming transactions in 2017 involved an ISDA-recognized dealer.

[254] Many dealer entities and financial groups transact through numerous accounts. Given that individual accounts may transact with hundreds of counterparties, the Commission may infer that entities and financial groups may transact with at least as many counterparties as the largest of their accounts.

[255] These 2,110 entities, which are presented in more detail in Table 1, below, include all DTCC-defined ''firms'' shown in TIW as transaction counterparties that report at least one transaction to TIW as of December 2017. The staff in the Division of Economic and Risk Analysis classified these firms, which are shown as transaction counterparties, by machine matching names to known third-party databases and by manual classification. *See, e.g.,* Dealing Activity Adopting Release, 81 FR 8602, fn.43. Manual classification was based in part on searches of the EDGAR and Bloomberg databases, the SEC's Investment Adviser Public Disclosure database, and a firm's public website or the public website of the account represented by a firm. The staff also referred to ISDA protocol adherence letters available on the ISDA website.

[256] *See* 15 U.S.C. 80b1–80b21. Transacting agents participate directly in the security-based swap market, without relying on an intermediary, on behalf of principals. For example, a university endowment may hold a position in a security-based swap that is established by an investment adviser that transacts on the endowment's behalf. In this case, the university endowment is a principal that uses the investment adviser as its transacting agent.

TABLE 1—THE NUMBER OF TRANSACTING AGENTS BY COUNTERPARTY TYPE AND THE FRACTION OF TOTAL TRADING ACTIVITY, FROM NOVEMBER 2006 THROUGH DECEMBER 2017, REPRESENTED BY EACH COUNTERPARTY TYPE—Continued

Transacting agents	Number	Percent	Transaction share (percent)
Total	2,110	100.0	100

[1] For the purpose of this analysis, the ISDA-recognized dealers are those identified by ISDA as belonging to the G14 or G16 dealer group during the period: JP Morgan Chase NA (and Bear Stearns), Morgan Stanley, Bank of America NA (and Merrill Lynch), Goldman Sachs, Deutsche Bank AG, Barclays Capital, Citigroup, UBS, Credit Suisse AG, RBS Group, BNP Paribas, HSBC Bank, Lehman Brothers, Société Générale, Credit Agricole, Wells Fargo and Nomura. *See, e.g., https://www.isda.org/a/5eiDE/isda-operations-survey-2010.pdf.*

Principal holders of CDS risk exposure are represented by ''accounts'' in the TIW.[257] The staff's analysis of these accounts in TIW shows that the 2,110 transacting agents classified in Table 1 represent 13,137 principal risk holders. Table 2, below, classifies these principal risk holders by their counterparty type and whether they are represented by a registered or unregistered investment adviser.[258] For instance, banks in Table 1 allocated transactions across 349 accounts, of which 20 were represented by investment advisers. In the remaining instances, banks traded for their own accounts. Meanwhile, ISDA-recognized dealers in Table 1 allocated transactions across 91 accounts. Private funds are the largest type of account holders that we were able to classify, and although not verified through a recognized database, most of the funds we were not able to classify appear to be private funds.[259]

TABLE 2—THE NUMBER AND PERCENTAGE OF ACCOUNT HOLDERS—BY TYPE—WHO PARTICIPATE IN THE SECURITY-BASED SWAP MARKET THROUGH A REGISTERED INVESTMENT ADVISER, AN UNREGISTERED INVESTMENT ADVISER, OR DIRECTLY AS A TRANSACTING AGENT, FROM NOVEMBER 2006 THROUGH DECEMBER 2017

Account holders by type	Number	Represented by a registered investment adviser		Represented by an unregistered investment adviser		Participant is transacting agent[2]	
Private Funds	3,857	1,973	51%	1,859	48%	25	1%
DFA Special Entities	1,319	1,262	96%	37	3%	20	2%
Registered Investment Companies	1,159	1,082	93%	73	6%	4	0%
Banks (non-ISDA-recognized dealers)	349	20	6%	8	2%	321	92%
Insurance Companies	301	196	65%	34	11%	71	24%
ISDA-Recognized Dealers	91	0	0%	0	0%	91	100%
Foreign Sovereigns	83	63	76%	3	4%	17	20%
Non-Financial Corporations	75	52	69%	4	5%	19	25%
Finance Companies	20	11	55%	0	0%	9	45%
Other/Unclassified	5,883	3,745	64%	1,887	32%	251	4%
All	13,137	8,404	64%	3,905	30%	828	6%

[2] This column reflects the number of participants who are also trading for their own accounts.

2. Natural Persons and Entity Persons Associated With SBS Entities

We now estimate the number of natural persons associated with entities likely to register with the SEC as SBS Entities. Based on an analysis of broker-dealer FOCUS reports, as of December 31, 2017, there were 3,523 broker-dealers that employed full-time registered representatives and were doing a public business; these broker-dealers each employed on average 75.8 registered representatives, or approximately 267,043 in total. However, based on our review of the entities we believe may register as SBS Dealers and their activities, the Commission believes the subset of clearing broker-dealers provides a better estimate given their size, complexity of operations, and role in clearing and trade execution. As of December 31, 2017, there were 438 clearing broker-dealers which had, on average, each employed 420 persons who were registered representatives; we use this average as the basis for our estimate of 21,000 natural persons associated with dealers (420 * 50 = 21,000). Note, however, that SBS Entities will be limited to sales of security-based swaps, whereas broker-dealers are generally engaged in the sale of a broader range of financial instruments, as well as other business lines such as prime brokerage services. Thus, it is possible that fewer people would be needed to facilitate this business.

Since registration requirements for major security-based swap participants are triggered by position thresholds, as opposed to activity thresholds for dealer registration, we anticipate that entities seeking to register with the Commission as major security-based swap participants may more closely resemble hedge funds and investment advisers.

[257] ''Accounts'' as defined in the TIW context are not equivalent to ''accounts'' in the definition of ''U.S. person'' provided by Exchange Act rule 3a71–3(a)(4)(i)(C). They also do not necessarily represent separate legal persons. One entity or legal person may have multiple accounts. For example, a bank may have one DTCC account for its U.S. headquarters and one DTCC account for one of its foreign branches.

[258] Unregistered investment advisers include all investment advisers not registered under the Investment Advisers Act and may include investment advisers registered with a state or a foreign authority, as well as investment advisers that are exempt reporting advisers under section 203(l) or 203(m) of the Investment Advisers Act.

[259] For the purposes of this discussion, ''private fund'' encompasses various unregistered pooled investment vehicles, including hedge funds, private equity funds, and venture capital funds. There remain over 5,800 DTCC accounts unclassified by type. Although unclassified, each account was manually reviewed to verify that it was not likely to be a special entity within the meaning of the Dodd-Frank Act and instead was likely to be an entity such as a corporation, an insurance company, or a bank.

Accordingly, to estimate the number of natural persons associated with major security-based swap participants, we use Form ADV filings by registered investment advisers. Based on this analysis, as of June 30, 2018 there were 13,010 registered investment advisers; these investment advisers had an average of 62 employees each. We use this average as the basis for our estimate of 310 natural persons associated with major security-based swap participants (62 * 5 = 310).

The estimated 21,000 natural persons associating with security-based swap dealers and estimated 310 natural persons associating with major security-based swap participants together provide our estimate of 21,310 natural persons associating with entities that are likely to register with the Commission as SBS Entities.

We now turn to the estimate of the number of entities associated with SBS Entities. Based on an analysis of historical Form BD filings, broker-dealers with control affiliates had an average of 8 control affiliates that started to associate between 2000 and 2017, and have not ended the association by December 31, 2017. Similar to the approach in the Proposing Release, it may be appropriate to scale the figure by a factor of two to account for complexity in business structures and for the fact that security-based swap dealers are likely to resemble some of the larger broker dealers, which results in an estimate of up to 800 (8*50*2 = 800) entities associated with security-based swap dealers. We continue to recognize that some SBS Entities, especially those SBS Entities not cross-registered as broker-dealers, may be engaged in sales of a more limited range of financial instruments than broker-dealers.

Using information on entity control persons in Schedules A, B and D in historical Form ADV filings for investment advisers as of June 30, 2018, investment advisers with control persons had an average of approximately 38.4 control persons listed as firms or organizations that started to associate between 2000 and June 2018 and have not ended the association by June 2018. We continue to believe that it may be appropriate to scale the figure by a factor of two to account for complexity in business structures and for the fact that major swap participants are likely to be similar to some of the larger investment advisers, which results in an estimate of up to approximately 384 (38.4*5*2 = 384) entities associated with major security-based swap participants.

The estimated 800 entity persons associating with security-based swap dealers and estimated 384 entity persons associating with major security-based swap participants together provide our estimate of 1,184 entity persons associating with SBS entities that will register.

Overall, we estimate that as many as 420 natural persons may associate with each dealer and as many as 62 natural persons may associate with each major participant, amounting to as many as 21,310 associated natural persons in total. In addition, we estimate that 1,184 entity persons may be associating with all SBS Entities.

We note that SBS Entities currently intermediating security-based swaps are frequently part of complex organizational structures, which may include thousands of natural persons and hundreds of entities. Further, we believe that SBS Entities may adjust their organizational structures and activities in response to the associated person and other requirements of the final SBS Entity registration rules and the pending substantive Title VII rules. We anticipate that there may be a high degree of heterogeneity in business structures and organizational complexity among SBS Entities. Ultimately, the Commission lacks data on SBS Entity associations with disqualified persons effecting or involved in effecting security-based swaps on their behalf, and commenters have not provided information or data that would allow such quantification. It is, therefore, difficult to estimate with a high degree of certainty the number of associated persons currently intermediating security-based swaps on behalf of SBS Entities that may be affected by the final rules.

3. Other Markets and Existing Regulatory Frameworks

The numerous financial markets are integrated, often attracting the same market participants that trade across corporate bond, swap, and security-based swap markets, among others.[260] For example, persons who will register as SBS Dealers and major security-based swap participants are likely also to be engaged in swap activity. In part, this overlap reflects the relationship between single-name CDS contracts, which are security-based swaps, and index CDS contracts, which may be swaps or security-based swaps. A single-name CDS contract covers default events for a single reference entity or reference security. Index CDS contracts and related products make payouts that are contingent on the default of index components and allow participants in these instruments to gain exposure to the credit risk of the basket of reference entities that comprise the index, which is a function of the credit risk of the index components. A default event for a reference entity that is an index component will result in payoffs on both single-name CDS written on the reference entity and index CDS written on indices that contain the reference entity. Because of this relationship between the payoffs of single-name CDS and index CDS products, prices of these products depend upon one another,[261] creating hedging opportunities across these markets.

These hedging opportunities mean that participants that are active in one market are likely to be active in the other. Commission staff analysis of approximately 4,358 TIW accounts that participated in the market for single-name CDS in 2017 revealed that approximately 2,936 of those accounts, or 67 percent, also participated in the market for index CDS. Of the accounts that participated in both markets, data regarding transactions in 2017 suggest that, conditional on an account transacting in notional volume of index CDS in the top third of accounts, the probability of the same account landing in the top third of accounts in terms of single-name CDS notional volume is approximately 38 percent; by contrast, the probability of the same account landing in the bottom third of accounts in terms of single-name CDS notional volume is only 5.4 percent. As a result of cross-market participation, informational efficiency, pricing and liquidity may spill over across markets.[262]

Based on an analysis of 2017 TIW data, the Commission estimates that approximately 46 of the 50 entities expected to register as security-based swap dealers will be dually registered with the CFTC and therefore be subject to CFTC requirements for swap dealers. Additionally, based on an analysis of TIW data and filings with the Commission, the Commission continues

[260] *See* Proposing Release, 80 FR at 51711.

[261] ''Correlation'' typically refers to linear relationships between variables; ''dependence'' captures a broader set of relationships that may be more appropriate for certain swaps and security-based swaps. *See, e.g.,* George Casella & Roger L. Berger, Statistical Inference 171 (2nd ed. 2002).

[262] *See* Business Conduct Adopting Release, 81 FR at 30108; Christopher Culp, Andria van der Merwe, & Bettina J. Starkle, *Single-name Credit Default Swaps: A review of the Empirical Academic Literature* 71–85 (International Swaps and Derivatives Association Study, 2016), *available at https://www.isda.org/a/KSiDE/single-name-cds-literature-review-culp-van-der-merwe-staerkle-isda.pdf;* Patrick Augustin, Marti G. Subrahmanyam, Dragon Y. Tang, & Sarah Q. Wang, *Credit Default Swaps: Past, Present, and Future,* 8 Ann. Rev. Fin. Econ. 175 (2016).

to estimate that 16 market participants that will register as SBS Dealers have already registered with the Commission as broker-dealers and are thus subject to Exchange Act and FINRA requirements applicable to such entities. Therefore, we expect SBS Entities to associate with persons effecting or involved in effecting transactions across the various markets overseen by the Commission, CFTC, FINRA, and NFA.

The Commission, CFTC, FINRA, and NFA have already established processes that enable various persons subject to a statutory disqualification or other bars to be permitted to associate with regulated entities transacting in equity, bond, commodity, swap, and other markets. In light of these considerations, our analysis below considers the costs and benefits, as well as the effects on efficiency, competition and capital formation of the disqualification review process under final Rule of Practice 194 in context of existing review processes established by the Commission, CFTC, FINRA, and NFA.

4. Data on Parallel Review Processes and Statutory Disqualification

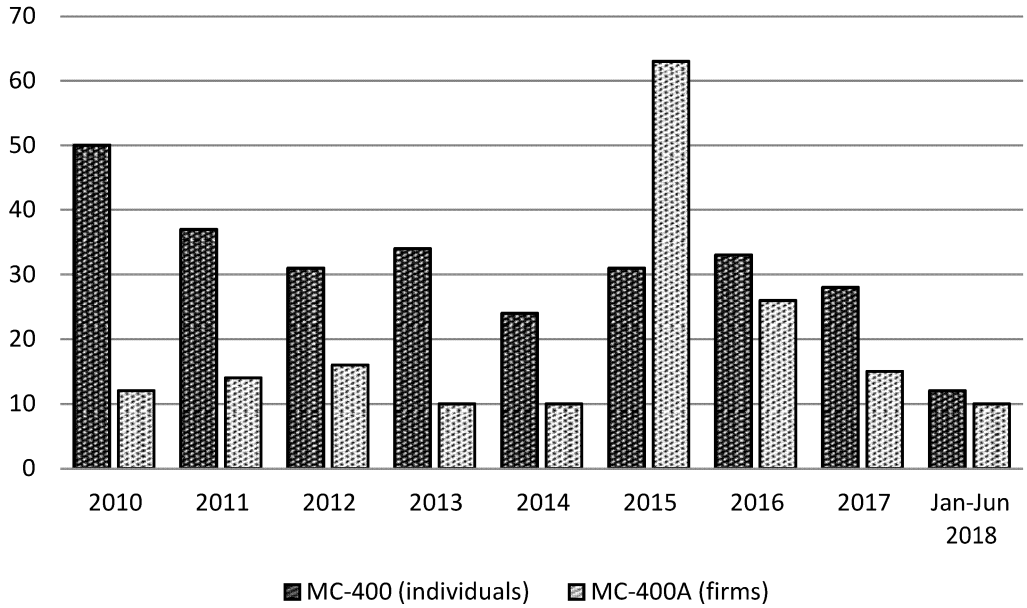
While the Commission lacks data on the incidence of statutory disqualifications in the security-based swap market, and therefore the likely number of applications for relief, we look to the securities market and the experience of broker-dealers as a guide. In the Proposing Release, we presented data on closely parallel statutory disqualification review processes. In this section, we provide updated information and data on applications, dispositions, investor losses, and re-offenses from parallel review processes by FINRA, the CFTC, the Commission's review under Rule of Practice 193, and recent research. From the outset, we recognize that one of the limitations of the data provided below is the time period for which the data are available (post-crisis period). We recognize that incidences of misconduct and fraud may be more prevalent and more difficult to detect in economic booms. As such, the figures below may underestimate the prevalence of certain types of misconduct in other markets.

a. FINRA's Review Process

The Commission continues to believe that the incidence of statutory disqualification among broker-dealers serves as a reasonable basis to estimate the incidence of disqualification among SBS Entities, because both broker-dealers and SBS Entities are engaged in the business of intermediating trades in financial instruments.

Based on information provided by FINRA to the Commission, in 8.5 years between 2010 and June 2018, FINRA has received 280 MC–400 applications (an average of approximately 33 per year), and 176 MC–400A applications (an average of approximately 21 per year). The number of applications by type on an annual basis is reported in Figure 1.

Figure 1. MC-400 and MC-400A applications received in 2010 - June 2018.[263]



Of all MC–400 applications for individuals received during 2010–June of 2018, approximately 26 percent of applications were related to statutory disqualification for solely non-investment related conduct; the other 74 percent were for investment-related conduct. Of all MC–400 applications received during 2010–June 30, 2018, 24 percent of those applications were related to SEC orders, 20 percent of those applications were related to FINRA actions, 16 percent of those applications were related to SOX violations, and 3 percent of those applications were related to injunctions. The remaining approximately 11 percent of those MC–400 applications were due to other investment-related or multiple types of conduct (including investment related conduct). Of all MC–400A applications received during 2010–June of 2018, 1 application was related to statutory disqualification for solely non-investment related conduct; the remaining 175 were for investment-related conduct. Figure 2 and Figure 3 present information about the nature of underlying conduct related to applications MC–400 and MC–400A applications in the full sample.

[263] The overwhelming majority of MC–400A applications submitted in 2015 resulted from the Commission's Municipalities Continuing Disclosure Cooperation (''MCDC'') initiative. The relatively high number of MC–400A Applications processed in 2015 is atypical of the amount of MC–400A applications that FINRA typically disposes of in a calendar year.

With respect to application dispositions, between 2010 and June of 2018, FINRA made 299 MC–400 dispositions for individuals subject to a statutory disqualification seeking relief under its FINRA Rule 9520 Series. Of these dispositions, 89 (or 30 percent) were approvals (including 23 approvals for non-investment-related disqualifications and 66 for investment-related disqualifications); 157 (or 53 percent) were denials; 29 were instances where the individuals were no longer required to file an application; and 24 were determined not to be statutorily disqualified. Figure 4 shows time trends in MC–400 dispositions.

Further, between 2010 and June of 2018, FINRA made dispositions pertaining to 173 MC–400A applications for statutorily disqualified member firms under its Rule 9520 Series. Of the MC–400A dispositions, 102 (or 59 percent) were approvals; 1 was a denial; in 53 (or 31 percent) applications the firm filed Form BDW, was canceled by FINRA or the application was no longer required; and in 17 applications (10 percent) the firm was determined not to be disqualified. Figure 5 shows time trends in MC–400A dispositions.

Figure 2. MC-400 Applications received in 2010 - June 2018, by nature of underlying conduct.

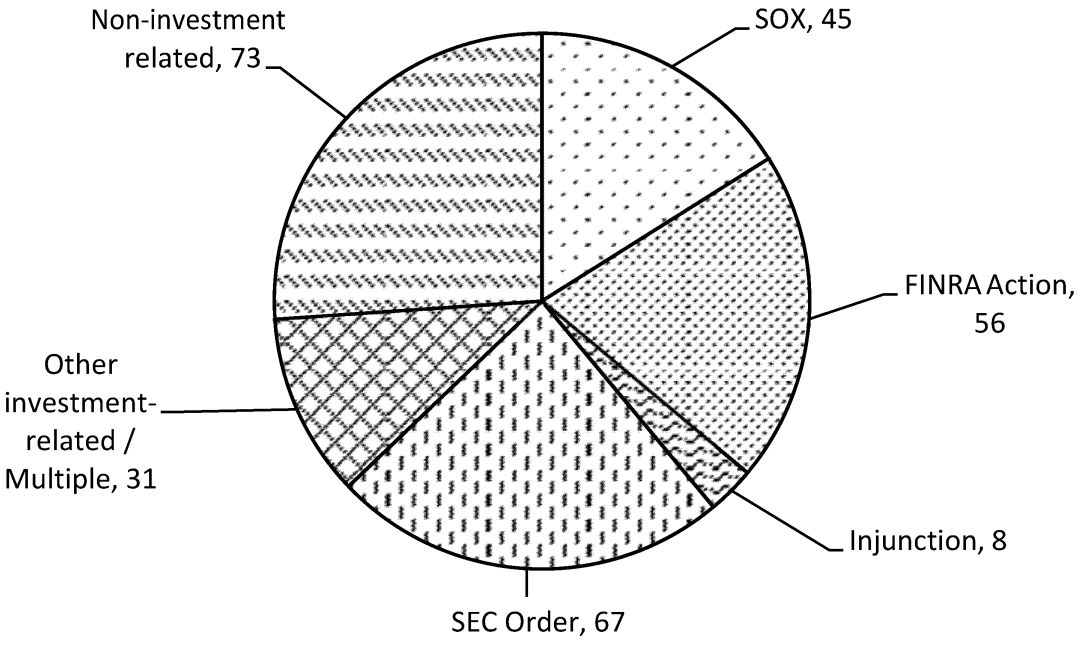


Figure 3. MC-400A Applications received in 2010 - June 2018, by nature of underlying conduct.

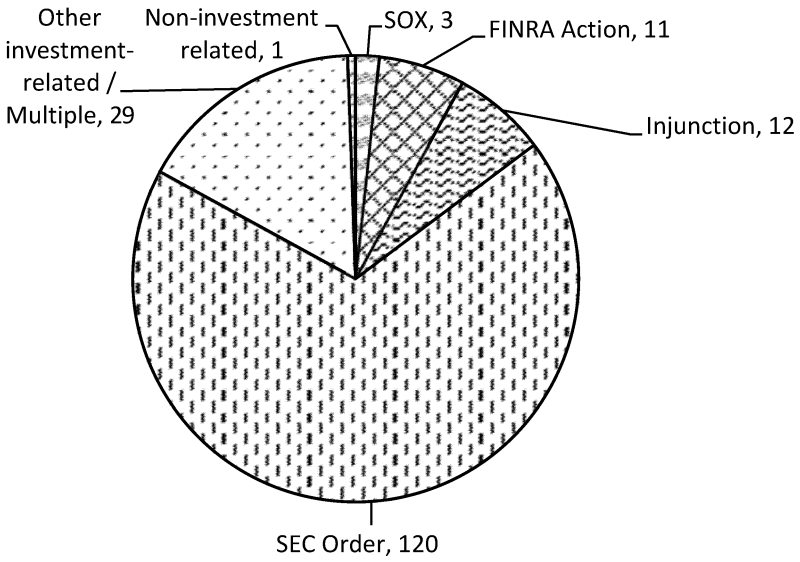


Figure 4. Application dispositions by year of disposition (regardless of when the applications were received): MC-400 applications for natural persons.

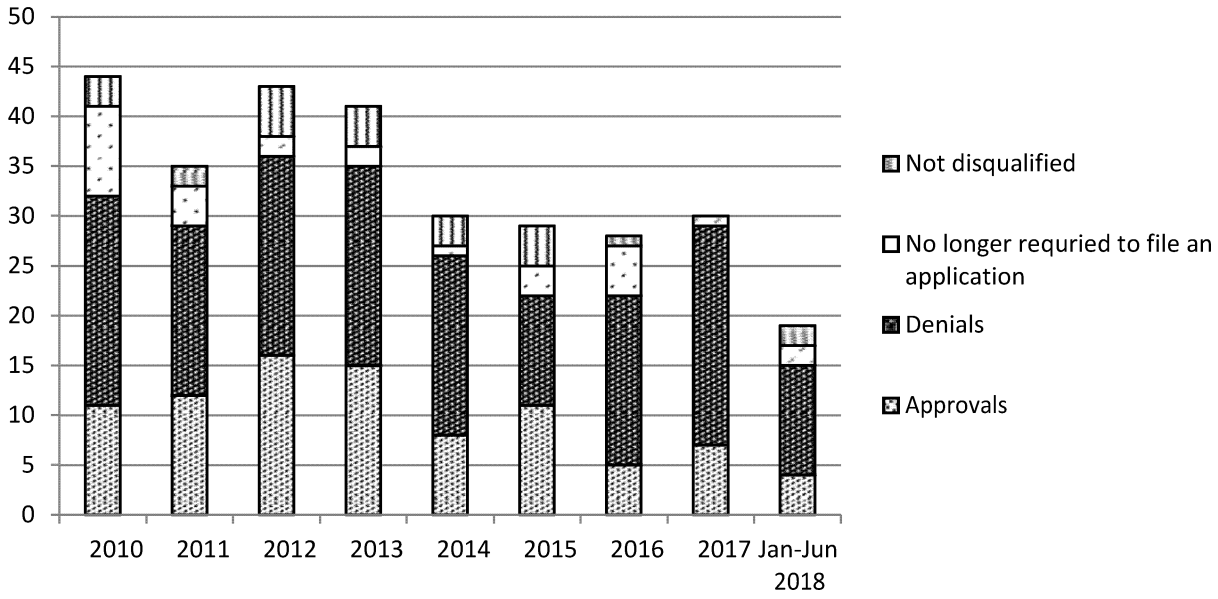
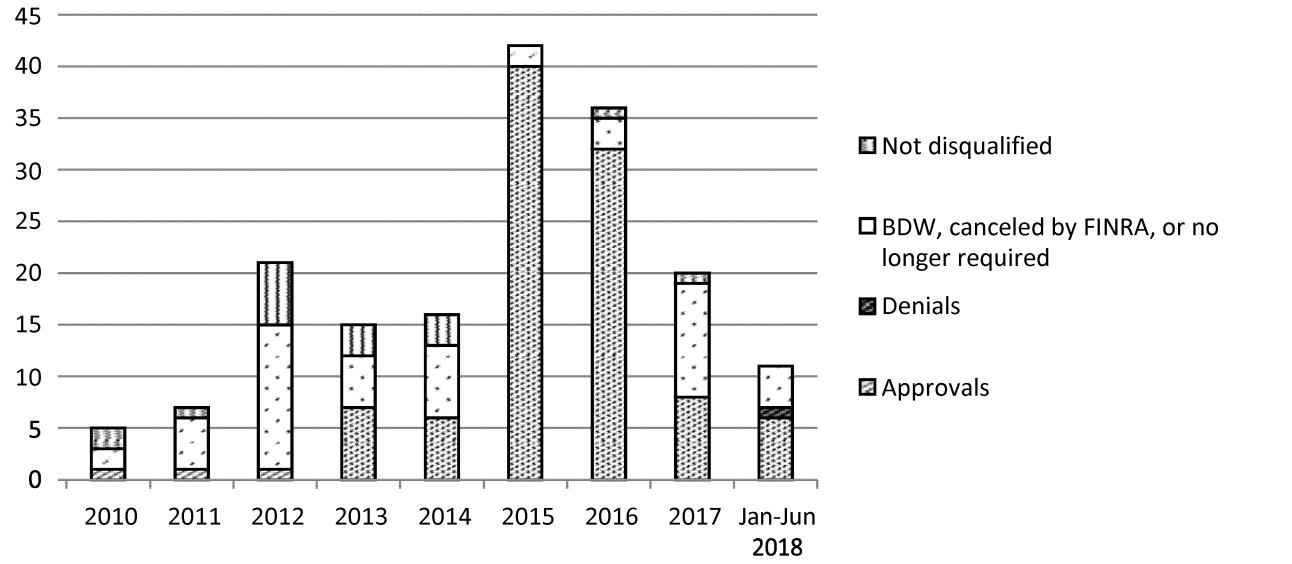


Figure 5. Application dispositions by year of disposition (regardless of when the applications were received): MC-400A applications for entities.[264]



Regarding reoffenses,[265] out of 89 MC–400 applications approved between 2010 and June of 2018, there were 10 reoffenses. Of the 10 MC–400 reoffenses, 2 offenders were originally disqualified for non-investment related offenses, and the repeat offense for both offenders was also non-investment related; and 2 offenders were originally disqualified for non-investment related misconduct and the repeat offense was investment related.[266] For entities, out of 102 MC–400A application approvals between 2010 and June of 2018, there were 29 reoffenses (all were investment-related). A portion of these occurred in 2015, which saw an increase in MC–400A applications as a result of the Commission's MCDC Initiative.

For MC–400A Applications: Reoffender is defined as a broker-dealer who was previously approved pursuant to Rule 19h–1 and who then became subject to statutory disqualification again within the relevant time period (January 1, 2010, through June 30, 2018), as reported on the broker-dealer's Uniform Registration Forms.

b. CFTC/NFA Review Process

We have also requested and received data from NFA. According to NFA staff, between October 11, 2012, and June 30, 2018, 7 different Swap Dealers filed 15 applications to the NFA for NFA to provide notice to the Swap Dealer that, had the person applied for registration as an associated person, NFA would have granted such registration. As noted above, the Commission has estimated that up to 55 SBS Entities may seek registration, while the CFTC has provisionally registered 102 Swap Entities.[267] Using the data from NFA concerning 15 applications over approximately 5.75 years, we estimate the filing of approximately 2 applications per year on aggregate across all SBS Entities requesting that statutorily disqualified associates persons be permitted to effect or be involved in effecting security-based swaps on behalf of an SBS Entity.[268]

We note that the number of applications received by NFA may only present a partial picture of the potential impact of a disqualification because, *inter alia,* (1) the CFTC definition of ''associated person'' of a Swap Entity includes only natural persons, not entities (*see* 17 CFR 1.3(aa)(6)); (2) in CFTC Regulation 23.22(b), 17 CFR 23.22(b), the CFTC provided an exception from the prohibition set forth in CEA Section 4s(b)(6), 7 U.S.C. 6s(b)(6), for any person subject to a statutory disqualification who is already listed as a principal, registered as an associated person of another CFTC registrant, or registered as a floor broker or floor trader.

Most applications were made with respect to individuals disqualified for non-investment related conduct: Of the 15 applications, 9 applications were filed by Swap Dealers for associated persons whose disqualifying misconduct was not investment-related (misdemeanors and felonies for non-investment related conduct). With respect to application dispositions, the NFA made a determination that it would have granted registration as an associated person of a Swap Dealer if that person had applied for registration as an associated person on 13 applications. In two other instances, an application for registration was filed and subsequently withdrawn (2012) and an individual was no longer employed by the firm (2013).

Regarding instances of repeated misconduct, since individuals who act as associated persons of Swap Dealers are not registered, NFA receives no information regarding re-offenses. However, to date, none of the swap dealers have filed additional statutory disqualification forms to request NFA determination with respect to a new statutory disqualification for any of the individuals. Information that would

[264] See Note 263.

[265] For MC–400 Applications: Reoffender is defined as a disqualified individual who was previously approved to associate pursuant to Rule 19h–1 and who then became subject to a subsequent final regulatory action or was convicted of a criminal offense within the relevant time period (January 1, 2010, through June 30, 2018), as reported on the individual's Uniform Registration Forms.

[266] A total of 3 individual's account for 4 reoffenses (*i.e.,* one person reoffended twice).

[267] *See* CFTC Provisionally Registered Swap Dealers, as of October 11, 2018, *https://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.html,* last accessed November 6, 2018.

[268] This figure slightly overestimates the number of applications calculated as: (15 applications × 55 SBSEs/102 Swap entities) / approximately 5.75 years ~= 1.4.

provide any estimates of investor losses in various disqualification instances was not available.

c. Other Data About Misconduct

In the Proposing Release, the Commission described available data on disqualification and misconduct in the securities market. In this section, we supplement the discussion with recent research on that topic. In addition to data on parallel review processes, research has examined data on misconduct of brokers, registered investment advisers, and money managers.[269] These results are generally obtained from registered brokers and investment advisers, in a more competitive industry with a clientele that includes retail customers. This differs from security-based swap markets, which have unique features. For example, security-based swaps may be more opaque than equity or bonds, potentially increasing informational asymmetries among transacting counterparties.[270] At the same time, security-based swap markets have a dealer-oriented market structure, where a relatively small group of dealers serves a predominantly institutional clientele.[271] This can strengthen repeated game reputational incentives, and the institutional nature of the clientele may suggest a greater degree of investor sophistication than in the retail context.

Nevertheless, these data imply that, at least in their specific settings: (i) Past disciplinary events and other disclosed matters may predict higher probability of future misconduct; (ii) employee characteristics are strong predictors of future employee misconduct; (iii) the ability to predict future misconduct with past misconduct may weaken over time; and (iv) misconduct may be relatively rare, employees with misconduct histories may be attracted to employers with higher prevalence of misconduct, and the misconduct of employees may increase the likelihood of misconduct of their colleagues.

Egan, Matvos, and Seru (2017)[272] examine BrokerCheck disclosures of the disciplinary history of FINRA registered representatives in 2005–2015. The paper defines misconduct broadly and includes in the definition customer disputes, disciplinary events, and financial matters reported by FINRA. On average, only 7 percent of employees in a given firm have misconduct records. However, rates of misconduct in several firms with the highest incidences of misconduct are as high as 15–20 percent. Hence, entities exhibit significant differences in misconduct risks in their labor force and, at least in some entities, the prevalence of misconduct by associated natural persons is significantly higher than industry average. In addition, firms tend to ''match on misconduct,'' with firms with higher rates of prior misconduct hiring employees with misconduct histories. Finally, prior misconduct strongly predicts repeated misconduct: Approximately a third of employees with misconduct engage in repeated misconduct, and employees with prior misconduct are approximately five times as likely to engage in new misconduct compared to the sample average. Similarly, Assadi (2018)[273] finds that misconduct predicts future misconduct, and this relationship is weakened by time elapsed since the previous incidence of misconduct.

Dimmock, Gerken, and Graham (2018)[274] examine customer complaints against FINRA-registered representatives in 1999 through 2011, and argue that misconduct of individuals influences the misconduct of their coworkers. The paper uses mergers of firms as a quasi-exogenous shock and examines changes in an adviser's misconduct around changes to an employee's coworkers due to a merger. The paper estimates that an employee is 37 percent more likely to commit misconduct if her new coworkers encountered in the merger have a history of misconduct. The paper contributes to broader evidence on peer effects, connectedness, and commonality of misconduct,[275] and can help explain the distributional properties in the prevalence of misconduct across firms documented in Egan, Matvos, and Seru (2017).

Other papers have considered the role of disclosures for the predictability of misconduct and the distribution of investor losses related to misconduct. They seem to indicate that, in some contexts, existing disclosures accessible to the investing public allow investors to identify brokers, investment managers, and hedge funds that have significantly higher misconduct risk both in terms of probability of misconduct as well as dollar investor losses. While these results are limited to their specific settings, we note that the security-based swap market is an institutional market. As such, the investor clientele consuming public disclosures of registered SBS Entities may be more sophisticated than that of retail brokerages or investment managers in the settings discussed below. In the broker-dealer setting, which may be most analogous to the security-based swap setting, Qureshi and Sokobin (2015)[276] use BrokerCheck data for 2000 through 2013 to explore the distribution of events involving investor losses (measured as complaints that led to awards against brokers or voluntarily settled above a *de minimis* threshold). They also test whether public disciplinary records, financial and other disclosures, and employment history information can meaningfully predict future misconduct and investor losses. The paper's three main results are as follows. First, investor loss events are rare and predominantly one-time offenses. Between 98.7 percent and 99 percent of brokers are not associated with any investor loss events. Of the brokers with investor loss events, the overwhelming majority (approximately 82 percent) have only 1 event, with only about 12 percent having 2 events and about 6 percent of brokers having 3 events or more. Second, publicly observable data yield a high degree of predictability of future investor loss events. For example, 20 percent of brokers with the highest *ex-ante* predicted probability of investor losses (based on public disclosures) are associated with more than 55 percent of

[269] A significant limitation of this literature is the fact that only a fraction of misconduct may be detected. As a result, misconduct rates in the data reflect both the prevalence of the underlying misconduct and the probability of detection.

[270] *See* Better Markets Letter, at 2 (stating that ''derivatives are so complex and poorly understood by even sophisticated market participants.'').

[271] As can be seen from Tables 1 and 2 above, the overwhelming bulk of activity is conducted by dealers and institutions. *See also* Inaki Aldasoro & Torsten Ehlers, *The Credit Default Swap Market: What a Difference a Decade Makes,* BIS Quarterly Review, June 2018, at 1, 4 (Graph 2), *available at https://www.bis.org/publ/qtrpdf/r_qt1806b.pdf,* last accessed July 30, 2018.

[272] *See* Mark Egan, Gregor Matvos, & Amit Seru, *The Market for Financial Adviser Misconduct,* J. Pol. Econ. (forthcoming, 2017), *available at https://ssrn.com/abstract=2739170.* Their measures of misconduct reflect customer disputes, disciplinary events, and financial matters reported by FINRA from advisers' disclosure statements during that period.

[273] *See* Pooria Assadi, *Empirical Investigation of the Causes and Effects of Misconduct in the U.S. Securities Industry* (Working Paper, 2018), *available at http://summit.sfu.ca/system/files/iritems1/17890/etd10567_PAssadi.pdf.*

[274] *See* Stephen G. Dimmock, William C. Gerken, & Nathaniel Graham, *Is Fraud Contagious? Coworker Influence on Misconduct by Financial Advisors,* 73 J. Fin. 1417, (2018).

[275] *See, e.g.,* Christopher A. Parsons, Johan Sulaeman, & Sheridan Titman, *The Geography of Financial Misconduct,* 73 J. Fin. 2087 (2018), *available at https://onlinelibrary.wiley.com/doi/abs/10.1111/jofi.12704.*

[276] *See* Hammad Qureshi & Jonathan S. Sokobin, *Do Investors Have Valuable Information about Brokers?* (FINRA Office of the Chief Economist Working Paper, August 2015), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2652535,* last accessed July 30, 2018.

the investor loss events with approximately 56 percent of total dollar investor losses. In turn, 20 percent of brokers with the lowest *ex-ante* probability of investor loss events are associated with only 3.8 percent of investor loss events. The paper concludes that publicly available information allows investors to discriminate between brokers with a high propensity for investor loss from other brokers. Third, losses associated with the broker's coworkers meaningfully increase the overall power to predict investor loss events; however, undisclosed financial events, undisclosed disciplinary events, and exam performance do not.

5. Requests for Relief From Statutory Disqualification Under Rule of Practice 194

In the Proposing Release, the Commission relied on disqualification review application data for 2014, and estimated that there may be as many as five applications per year with respect to associated natural persons and as many as two applications per year with respect to associated person entities.[277] As described above, we estimate that up to 55 entities may register with the Commission as SBS Entities, and we now estimate 21,310 associated natural persons. We have also received additional data regarding the total number of MC–400 and MC–400A applications received by FINRA from 2010 through June of 2018. Assuming the ratio of applications for association with statutorily disqualified persons at SBS Entities is the same as at broker-dealers, the data indicate there may be approximately three applications for natural persons per year.[278] Recognizing potential annual fluctuations in the incidence of disqualification review applications, we now conservatively estimate that SBS Entities may file up to five applications per year with respect to their associated natural persons.[279]

[277] *See* Proposing Release, 80 FR at 51707.

[278] For natural persons: 21,310 * (33/267,043) = 2.6.

[279] To the extent that SBS Entities are using the same personnel to transact in security-based swaps, swaps, and underlying securities, and if those personnel are the subject of a prior application or other form of relief from the Commission, CFTC, an SRO, or a registered futures association, the number of new applications the Commission receives may be lower than the calculated estimate.

We also note that registered SBS Entities retain the option of complying with statutory disqualification provisions by disassociating with or reassigning disqualified persons. As a result, many instances of disqualification may be resolved through disassociation or reassignment. Registered SBS Entities would likely take advantage of the provision only when the benefits of associating with a disqualified person outweigh the costs, including reputational costs, of making an application.

C. Benefits, Costs, and Effects on Efficiency, Competition, and Capital Formation

Exchange Act Section 15F(b)(6) provides the Commission with the authority to provide relief from the prohibition against using associated natural persons subject to a statutory disqualification to effect or be involved in effecting security-based swaps.[280] As discussed above, clarity provided by the final rule regarding the materials to be submitted, the items to be considered, and the standard of review, may alter an SBS Entity's assessment of (1) any application costs and reputational costs that come with choosing to associate with disqualified persons, and (2) its beliefs as to the likelihood of an approval or denial decision by the Commission. To the extent that any such alteration leads to greater or fewer applications for relief under Rule of Practice 194 relative to the baseline with no process rule in place, economic costs and benefits may accrue to SBS Entities, associated persons, and counterparties to SBS Entities.

As discussed above, we estimate that the Commission will receive five or fewer applications per year under the final Rule of Practice 194. Given the number of natural persons expected to associate with SBS Entities, and our understanding of the labor market in security-based swaps, reassigning or disassociating from a disqualified natural person for the purposes of effecting security-based swaps on behalf of SBS Entities may be relatively less costly than disassociating from disqualified person entities. We continue to believe that the overall economic impact of the final rule will depend primarily on: (i) How many associated persons of SBS Entities become disqualified and their value to their associated SBS Entities, (ii) the relative market share of affected SBS Entities, (iii) the importance and structure of relationships between SBS Entities and their counterparties, and (iv) the response of unaffected SBS Entities and their counterparties. We are mindful of the economic tradeoffs inherent in our policy choices and their impact on the securities markets. We discuss these economic effects in more detail below.

The Commission lacks data on the complexity and variety of current SBS Entity business structures and activities, the degree of SBS Entity reliance on associated persons subject to statutory disqualification, the location and specificity of expertise of such persons, as well as any reputational costs of associating with disqualified persons in security-based swap markets. Further, the economic effects of various provisions of the final Rule of Practice 194 hinge on a number of factors. Such factors include: (i) Whether and how significantly SBS Entities may be affected by the statutory prohibition in Exchange Act Section 15F(b)(6); (ii) any reputational and direct costs and response of counterparties to SBS Entities seeking relief under Rule of Practice 194 relative to the baseline exemptive relief process; (iii) differences in counterparty risks and related losses under final Rule of Practice 194 relative to the baseline exemptive relief process; and (iv) how other SBS Entities may react to the newly opened market share should some SBS Entities temporarily cease effecting security-based swaps or exit the market due to the statutory prohibition in Exchange Act Section 15F(b)(6). To the best of our knowledge, no such data are publicly available, and commenters have not provided data, estimates or other information to enable quantification. We, therefore, cannot quantify many of the effects of the final Rule of Practice 194, including the tradeoff behind an SBS Entity's choice to pursue relief and face potential reputational losses versus disassociating with the statutorily disqualified associated person. Where we cannot quantify, we discuss in qualitative terms the relevant economic effects, including the costs and benefits of the final rule and alternative approaches.

1. Costs and Benefits of Rule of Practice 194

a. Costs and Benefits of a Review Process

In evaluating the likely benefits to SBS Entities of the approach being adopted, we note that absent Rule of Practice 194, SBS Entities would still be able to apply to the Commission, and the Commission would still be able to exercise its authority to grant relief.[281] The final Rule of Practice 194 does, however, establish a structured process that provides SBS Entities clarity and guidelines on the form of application, the items to be considered, and the standard of review that the Commission will apply. Furthermore, the final rule helps to ensure that the Commission will have sufficient information to make a meaningful determination that

[280] *See* 15 U.S.C. 78o–10(b)(6).

[281] *See* 15 U.S.C. 78o–10(b)(6). *See also* Section V.B, *supra.*

providing relief for an associated person is consistent with the public interest.

Specifically, absent Rule of Practice 194 and without a formal review process, SBS Entities seeking to apply for relief from Section 15F(b)(6) are likely to apply to the Commission directly, looking to either Rule of Practice 193 [282] or an analogous process as a guide. We believe that such applications would be more time-consuming and would be more prone to errors or more likely to be deemed to contain insufficient information to allow the Commission to make an informed determination.

Under the final Rule of Practice 194, SBS Entities will generally be aware of the information they are required to provide, as well as the standard of review. Clarity about the items that the Commission will consider in making a determination, will allow SBS Entities to make more-informed assessments as to the likelihood that the Commission will either grant or deny relief, which may affect their decision whether to apply for relief. The final Rule of Practice 194 may thus conserve resources relative to a more time-consuming and error-prone application process absent the rule. Delays in the application process absent the rule may require SBS Entities to replace or reassign a statutorily disqualified associated person. To the extent that the application review process under Rule of Practice 194 is less error-prone and involves fewer delays, such costs may be reduced. In addition, the final Rule of Practice 194 may allow SBS Entities to make more-informed evaluations about the tradeoff between pursuing an application and either disassociating with or reassigning a person subject to a statutory disqualification.

To the extent that Rule of Practice 194 increases certainty and conserves resources for SBS Entities applying for relief from the statutory prohibition in Exchange Act Section 15F(b)(6), some SBS Entities may choose to apply to the Commission under Rule of Practice 194, where they would have otherwise disassociated from a disqualified person. This may benefit affected SBS Entities that would have incurred higher costs from disassociating compared with costs of applying for relief under Rule of Practice 194. As discussed in greater detail in Section V.C.2, under Rule of Practice 194, a greater number of SBS Entities may be able to effect security-based swaps without potentially costly business restructuring. As a result, the counterparties of SBS Entities may benefit from greater choice of SBS Entity counterparties and lower transaction costs. Finally, applications and supporting materials, including information concerning supervisory structure, terms of employment and other items, may inform Commission understanding of SBS Entity associations and ongoing oversight.

While Rule of Practice 194 is expected to result in benefits discussed above, it will also result in direct application costs for SBS Entities filing with the Commission under the final Rule of Practice 194. In the Proposing Release, the Commission estimated that the average time necessary for an SBS Entity to research the questions, and complete and file an application under Rule of Practice 194 would be approximately 40 hours for applications regarding entities, and 30 hours for applications regarding natural persons.[283] The Commission received no comments and continues to believe the estimate for applications regarding natural persons is reasonable and appropriate; the exclusion for entities under the final rule, however, means that SBS Entities will not make any applications regarding entities and thus will spend no time on such applications. Since the Commission now estimates that SBS Entities would make up to five applications on an average annual basis, the Commission estimates the economic costs to prepare, review, and submit applications under the final Rule of Practice 194 of up to $73,620 per year.[284]

Notably, an SBS Entity would only submit an application where the SBS Entity believed that the economic value of retaining a particular person to effect security-based swaps outweighed the application costs associated with the final Rule of Practice 194. In other words, any application costs would be incurred by SBS Entities on a voluntary basis. As such, it is not clear how many SBS Entities will choose to apply for relief rather than simply disassociate from a statutorily disqualified associated person. Furthermore, the decision to incur application costs would also reflect an SBS Entity's assessment of the likelihood of the Commission granting relief under the public interest standard set forth in the final Rule of Practice 194. Lastly, under the baseline and absent Rule of Practice 194, SBS Entities can apply to the Commission for exemptive relief from the statutory prohibition, which would also involve costs. Since compliance with SBS Entity registration is not yet required and, thus, no exemptive relief applications by SBS Entities have been filed, we are unable to estimate those costs. The net costs of the application process under Rule of Practice 194 must be assessed relative to the baseline process of requesting exemptive relief, and the above estimate of $73,620 per year is likely to overestimate the additional costs of the application process.

Under the baseline, an SBS Entity would not be precluded under Exchange Act Section 15F(b)(6) from seeking Commission relief.[285] However, as already discussed, SBS Entities would lack clarity about the application process and, though they may look to Rule of Practice 193 or similar processes as a guide, SBS Entities could potentially expend more resources than necessary due to process uncertainty. Thus, notwithstanding the cost estimates above, the final rule may mitigate application costs relative to the baseline due to the existence of a structured process. We expect that this cost mitigation would be most significant for SBS Entities that would be among the first to seek relief. SBS Entities seeking relief later would enjoy the benefits of learning by observing the process experienced by first-movers.

The Commission has received comment that the absence of penalties invites misconduct and that a ban on disqualified persons without exclusions would lead firms to understand that failure to oversee and disassociate from disqualified persons jeopardizes business.[286] In evaluating this argument, the Commission has considered recent supplemental information relevant to this question. Specifically, in other contexts, some entities dismiss or disassociate from disqualified persons to limit reputational costs. For example, Egan, Matvos, and Seru (2017) show that approximately half of employees with a misconduct history lose their jobs. However, other firms frequently rehire such employees, and the rehiring firms tend to have higher rates of prior misconduct. Employees with prior misconduct records are more likely to be hired by firms with higher rates of misconduct that pay lower compensation, have retail customers, and operate in counties with lower

[282] *See* 17 CFR 201.193.

[283] *See* Proposing Release, 80 FR at 51713.

[284] This estimate is based on the following. Total burden hours = [(30 hours) × (up to 5 SBS Entities applying with respect to associated persons that are natural persons) + (6 hours) × (up to 5 SBS Entities filing notices)] = 180. Attorney at $409 per hour × 180 burden hours = $73,620. The hourly cost figure is based upon data from SIFMA's *Management & Professional Earnings in the Securities Industry 2013* (modified by the Commission staff to adjust for inflation and to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead).

[285] *See* Section *supra*.

[286] *See* Public Citizen Letter, at 1–2.

education, elderly populations, and higher incomes. The paper hypothesizes that such firms ''specialize'' in misconduct and cater to unsophisticated customers, but the paper does not evaluate fees or performance of investor portfolios. However, in the residential mortgage-backed securities (''RMBS'') market, Griffin, Kruger, and Maturana (2018) [287] do not find that RMBS employees had lower levels of job retention, promotion, or outside moves than non-RMBS employees, even when RMBS employees signed high-loss deals or deals implicated in lawsuits. While these results in the RMBS market appear somewhat inconsistent with evidence in the broker-dealer setting (Egan et al. (2017)), Amiram et al. (2018) suggest that instances of RMBS-related fraud in the sample may not have imposed on banks reputational costs large enough to result in significant labor market discipline of RMBS employees. In addition, some RMBS employees that signed deals implicated in lawsuits may have remained in continued employment of issuing banks to support litigation.

We continue to acknowledge that the results of the cited studies are not specific to the swap or security-based swap contexts. However, the studies suggest that, in some settings, even without a ban on disqualified persons, some employers may already understand that failure to oversee and disassociate from some disqualified persons may jeopardize the firms' business, and the labor market may provide some penalties against misconduct. To the degree that these findings may apply to institutional security-based swap markets, they indicate that market discipline may be a separate disincentive against misconduct and may partly mitigate the concern raised by the commenter [288] that the absence of bans invites misconduct.

b. Costs and Benefits of the Commission, CFTC, SRO, Registered Futures Association Provision

Beyond establishing a process for submitting applications, Rule of Practice 194 allows an SBS Entity, subject to certain conditions, to permit an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the SBS Entity without making an application to the Commission, if the associated person's membership, association, registration, or listing as a principal has been granted or otherwise approved by the Commission, CFTC, an SRO, or a registered futures association. In such cases where an SBS Entity meets the requirements of the final rule, these SBS Entities would be able to provide notice to the Commission in lieu of having to compile the same information and documentation for a repeated review, thereby eliminating redundancy and decreasing SBS Entity costs.

This provision of final Rule of Practice 194 provides SBS Entities with flexibility in hiring and assigning employees and associating with entities depending on business needs and required capabilities. To the extent that SBS Entities, Swap Entities, and broker-dealers use the same personnel or entities to effect security-based swaps, swaps, and securities transactions, SBS Entities will not have to undergo and bear costs of duplicate review when decisions about relief from statutory disqualifications have already been made by the Commission or another regulatory authority. This provision would, therefore, primarily benefit SBS Entities transacting across markets through statutorily disqualified associated persons previously granted relief by the Commission, the CFTC, FINRA or NFA by enabling those SBS Entities to avoid costs of a separate application process under Rule of Practice 194 or business restructuring. We also recognize that this provision reduces costs incurred by SBS Entities associating with disqualified persons previously granted relief by the Commission, the CFTC, FINRA or NFA so it may benefit these disqualified persons by potentially improving their employment options and business outcomes.

Notwithstanding these benefits, this provision of the final Rule of Practice 194 may give rise to risks related to permitting otherwise statutorily disqualified associated persons to effect or be involved in effecting security-based swaps on behalf of SBS Entities without an individualized determination by the Commission that doing so is consistent with the public interest. Exchange Act Rule 19h–1 provides for Commission review of notices filed by SROs proposing to admit any person to, or continue any person in, membership or association with a member, notwithstanding statutory disqualification.[289] The Commission does not, however, review or approve statutory disqualification decisions of NFA or CFTC. As a result, in circumstances where the SBS Entity has obtained relief from the NFA or CFTC, the Commission will not have the opportunity through the Rule of Practice 194 process to make an individualized determination or impose terms of reassociation specific to risks and activities in security-based swap markets. However, this relief is only available where an application related to a specific disqualifying event has been reviewed and approved by the CFTC, FINRA, or the NFA, and the terms and conditions of association with the SBS Entity are the same in all material respects as those approved by the CFTC, FINRA, or the NFA. Since this provision would result in a potentially greater number of statutorily disqualified associated persons being permitted to effect or be involved in effecting security-based swaps on behalf of SBS Entities, it may increase compliance and counterparty risks, as discussed in section IV.D. However, we note that the Commission continues to have authority to bring a separate action under Exchange Act Section 15F(l)(3).[290] As discussed above and in Section III, the Commission continues to believe that this provision may benefit SBS Entities relying on the same associated persons transacting across integrated markets, and, to the extent SBS Entity costs may be passed along to counterparties in the form of less attractive terms of available security-based swaps, it may also benefit counterparties.

c. Costs and Benefits of the Relief for Associated Entity Persons From Exchange Act Section 15F(b)(6)

As part of the final Rule of Practice 194, the Commission is adopting a blanket exclusion from the general prohibition in Exchange Act Section 15F(b)(6) with respect to all associated person entities. As a result of this provision, SBS Entities cross-registered as Swap Entities with the CFTC would experience economies of scope in associating with persons that are entities because the ''associated person'' definition of a Swap Entity is limited solely to natural persons and excludes person entities.[291] SBS Entities will be able to rely on the same associated person entities in transactions with the same counterparties across integrated swap and security-based swap markets. As estimated in the economic baseline, approximately 46 out of 50 entities

[287] *See* John M. Griffin, Samuel Kruger, & Gonzalo Maturana, *Do Labor Markets Discipline? Evidence from RMBS Bankers,* J. Fin. Econ. (accepted, 2018), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2977741,* last accessed Aug. 19, 2018.

[288] *See* Public Citizen Letter, at 1–2.

[289] *See* 17 CFR 240.19h–1.

[290] *See* 15 U.S.C. 78o–10(l)(3).

[291] *See* 17 CFR 1.3(aa)(6). *See also* CFTC Regulation 23.22(b), 17 CFR 23.22(b).

likely to register with the Commission as SBS Dealers are already registered with the CFTC as Swap Dealers and are currently able to associate with statutorily disqualified associated person entities in their swap activity.

In addition, as discussed above, approximately two thirds of accounts participating in the single-name CDS market also transact in index CDS subject to the CFTC's disqualification regime. This suggests that a majority of security-based swap counterparties are already currently transacting with the same entities likely to register as SBS Entities and that those SBS Entities may be associating with disqualified entities. The entity exclusion would enable the same SBS Entity—counterparty relationships to continue across swap and security-based swap markets, eliminating the need for a counterparty to establish new dealer relationships solely for the purpose of security-based swap transactions.

Further, SBS Entities will avoid all costs of business restructuring related to associated person entities that become statutorily disqualified, or in the event of new associations with statutorily disqualified associated person entities effecting or involved in effecting security-based swaps on the SBS Entity's behalf. This flexibility may benefit SBS Entities and enable them to provide counterparty services to security-based swap counterparties more effectively or efficiently. In addition, the exclusion eliminates the potential for disruption to security-based swap markets, including potential adverse effects to counterparties, that may occur if SBS Entities temporarily cease operations due to not being able to utilize the services of their associated person entities or if SBS Entities move services to associated person entities that may not be as well-equipped to handle them, pending a determination on their application for relief.

Relief for SBS Entities associating with statutorily disqualified person entities would result in SBS Entities being less constrained by the general statutory prohibition. We continue to recognize that associating with statutory disqualified person entities effecting or involved in effecting security-based swaps on behalf of SBS Entities may give rise to counterparty and compliance risks and related losses.[292] We also continue to recognize that statutory disqualification and an inability to continue associating with SBS Entities creates disincentives against underlying misconduct for associated persons.[293] Further, we recognize that, under the provision being adopted, the Commission would be unable to make an individualized determination about whether permitting a given associated person entity subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of an SBS Entity is consistent with the public interest.[294]

Some counterparties may respond to the exclusion by increasing the amount of due diligence they perform on their SBS Entity counterparties (such as accessing public Form SBSE disclosures, SEC orders, FINRA actions, and other public records) relative to the current baseline. We are unable to quantitatively estimate the number of counterparties that may respond in this way and related costs, as the extent of additional information acquisition and related costs will depend on: Each counterparty's baseline due diligence and compliance practices; the size of the counterparty's security-based swap transaction activity and relative importance of such activity in the counterparty's business; the degree to which the counterparty values statutory disqualification of associated persons as a signal of SBS Entity quality; and each counterparty's assessment of the tradeoff between potentially higher ongoing risks related to disqualification of SBS Entities' associated persons and the relative attractiveness of the price and non-price terms of security-based swaps that SBS Entities with disqualified associated persons may offer.

Several factors may limit the above economic effects of this final provision.

First, information about conduct giving rise to statutory disqualification (*e.g.,* SEC orders, injunctions, FINRA actions) in the U.S. is generally public.[295] In addition, the final SBS Entity registration rules that form a part of our economic baseline require all SBS Entities to submit to the Commission information about their disciplinary histories, including those of control affiliates. Under the final SBS Entity registration rules that form a part of the economic baseline, this information will subsequently be made public by the Commission.[296] We recognize that control affiliates are a subset of all associated person entities of an SBS Entity. However, to the extent that SBS market participants consider disciplinary history of control affiliates important in predicting future misconduct, assessing counterparty risks, or selecting security-based swap market counterparties, market participants will have access to such disclosures. Under the baseline, SBS market participants are, thus, able to choose whether and how to transact with SBS Entities that use control affiliates with a history of misconduct, enabling better informed counterparty selection and market discipline of misconduct.

Second, the security-based swap market is a dealer market, with the bulk of activity and exposure among dealers, or between dealers and non-dealer financial entities.[297] To the degree that disciplinary history may predict future counterparty risks, and to the extent that institutional market participants are able to process the information in disclosures, disciplinary history disclosures regarding control affiliates are likely to reduce counterparty selection of SBS Entities that have been the subject of disciplinary actions, imposing market discipline.[298] SBS Entities, knowing that disciplinary history of control affiliates must be disclosed, may have further incentives to avoid engaging in misconduct or may exit the market.

As discussed above, one commenter indicated that a ban on statutorily disqualified associated persons without any exclusions (including without an entity exclusion) would lead firms to understand that lax oversight and failure to disassociate from disqualified persons jeopardizes business.[299] In addition, a commenter indicated that, absent an associated person entity prohibition, there would be no deterrent for entities or firms engaging in misconduct that gives rise to

[292] *See, e.g.,* Better Markets Letter. *See also* Proposing Release, 80 FR at 51713. *Accord* Egan, Matvos, & Seru (2017) (showing in another context that there is considerable clustering of employees engaging in misconduct in a handful of firms).

[293] *See, e.g.,* Public Citizen Letter; Better Markets Letter. *See also* Proposing Release, 80 FR at 51716.

[294] However, the Commission could, by order, censure, place limitations on the activities or functions of the associated person, or suspend or bar such person from being associated with an SBS Entity. *See* 15 U.S.C. 78o–10(l)(3).

[295] As a general matter, Commission orders are publicly available, and FINRA disciplinary actions issued in 2005 or later are eligible for publication pursuant to Rule 8313 (Release of Disciplinary Complaints, Decisions and Other Information). Information about criminal convictions are generally publicly available in the United States (absent orders sealing those records), but are typically made available through federal, state, and local criminal dockets, which can be more costly to access. Statutorily disqualifying events in foreign jurisdictions may not be public depending on the rules and blocking/privacy statutes in various jurisdictions.

[296] *See* Registration Adopting Release, 80 FR at 49004.

[297] *See* Tables 1 and 2 of the baseline. *See also* Aldasoro & Ehlers (2018) at 4 (Graph 2), *available at https://www.bis.org/publ/qtrpdf/r_qt1806b.pdf.*

[298] *See* Registration Adopting Release, 80 FR at 49004.

[299] *See* Public Citizen Letter, at 1–2.

disqualification.[300] In evaluating these arguments, the Commission has considered recent supplemental information. Specifically, existing evidence on reputational incentives surrounding misconduct is limited to other contexts (such as corporate restatements, SEC enforcement actions, securities class actions, mutual fund scandals, and broker disclosures, etc.). However, most existing evidence on broker-dealers and mutual funds seems to suggest that markets may often respond to disclosures of financial misconduct and investors may vote with their feet, such that companies and mutual funds engaging in misconduct suffer direct and reputational costs around the revelation of misconduct.[301] We note that not all misconduct affects reputational capital, and some papers show that the market may be less likely to penalize non-financial, third-party, and some financial reporting misconduct.[302] However, to the degree that disclosures of disciplinary history information are informative of the probability of different types of future misconduct,[303] customers may choose to closely monitor such disclosures and make informed counterparty selection decisions. Sophisticated institutional investors with large security-based swap exposures may have stronger incentives and better ability to monitor their SBS Entity counterparties, and their choice to shift business to another SBS Entity may result in greater losses for their original SBS Entity counterparty. As a result, reputational incentive effects may be more important in markets with a concentrated institutional investor clientele. Thus, we recognize that reputational costs of misconduct may be another important disincentive against SBS Entity associations with disqualified persons, separate from a ban on statutorily disqualified associated persons, potentially mitigating the concern raised by commenters.[304]

At the same time, the concentrated nature of security-based swap dealing activity may reduce the ability of counterparties to choose to transact with SBS Entities that do not rely on disqualified associated persons. As estimated in the economic baseline, the top five dealer accounts engaged in over 55 percent of all SBS Entity transactions, and the median counterparty transacted with only 2 dealers in 2017. While reputational incentives may flow from a customer's willingness to deal with an SBS Entity, the fact that the customer many not have many dealers to choose from weakens those incentives. Importantly, we recognize that these estimates of market concentration are themselves reflecting market participants' current choice of counterparties. Institutional counterparties are likely to trade off the potentially higher counterparty risk of transacting with SBS Entities with disqualified person entities against the price and non-price terms of security-based swaps such SBS Entities may offer. If a number of active counterparties choose to move their business to SBS Entities without disqualified associated persons, even if they currently have low market share, activity may become further concentrated among SBS Entities without disqualified persons and/or market concentration itself may decrease.

Third, as discussed above,[305] the exclusion in Rule of Practice 194(c) will neither limit nor otherwise affect the Commission's statutory authority to institute proceedings or bring an action against any associated person entities, including, in the appropriate case, to institute proceedings under Exchange Act Section 15F(l)(3) to determine whether the Commission should censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with an SBS Entity. As noted above, this exclusion will also neither limit nor otherwise affect the ability of the Commission, the CFTC, an SRO or the NFA to deny membership, association, registration or listing as a principal with respect to any associated person entity.

The overall effects of this exclusion on security-based swap markets reflect these economic tradeoffs and will likely be similar to those observed in swap markets, which involve largely the same group of dealers (46 out of 50 SBS Dealers expected to be cross-registered in swap markets) and most of the same counterparties (approximately two thirds of accounts are active across single name and index CDS markets).

d. Costs and Benefits of Public Availability of Orders and Notices

The publication of orders and notices gives rise to both costs and benefits for affected SBS Entities, their counterparties, and other market participants.

First, publicly available and publicly disseminated information regarding applications under Rule of Practice 194 would provide market participants with information they may find useful in assessing their counterparties. In particular, market participants may use knowledge about whether an SBS Entity has applied for relief and/or whether an SBS Entity currently employs or associates with disqualified persons to effect or be involved in effecting security-based swaps when choosing counterparties. In general, such information may be valued by market participants when selecting counterparties, if they believe such knowledge is informative about the misconduct risk of a counterparty.

In addition, we note that this information may be useful to SBS Entities that have not applied for relief under the final Rule of Practice 194. In particular, publicly available information regarding the outcome of Rule of Practice 194 applications may inform other SBS Entities' assessments of the likelihood that the Commission would grant relief in particular circumstances. For example, SBS Entities could look to outcomes in applications where disqualifications were for similar reasons. Such information may be useful in determining whether it is cost effective to seek relief.

We note that some SBS Entities may prefer that orders approving or denying an application under the rule remain private if they believe that counterparties will use this information as a signal of low quality or high

[300] *See* Americans for Financial Reform Letter, at 3.

[301] For example, in the mutual fund advisor context, Wu (2018) shows that advisors with ADV disciplinary history disclosures are more likely to be replaced in the year following misconduct, which dampens the effect of misconduct on fund flows. *See* Kai Wu, *The Economic Consequences of Mutual Fund Advisory Misconduct* (Asian Finance Association 2018 Conference, Working Paper, 2018) *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3061419,* last accessed Sept. 8, 2018. *See also* Dan Amiram, Serene Huang, & Shiva Rajgopal, *Does Financial Reporting Misconduct Pay Off Even When Discovered?* (Working Paper, October 1, 2018), *available at https://www0.gsb.columbia.edu/mygsb/faculty/research/pubfiles/25784/Does%20misconduct%20pay%20Oct%201%202018%20SR.pdf.*

[302] *See, e.g.,* Jonathan M. Karpoff, D. Scott Lee, & Gerald S. Martin, *Foreign Bribery: Incentives and Enforcement* (Working Paper, April 7, 2017), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1573222,* last accessed Aug. 19, 2018. *See also* Bruce Haslem, Irena Hutton, & Aimee Hoffman Smith, *How Much Do Corporate Defendants Really Lose? A New Verdict on the Reputation Loss Induced by Corporate Litigation* (Working Paper, November 21, 2016), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2290821,* last accessed Aug. 19, 2018. *See also* Amiram, Huang, & Rajgopal (2018).

[303] For example, in the parallel broker-dealer context, some existing research suggests that disclosures of past misconduct are strongly predictive of future misconduct risk. *See, e.g.,* Qureshi & Sokobin (2015).

[304] *See* Public Citizen Letter, at 1–2; Americans for Financial Reform Letter, at 3.

[305] *See* Section III.C, *infra,* for a discussion of proposed Rule of Practice 194(c).

counterparty risks of transacting with SBS Entities. Therefore, potential reputational costs associated with going through the application process and potentially associating with statutorily disqualified associated persons may discourage some SBS Entities from applying for relief under the final rule. Such SBS Entities may instead choose to disassociate from disqualified persons or reassign them to responsibilities that do not involve effecting or being involved in effecting security-based swaps. In considering disassociation, an SBS Entity will weigh any reputational costs against any costs of disassociation. For disqualified natural persons, such costs include the cost to an SBS Entity of replacing an employee (or other associated person), and will depend on the scarcity and value of a particular person's skills.

As stated above, under the approach being adopted, orders and notices under Rule of Practice 194 will be made publicly available on the Commission's website, whereas applications and supporting materials will be kept confidential, subject to the existing statutory and regulatory framework with respect to the public availability of such materials, including the FOIA,[306] the Exchange Act,[307] and applicable Commission rules.[308] To the extent that (1) the information provided by SBS Entities in applications and supporting materials may be informative about future compliance and counterparty risks, (2) this information will not be fully reported in orders and notices, and (3) market participants may face costs of obtaining this information under the FOIA and other applicable laws, the approach being adopted provides fewer benefits relative to the alternative of routine mandatory disclosure of applications and supporting materials by applicants or the Commission. These considerations are discussed in greater detail in Section IV.D.6.

2. Effects on Efficiency, Competition, and Capital Formation

The Commission has assessed the effects arising from the final Rule of Practice 194 on efficiency, competition, and capital formation. As noted above, limiting the ability of statutorily disqualified associated persons to effect or be involved in effecting security-based swaps on behalf of SBS Entities may mitigate compliance and counterparty risks and may facilitate competition among higher quality SBS Entities, thereby enhancing integrity of security-based swap markets. At the same time, limits on a statutorily disqualified associated person's participation in the security-based swap markets may result in costs of business restructuring or applying to the Commission for relief, which may disrupt existing counterparty relationships and increase transaction costs borne by counterparties. As with the other economic effects already discussed, the effects of final Rule of Practice 194 on efficiency, competition, and capital formation flow primarily from: (i) How the rule alters an SBS Entity's evaluation of the tradeoff between the value of an associated person's skill and expertise in effecting security-based swaps against the costs of applying for relief or restructuring, and its ultimate decision concerning whether to seek relief and (ii) the exclusion of statutorily disqualified associated person entities from the scope of the prohibition.

As noted above, by providing a structured process and clarity as to the standard of review, the final Rule of Practice 194 may conserve resources relative to the baseline for SBS Entities applying for relief under Section 15F(b)(6), and therefore create a more efficient process for SBS Entities that choose to apply. Clarity about the items that the Commission will consider in making determinations on applications for relief may allow SBS Entities to make more informed assessments about whether a particular application is likely to be approved or denied. Increased certainty about the process may, in turn, alter an SBS Entity's evaluation of its own cost-benefit tradeoff in determining whether to file an application for relief, enabling the entity to more efficiently expend resources. To the extent that the savings resulting from the final rule encourage more SBS Entities to apply for relief, a greater number of SBS Entities may be able to effect security-based swaps without disruptions related to reassignments of statutorily disqualified staff. This may facilitate competition among SBS Entities or improve terms of available security-based swaps, if some SBS Entities pass along their costs to counterparties in the form of higher priced security-based swaps.

In addition, should more SBS Entities apply for relief or seek to avail themselves of the associated person entity exclusion, a greater number of statutorily disqualified persons may seek employment and business opportunities in security-based swap markets. On the one hand, this could increase the ''lemons'' problem and related costs of adverse selection,[309] since market participants may demand a discount from counterparties if they expect a greater chance that counterparties have employed statutorily disqualified associated persons that are involved in arranging transactions. On the other hand, the conduct that gives rise to disqualification is generally public information and orders regarding the outcome of review applications under Rule of Practice 194 as well as notices submitted by SBS Entities will be made public by the Commission, which may significantly attenuate this effect.

Persons eligible to rely on the exclusion related to applications already reviewed by the Commission, the CFTC, an SRO, or a registered futures association may enjoy a competitive advantage over persons not eligible for the same treatment. Because SBS Entities would not need to expend resources filing an application and would not face uncertainty concerning the likelihood of approval of such applications, they may prefer associating with persons who can rely on such an exclusion over other disqualified persons. If SBS Entities exhibit a preference for such persons, it could create competitive disparities among statutorily disqualified associated persons.

The associated person entity exclusion may prevent the fragmentation of transaction activity across related markets due to differential regulatory treatment of statutory disqualification. The Commission continues to recognize extensive spillovers between the informational efficiency, pricing, and liquidity of swap and security-based swap markets, and their connection to activity in reference security markets. Given the high degree of concentration of dealing activity in single-name and index CDS markets, even a temporary inability of one or several SBS Entities to transact due to a statutorily disqualifying event of an associated person entity may result in liquidity fragmentation and mispricing of claims with otherwise identical payoffs and risks. As a result, the associated person entity exclusion may limit fragmentation of integrated markets.

[306] *See* 5 U.S.C. 552, *et seq.*

[307] *See* 15 U.S.C. 78x.

[308] *See, e.g.,* 17 CFR 200.80; 17 CFR 201.190; 17 CFR 240.24b–2.

[309] *See, e.g.,* George A. Akerlof, *The Market for ''Lemons'': Quality Uncertainty and the Market Mechanism,* 84 Q. J. Econ. 488 (1970). Informational asymmetry about quality can negatively affect market participation and decrease the amount of trading—a problem commonly known as adverse selection. When information about counterparty quality is scarce, market participants may be less willing to enter into transactions and the overall level of trading may fall.

In addition, under the associated person entity exclusion, SBS Entities would be able to continue their security-based swap market participation without incurring the costs of reassigning or disassociating from disqualified entities. As a result, SBS Entities associating with entities that become subject to a statutory disqualification can continue dealing in security-based swaps without incurring costs of business restructuring. SBS Entities that begin to associate with already statutorily disqualified entities would be eligible for the same relief. This may enhance competition among SBS Entities as both SBS Entities with and those without statutorily disqualified associated person entities will be able to compete for security-based swap business with counterparties. This competitive effect may be particularly important given the highly concentrated nature of the security-based swap dealer market.

The overall effects of the exclusion for associated person entities from the general statutory prohibition on efficiency, competition, and capital formation, depend on the balance of several competing effects. Broadly, the exclusion may lower costs to SBS Entities of beginning or continuing to associate with statutorily disqualified entities. It also may serve to mitigate potential disruptions—such as SBS Entities temporarily ceasing dealing activity pending business restructuring—should associated person entities of a number of SBS Entities become disqualified. At the same time, the presence and magnitude of the potential market disruption is unclear, since other SBS Entities are likely to begin competing for the newly opened market share if, for example, the SBS Entity had to, at least temporarily, cease dealing activity. The overall effects of this provision on security-based swap market quality, competition, and capital formation depend primarily on: (i) Whether and which SBS Entities would be able to win the newly opened market share in such cases; (ii) the degree to which statutory disqualification may indicate future misconduct risk by associated person entities; (iii) the reputation costs to SBS Entities from associating with statutorily disqualified associated person entities relative to costs of disassociating and establishing a relationship with a non-statutorily disqualified associated person entity, and (iv) the degree to which existing public information about conduct giving rise to statutory disqualification is informative of future misconduct risk and the extent to which counterparties pay attention to such public information.

The Commission has received comment in support of strong disqualification standards as a feature of the SBS Entity regulatory framework, the general need of the public to have confidence in regulatory oversight of market participants, and making applications and supporting materials public.[310] We note that some recent research in other contexts shows that greater prevalence of disclosed misconduct can reduce investor participation in capital markets. Some research suggests that retail investor participation in the stock market may decrease around the revelation of fraud or misconduct, and there may be negative spillovers for firms that were not engaged in misconduct. For example, Gurun, Stoffman, and Yonker (2018) find that residents of communities more exposed to fraud were more likely to shift from capital markets to bank deposits. This result is consistent with the theoretical result in Gennaioli, Shleifer, and Vishny (2015) that portfolio managers provide ''hand-holding'' to build investor trust. Giannetti and Wang (2016) show that household participation in the stock market in a given state decreases after the revelation of corporate fraud in that state. They find that even households that do not hold stocks in scandal firms decrease holdings in both fraudulent and non-fraudulent firms. They also find that households with more lifetime exposure to corporate fraud allocate a lower share of capital into equity.[311] Importantly, this research pertains to retail investor behavior in markets with relatively low informational asymmetries. We continue to recognize that these effects may be muted in institutional swap or security-based swap markets, or amplified due to the greater opacity of swaps or security-based swaps.

In addition, strong disqualification standards suggested by commenters may adversely affect competition and consumer surplus. For example, Berk and van Binsbergen (2017) model the costs and benefits of both disclosure and standards regulation of ''charlatans'' (professionals who sell a service they do not deliver) in high skill professions. Both standards and disclosure regulations drive charlatans out of the market, but the resulting reduction in competition amongst producers actually reduces aggregate consumer surplus, benefiting producers.[312]

Further, information about underlying misconduct is public, and other research discussed above suggests that there may be significant capital market and labor market penalties for misconduct in some settings.[313] This may suggest that SBS Entities may simply disassociate from or reassign a statutorily disqualified associated person where the reputational penalties are severe. In addition, instead of exiting the market, some counterparties of SBS Entities with statutorily disqualified associated persons may simply move transaction activity to SBS Entities without such statutorily disqualified associated persons. Thus, where counterparties may become less willing transact with SBS Entities relying on statutorily disqualified associated persons, other SBS Entities that do not rely on disqualified associate persons may win business. Finally, we continue to note that Exchange Act Section 15F(b)(6) does not preclude either SBS Entities from seeking relief or the Commission from granting relief in the absence of the final Rule of Practice 194 or another disqualification review process. This economic analysis assesses the impacts of Rule of Practice 194 relative to a statutory baseline under which SBS Entities can seek exemptive relief from the Commission.

[310] *See* Americans for Financial Reform Letter, at 4; Better Markets Letter, at 2, 6; Cummings Letter, at 3.

[311] *See* Umit G. Gurun, Noah Stoffman, & Scott E. Yonker, *Trust Busting: The Effect of Fraud on Investor Behavior,* 31 Rev. Fin. Stud. 1341 (2018); Nicola Gennaioli, Andrei Shleifer, & Robert Vishny, *Money Doctors,* 70 J. Fin. 91 (2015); Mariassunta Giannetti & Tracy Yue Wang, *Corporate Scandals and Household Stock Market Participation,* 71 J. Fin. 2591 (2016).

[312] The model assumes that, among others, the producers have no dominating outside options (skilled producers do not exit the market when the equilibrium wage in the profession declines). The paper models a labor market in which skill is in high demand, but very short supply. As a result, price increases due to standards regulation lead to the entry of charlatans, but, because supply of skill is constrained, that does not increase quality. By contrast, Leland (1979) and the literature that emerged from it does not model charlatans or focus on markets with a short supply of skill. In Leland (1979), the introduction of standards can benefit consumers since the resulting price increase leads to the entry of higher quality goods—something that cannot happen when the supply of high quality goods is constrained, as in Berk and van Binsbergen (2017). Moreover, in Leland (1979) the government is fully informed and the consumer has no information about the quality of the good, whereas Berk and van Binsbergen (2017) model a homogeneous good bought by heterogeneous consumers. *See* Jonathan Berk & Jules H. van Binsbergen, *Regulation of Charlatans in High-Skill Professions* (Stanford University Graduate School of Business, Research Paper No. 17–43, August 4, 2017), *available at https://ssrn.com/abstract=2979134,* last accessed Aug. 18, 2018. *See also* Hayne E. Leland, *Quacks, Lemons, and Licensing: A Theory of Minimum Quality Standards,* 87 J. Pol. Econ. 1328 (1979).

[313] *See* Section V.C.1.a, *supra. See also* Note 301, *supra.*

D. Rule Alternatives

In addition to Rule of Practice 194, the Commission has considered several primary alternative approaches, which are discussed below.

1. Temporary Exclusions

The Commission proposed a temporary exclusion, under which SBS Entities would not have to comply with the statutory prohibition in Exchange Act Section 15F(b)(6) with respect to associated person entities for the first 180 days that an application before the Commission, the CFTC, an SRO, or a registered futures association is pending. However, after 180 days, the SBS Entity would have 60 days to disassociate from the disqualified person entity pending disposition of the review application. The Commission is not adopting such an approach, but is, instead, adopting a broader exclusion that provides relief to all associated person entities and is not time limited.

The alternative would provide more limited relief to SBS Entities associating with statutorily disqualified associated person entities relative to the approach being adopted. Similar to the final exclusion for associated person entities, the alternative would lower business restructuring costs for SBS Entities that are associated with disqualified entities. As a result, like the rule being adopted, the alternative would limit the risk that SBS Entities may become, at least temporarily, unable to intermediate transactions and bear additional costs, which may be passed along to counterparties in the form of execution delays, potentially reduced liquidity or higher transaction costs. Further, similar to the final rule, the alternative would recognize that non-dealer counterparties may value bilateral relationships with SBS Entities, and searching for and initiating bilateral relationships with new SBS Entities may involve direct costs for counterparties. The alternative would also eliminate costs and delays related to SBS Entities ceasing dealing activity, but only conditional on filing a review application and only for the first 180 days.

Unlike the approach being adopted, the alternative would introduce significant uncertainty about the eventual ability of an SBS Entity to associate with a statutorily disqualified associated person entity, even when the affiliate has disassociated from any natural persons who may have engaged in the underlying misconduct. Such an alternative and resulting uncertainty may be particularly costly for those SBS Entities that are cross-registered with the CFTC as Swap Entities, as Swap Entities are able to freely associate with statutorily disqualified associated person entities and, in swap markets, the statutory prohibition is applied to natural persons only. In addition, under the alternative, SBS Entities would bear direct costs of time and resources necessary to complete applications and collect necessary documentation to file for relief under Rule of Practice 194—costs that may be passed on to counterparties in the form of more expensive security-based swaps. In addition, similar to the approach being adopted, and as discussed in Section V.C.1., some counterparties may choose to engage in greater due diligence and bear related costs, to the degree that they have a significant security-based swap business, interpret statutory disqualification as a meaningful signal of SBS Entities' quality, and do not already perform such due diligence.

The Commission continues to believe statutory disqualification may have incentive effects with respect to underlying misconduct. Relative to the approach being adopted, the temporary exclusion alternative could result in fewer statutorily disqualified associated person entities transacting in security-based swap markets on behalf of SBS Entities. While the alternative may involve lower compliance and counterparty risks relative to the approach being adopted, it would also impose new costs on SBS Entities and counterparties, and may involve greater risks of disruptions to security-based markets. Moreover, as recognized in the Proposing Release, the temporary nature of the exclusion under the alternative would introduce uncertainty concerning the eventual need to restructure before the Commission, the CFTC, an SRO, or registered futures association has rendered a decision on the application.

The Commission could also have adopted a modified temporary exclusion, under which, the application would be considered granted if the Commission, the CFTC or an SRO does not render a decision within 180 days the application. This alternative would effectively default to relief from the statutory prohibition for applications under review. SBS Entities would be able to permit statutorily disqualified associated person entities to effect or be involved in effecting security-based swaps on their behalf, unless the Commission made an individualized determination that it is not consistent with the public interest to permit the participation of such statutorily disqualified associated person entities within 180 days of the application being filed. Relative to the approach being adopted, this would involve greater application costs and uncertainty about the eventual need to restructure the business and disassociate from the statutorily disqualified associated person entity. However, it would allow the Commission, the CFTC or SRO to perform an individualized assessment of the facts of each case within the first 180 days of filing. This alternative may somewhat strengthen counterparty protections relative to the approach being adopted, but would increase uncertainty and costs of restructuring for affected SBS Entities and their counterparties.[314]

The overall effects of the temporary stay alternatives relative to the approach being adopted, thus, depend on: (i) The degree to which disqualifying conduct by an associated person may predict future misconduct and related counterparty risks; (ii) the extent to which the largely institutional security-based swap market participants fail to observe and process public information regarding their counterparties' disqualifying conduct; (iii) the reputational costs of SBS Entities in associating with statutorily disqualified associated person entities relative to the uniqueness of their resources and abilities; and (iv) the degree to which uncertainty related to the temporary exclusion alternative would lead to preemptive disassociations from valuable statutorily disqualified associated person entities.

2. Relief for Non-Investment-Related Offenses

The Commission could also adopt the approach of automatically excepting from the Section 15F(b)(6) prohibition all SBS Entities that associate with statutorily disqualified persons if the matters that triggered the statutory disqualification were non-investment-related.[315] SBS Entities would still be required to apply for relief under Rule of Practice 194 for investment- related statutory disqualifications. Such an approach would eliminate restructuring or application costs for SBS Entities associating with statutorily disqualified persons when statutory disqualification arises out of non-investment related offenses. This may, in turn, attract new persons currently disqualified for non-investment-related offenses into the security-based swap market, and increase competition among SBS Entity

[314] *See, e.g.,* Americans for Financial Reform Letter; Better Markets Letter; Cummings Letter.

[315] Section V.B.4 presents data from 2010 through June 2018 about the incidence of statutory disqualification and reoffenses by investment-related and non-investment related nature of conduct in a somewhat analogous scenario for broker-dealers.

associated persons. At the same time, other SBS Entities associating with persons statutorily disqualified for investment-related offenses would still have to bear costs of disassociating or applying for relief, and would have to compete with a greater number of SBS Entities that do not have to apply for relief.

As discussed above, statutory disqualification and the potential inability to deal in various markets may present an incentive against misconduct, including non-investment-related misconduct. Relative to the approach being adopted, this alternative may weaken incentives against non-investment-related misconduct. The alternative would also lower the information benefits of reviewing applications and supporting materials, including information concerning supervisory structure, terms of employment and other items, which will inform Commission understanding of SBS Entity associations and ongoing oversight. Finally, some statutory disqualification triggers that may not fall in the ''investment related offense'' category may point to a higher risk of future misconduct, including violations of securities laws, federal rules, and regulations thereunder.[316] Uniformly excepting associated persons disqualified for non- investment-related misconduct without an opportunity for the Commission to review the circumstances of each case and make a determination that allowing SBS Entities to permit those persons to effect or be involved in effecting security-based swaps is consistent with the public interest may pose risks to counterparties and security-based swap markets.

3. No Relief for CFTC, SRO, or Registered Futures Association Review

Rule of Practice 194 allows SBS Entities to permit statutorily disqualified persons to effect or be involved in effecting security-based swaps on their behalf without an application to the Commission, if the associated person's membership, association, registration or listing as a principal has been granted or otherwise approved by the CFTC, an SRO, or a registered futures association. The Commission could adopt an alternative approach under which such SBS Entities would not automatically be able to permit statutorily disqualified associated persons to effect or be involved in effecting security-based swaps on the SBS Entity's behalf, either on a permanent or temporary basis, based on a determination by the CFTC, an SRO, or a registered futures association. Instead, such SBS Entities would have to apply for a substantive review by the Commission under Rule of Practice 194.[317] However, the exclusion for all associated person entities would still apply, as in the approach being adopted.

This alternative approach would allow the Commission to review the facts and circumstances of each case and make an individualized public interest determination as to whether each statutorily disqualified associated person should be permitted to effect or be involved in effecting security-based swaps on behalf of SBS Entities, and under which conditions. If fewer SBS Entities choose to go through a separate review by the Commission, this alternative may result in a smaller number of statutorily disqualified associated persons effecting or involved in effecting security-based swaps than the adopted approach. To the extent that statutory disqualification, and terms and conditions of reassociation imposed as a result of individualized Commission review, reduce compliance and counterparty risks, this alternative may improve compliance and counterparty protections for security-based swap market participants.

However, this alternative may increase costs for SBS Entities. Specifically, this alternative would require SBS Entities to incur the application costs under Rule of Practice 194 with respect to associated persons that have already been approved by the CFTC, an SRO, or a registered futures association, or to incur the costs of restructuring the business or disassociating from such persons. If the application is denied, SBS Entities would need to restructure the business or disassociate from the associated person. In addition, in light of the high degree of integration among swap and security-based swap markets and expected cross-registration, many SBS Entities are expected to transact across swap, security-based swap and reference security markets, and some SBS Entities may be relying on the same personnel and entities in effecting, for instance, single name and index CDS. This alternative approach would limit SBS Entity flexibility in hiring and retaining statutorily disqualified associated persons where the SBS Entity believes the person's quality and expertise outweigh the potential reputational costs of associating with a disqualified person and where the CFTC, an SRO, or a registered futures association has made a favorable finding with respect to the associated person.

The effects of this alternative on security-based swap markets will depend on: (i) The extent to which SBS Entities rely on disqualified persons approved by the CFTC, an SRO, or a registered futures association; (ii) the magnitude of any business restructuring costs; (iii) the significance of bilateral counterparty relationships, and (iv) the severity of compliance and counterparty risks posed by statutorily disqualified associated persons. As discussed in earlier sections, we lack data or other information to quantify these effects with any degree of certainty.

4. No Relief for Associated Person Entities From Exchange Act Section 15F(b)(6)

The Commission could establish a uniform prohibition on associated person entities subject to statutory disqualification effecting or being involved in effecting security-based swaps on behalf of SBS Entities, without the availability of any application review process, and regardless of the reason for the disqualification or whether the CFTC, an SRO, or a registered futures association has permitted such associated person entities to participate in the market.

Under this alternative approach, all statutorily disqualified associated person entities not covered by the exemption in the final SBS Entity registration rules [318] would be barred from intermediating security-based swaps on behalf of SBS Entities.[319] To the extent that past disqualifications can point to higher compliance and counterparty risks, this alternative could potentially strengthen counterparty protections. Further, the inability to participate in various markets due to disqualification disincentivizes misconduct. Adopting this approach

[316] *See, e.g.,* Kelvin Law & Lillian F. Mills, *Do Financial Gatekeepers Under-Protect Investors? Evidence from Criminal Background Checks* (Working Paper, April 27, 2018), *available at https://ssrn.com/abstract=3075305,* last accessed Aug. 18, 2018; Robert Davidson, Aiyesha Dey, & Abbie Smith, *Executives' ''Off-the-job'' Behavior, Corporate Culture, and Financial Reporting Risk,* 117 J. Fin. Econ. 5 (2015).

[317] *See* Americans for Financial Reform Letter; Better Markets Letter; Public Citizen Letter; Cummings Letter.

[318] As discussed in the economic baseline, under Exchange Act Rule 15Fb6–1, unless otherwise ordered by the Commission, an SBS Entity may permit statutorily disqualified associated person entities to effect or be involved in effecting security-based swaps on its behalf, provided that the statutory disqualification occurred prior to the compliance date set forth in the Registration Adopting Release, and provided that the SBS Entity identifies each such associated person on the applicable registration form.

[319] *See, e.g.,* Public Citizen Letter.

would strengthen these incentive effects, but only to the degree that reputational incentives and capital market discipline may currently not be sufficiently strong disincentives against misconduct for some entities. However, as discussed in detail in the economic baseline, evidence from other market suggests that market participants, even retail investors, pay close attention to disclosures of disciplinary history and vote with their feet, such that market participants suffer significant and sticky reputation costs around revelations of misconduct.

We recognize that this market discipline effect may be partly mitigated due to the concentrated nature of current security-based swap dealing activity discussed above. But we also note that market concentration is itself endogenous to market participants' counterparty selection and customer demand. That is, counterparties trade off the potentially higher counterparty risk of transacting with SBS Entities that rely on disqualified associated persons against the attractiveness of security-based swaps (price and non-price terms) that they may offer. If a large number of counterparties choose to move their business to SBS Entities that do not rely on disqualified associated persons (including those SBS Entities that may currently have lower market share), market concentration itself can decrease.

Barring all statutorily disqualified associated person entities from effecting or being involved in effecting security-based swaps on behalf of SBS Entities would impose costs of business restructuring for a number of SBS Entities, which may in turn affect market quality. Specifically, in the event of a disqualification after the compliance date of the final SBS Entity registration rules, SBS Entities would be required to cease intermediating security-based swaps and restructure their business to disassociate from all disqualified entities, posing a risk of business disruptions during the restructuring. If a number of entities associated with different SBS Entities become disqualified at the same time, a number of SBS Entities may, in turn, become temporarily unable to effect security-based swaps due to disqualification. As discussed elsewhere, the subset of SBS Entities that are major security-based swap participants are expected to hold large security-based swap positions, and their activities in security-based swap markets may pose market and counterparty risks.[320] As discussed in the economic baseline, the remaining SBS Entities that are SBS Dealers play a central role in security-based swap markets, intermediating trades with hundreds of counterparties and representing a significant portion of trading activity in security-based swaps.

If some SBS Entities are temporarily unable to effect security-based swaps, transaction costs may increase and other terms of security-based swaps available to counterparties may deteriorate. For example, security-based swaps are often renegotiated during the life of the contract and, in the event of a disruption to the bilateral relationship with the SBS Entity related to an associated entity disqualification, counterparties may find themselves unable to modify contracts. Absent relief for associated person entities, counterparties may price such potential future constraints in larger spreads.

We note that other SBS Entities are likely to step in to pick up the market share, and, to the extent that statutory disqualification of associated person entities may indicate ongoing compliance and counterparty risks of SBS Entities, SBS Entities with potentially lower compliance and counterparty risks would be intermediating security-based swaps. However, as discussed above, SBS Entities that capture the newly available market share may be able to consolidate market power while the disqualified SBS Entity is undergoing restructuring or awaiting a relief determination. As a result, competition in security-based swap markets may, at least temporarily, decrease, and pricing power of remaining SBS Entities may increase. The overall economic effects of the alternative would depend on: (i) The costs and the required length of time for business restructuring; (ii) which SBS Entities would be able to pick up the newly available market share; and (iii) the relative importance of bilateral relationships between SBS Entities and counterparties.

In addition, SBS Entities cross-registered as Swap Entities with the CFTC would not experience economies of scope in associating with persons that are entities and would be unable to rely on the same associated person entities in transactions with the same counterparties across integrated swap and security-based swap markets. As discussed in the economic baseline, approximately 46 out of 50 entities likely to register with the Commission as SBS Dealers are already registered with the CFTC as Swap Dealers. In addition, as discussed above, two thirds of accounts transacting in single-name CDS also transact in index CDS. Under the alternative, counterparty relationships with dually registered Swap and SBS Entities could be disrupted, potentially requiring counterparties to establish new dealer relationships solely for the purpose of security-based swap transactions. Lastly, this alternative may decrease the number of entities seeking to associate with SBS Entities since statutorily disqualified associated person entities will no longer be able to effect or be involved in effecting security-based swaps. Such disqualified entities may seek to associate with security-based swap market participants that are not required to register (entities falling within the *de minimis* exception set forth in Exchange Act Rule 3a71–2 [321]). The alternative has the potential to significantly reduce competition among associated person entities engaging in security-based swap transactions on behalf of SBS Entities.[322] Reduced competition may increase the pricing power of remaining market participants vis-à-vis their activities on behalf of SBS Entities in security-based swap markets, and such costs are likely to be passed on to counterparties.

5. Form of Applications To Be Submitted: Time Period

The final Rule of Practice 194 requires applications to include certain types of information and supporting materials concerning disciplinary sanctions and other events over the preceding five years. In response to a comment received,[323] we have considered an alternative approach, under which the Commission would require applicants to address disciplinary events with a longer time period (*e.g.,* ten years) for certain items specified in Rule of Practice 194. In considering this alternative, we note that Rule of Practice 194, as adopted, does not specify a time period with respect to certain other items relating to disciplinary history, including, among other things, (i) a copy of the order or other applicable document that resulted in the associated person being subject to a statutory disqualification; and (ii) a copy of the questionnaire or application for employment required by Exchange Act Rule 15Fb6–2(b). In addition, under final Rule of Practice 194, the Commission has reserved the right to request from the applicant

[320] *See* Business Conduct Adopting Release, 81 FR at 30111.

[321] *See* 17 CFR 240.3a–71–2.

[322] *See, e.g.,* Berk & van Binsbergen (2017).

[323] *See* Better Markets Letter, at 6.

supplementary information to assist in its review, which could include information outside of the five-year time period, where appropriate.

Requiring applicants to provide information concerning a longer time period could potentially provide additional information regarding ongoing counterparty and compliance risks. Also, requiring filing of information concerning disciplinary sanctions, compliance and disciplinary history, litigation concerning investment or investment-related activities and unsatisfied judgments and supporting materials for a longer period of time as part of applications under Rule of Practice 194 may enhance the review process and its counterparty protections benefits. At the same time, requiring SBS Entities to provide older materials and documents may increase application burdens under the Rule of Practice 194. Importantly, older misconduct may be less important in predicting future misconduct than recent offenses. Additionally, as discussed above, the five-year time period is more consistent with the current practice in other contexts. The approach being adopted provides the Commission with the benefit of a longer look-back period, where necessary, without uniformly imposing that burden on all SBS Entities applying for relief.

6. Public Availability of Applications and Supporting Materials

Under Rule of Practice 194, as adopted, orders and notices will be made publicly available on the Commission's website, whereas applications and supporting materials provided pursuant to Rule of Practice 194 will be kept confidential, subject to the existing statutory and regulatory framework with respect to the public availability of such materials, including the FOIA,[324] the Exchange Act,[325] and applicable Commission rules.[326] As an alternative approach, applications and supporting materials could be made publicly available. We have considered comments about how this alternative may affect applicants, other SBS Entities, and non-SBS Entity market participants.[327]

Making application and supporting materials publicly available on the Commission's website may enable market participants to independently assess ongoing compliance and counterparty risks as they pertain to individual security-based swaps. To the extent that applications and supporting materials contain more information than orders and notices, and to the extent that this additional information enables market participants to better assess counterparty risks, this alternative could strengthen market discipline and the reputational disincentives against misconduct, increasing counterparty protections. However, it is not clear that applications and supporting materials would contain significant additional information relevant for counterparty selection, given the fact that the information about misconduct that gives rise to disqualification is public, and that notices prepared by SBS Entities and Commission orders will be made public.

We recognize that the public nature of such filings may affect SBS Entity reputation and bilateral relationships in security-based swap markets. Under this alternative, more SBS Entities are likely to disassociate from disqualified natural persons instead of filing with the Commission an application for relief under Rule of Practice 194. To the extent that associations with disqualified persons may pose ongoing compliance and counterparty risks, this could potentially benefit market participants and strength counterparty protections. However, confidentiality and reputational concerns may also deter an SBS Entity from filing an application even where it would be consistent with the public interest to permit the associated person subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the SBS Entity, reducing the expected benefits of the review process. We continue to note that, as discussed throughout the release, the range of conduct that gives rise to statutory disqualification is broad and may not always be indicative of higher probability of counterparty risks and investor losses.

Further, as a result of reputational and confidentiality concerns, making applications and supporting materials publicly available on the Commission's website may lead SBS Entities to make less informative disclosures, which may influence the effectiveness of the review process. In addition, we are sensitive to the concern that applications and supporting materials under Rule of Practice 194 may reveal commercial or financial information that is confidential or privileged, and information that would invade and individual's personal privacy. We recognize that costs may be incurred by SBS Entities to redact confidential information from any application and supporting materials if they were to be made publicly available on the Commission's website.

Accordingly, under the approach being adopted, where counterparties, which may be institutional market participants,[328] or other interested persons believe that applications or supporting materials contain information beyond any information that is publicly available, such persons would be able to submit a FOIA request to seek to obtain those materials—in accordance with the existing statutory and regulatory framework with respect to the public availability of such materials.[329] As discussed in Sections I and II, the Commission continues to believe the existing statutory and regulatory framework sets forth a detailed and well-established process for the Commission to make available application materials [330] to members of the public, upon request, but to keep certain information contained in those materials confidential, where appropriate.[331]

VI. Regulatory Flexibility Act Certification

A. Regulatory Framework

The Regulatory Flexibility Act (''RFA'') [332] requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) [333] of the Administrative Procedure Act,[334] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such

[324] *See* 5 U.S.C. 552, *et seq.*

[325] *See* 15 U.S.C. 78x.

[326] *See, e.g.,* 17 CFR 200.80; 17 CFR 201.190; 17 CFR 240.24b–2.

[327] *See* Better Markets Letter, at 6; Americans for Financial Reform Letter, at 3–4; Cummings Letter, at 3.

[328] The Commission has classified market participants transacting in single name CDS reported to TIW to include private funds, registered investment companies, banks, insurance companies, ISDA recognized dealers, foreign sovereigns, non-financial corporations, finance companies, special entities and other account holders (such as hedge funds, private equity and venture capital funds). As can be seen from Table 2 in the economic baseline, approximately 94 percent of market participants transacted in single name CDS through investment advisers between 2006–2017. Over the same time period, investment advisers, banks, insurance companies, pension funds and ISDA recognized dealers represented approximately 94.1 percent of transacting agents and 99.8 percent of total trading activity.

[329] Alternatively, such counterparties could also request such information directly from SBS Entities.

[330] *See* 15 U.S.C. 78x(a) (for purposes of 5 U.S.C. 552, ''the term 'records' includes all applications, notices, and other documents filed with or otherwise obtained by the Commission pursuant to the [Exchange Act] or otherwise'').

[331] *See, e.g.,* 17 CFR 200.80(a)(4), (b).

[332] 5 U.S.C. 601 *et seq.*

[333] 5 U.S.C. 603(a).

[334] 5 U.S.C. 551 *et seq.*

rulemaking on ''small entities.'' [335] Section 605(b) of the RFA provides that this requirement shall not apply to any proposed rule or proposed rule amendment, which if adopted, would not have a significant economic impact on a substantial number of small entities.[336]

The Commission certified that the proposed Rule of Practice 194, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.[337] Although we encouraged written comments regarding this certification, no commenters responded to this request.

B. Assessment of Impact

Rule of Practice 194, as adopted, establishes rules concerning an application by SBS Entity to the Commission for an order permitting an associated person that is a natural person who is subject to a statutorily disqualification to effect or be involved in effecting security-based swaps on behalf of an SBS Entity. With respect to SBS Entities, based on feedback from market participants and our information about the security-based swap markets, the Commission continues to believe, as we stated in the proposal,[338] that (1) the types of entities that would engage in more than a *de minimis* amount of dealing activity involving security-based swaps—which generally would be large financial institutions—would not be ''small entities'' for purposes of the RFA; [339] and (2) the types of entities that may have security-based swap positions above the level required to be a ''major security-based swap participant'' would not be ''small entities'' for purposes of the RFA.[340]

C. Certification

For the foregoing reasons, the Commission certifies that Rule of Practice 194, as adopted, will not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

VII. Statutory Authority

The Commission is adopting Rule of Practice 194 pursuant to Exchange Act Section 15F(b)(4) and (6),[341] as added by Section 764(a) of the Dodd-Frank Act, and Exchange Act Section 23(a).[342]

List of Subjects in 17 CFR Parts 201 and 240

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

Text of the Rule

In accordance with the foregoing, the Securities and Exchange Commission is amending title 17, chapter II of the Code of Federal Regulations as follows:

PART 201—RULES OF PRACTICE

■ 1. The general authority citation for subpart D is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 77sss, 77ttt, 78(c)(b), 78d–1, 78d–2, 78l, 78m, 78n, 78*o*(d), 78*o*–3, 78*o*–10(b)(6), 78s, 78u–2, 78u–3, 78v, 78w, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, 80b–12, 7202, 7215, and 7217.

* * * * *

■ 2. Add § 201.194 to subpart D before the undesignated center heading ''Initiation of Proceedings and Prehearing Rules'' to read as follows:

§ 201.194 Applications by security-based swap dealers or major security-based swap participants for statutorily disqualified associated persons to effect or be involved in effecting security-based swaps.

A security-based swap dealer or major security-based swap participant making an application under this section should refer to paragraph (i) of this section.

(a) *Scope of rule.* Applications by a security-based swap dealer or major security-based swap participant for the Commission to permit an associated person (as provided in 15 U.S.C. 78c(a)(70)) to effect or be involved in effecting security-based swaps on behalf of a registered security-based swap dealer or major security-based swap participant, or to change the terms and conditions thereof, may be made pursuant to this section where the associated person is subject to a statutory disqualification and thereby prohibited from effecting or being involved in effecting security-based swaps on behalf of a security-based swap dealer or major security-based swap participant under Exchange Act Section 15F(b)(6) (15 U.S.C. 78o–10(b)(6)).

(b) *Required showing.* The applicant shall make a showing that it would be consistent with the public interest to permit the person associated with the security-based swap dealer or major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant.

(c) *Exclusion for other persons.* The security-based swap dealer or major security-based swap participant shall be excluded from the prohibition in Section 15F(b)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)(6)) with respect to an associated person that is not a natural person who is subject to a statutory disqualification.

(d) *Form of application.* Each application with respect to an associated person that is a natural person who is subject to a statutory disqualification shall be supported by a written statement, signed by a knowledgeable person authorized by the security-based swap dealer or major security-based swap participant, which addresses the items set forth in paragraph (e) of this section. The application shall be filed pursuant to Rules of Practice 151, 152, and 153 (17 CFR 201.151, 201.152, and 201.153). Each application shall include as exhibits:

(1) A copy of the order or other applicable document that resulted in the associated person being subject to a statutory disqualification;

(2) An undertaking by the applicant to notify promptly the Commission in writing if any information submitted in support of the application becomes materially false or misleading while the application is pending;

(3) A copy of the questionnaire or application for employment specified in 17 CFR 240.15Fb6–2(b), with respect to the associated person; and

(4) If the associated person has been the subject of any proceeding resulting in the imposition of disciplinary sanctions during the five years preceding the filing of the application or is the subject of a pending proceeding by the Commission, the Commodity Futures Trading Commission, any federal or state regulatory or law enforcement agency, registered futures association (as provided in 7 U.S.C. 21), foreign financial regulatory authority,

[335] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits the Commission to formulate is own definition. The Commission has adopted definitions for the term small entity for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Exchange Act Release No. 18451, 47 FR 5212 (Feb. 4, 1982).

[336] *See* 5 U.S.C. 605(b).

[337] *See* Proposing Release, 80 FR at 51718.

[338] *See id.*

[339] *See, e.g.,* Cross-Border Adopting Release, 79 FR at 47368. *See also* Economic Analysis Section V.B.1.b., *supra.* For example, and as explained above, based on an analysis of 2017 single-name CDS data in TIW, accounts of those firms that are likely to exceed the security-based swap dealer *de minimis* thresholds and trigger registration requirements intermediated transactions with a gross notional amount of approximately $2.9 trillion, approximately 55 percent of which was intermediated by the top five dealer accounts. *See id.*

[340] *See* Cross-Border Adopting Release, 79 FR at 47368.

[341] 15 U.S.C. 78o–10(b)(4), (6).

[342] 15 U.S.C. 78w(a).

registered national securities association, or any other self-regulatory organization (as provided in 15 U.S.C. 78c(a)(26)), or commodities exchange, or any court, the applicant should include a copy of any order, decision, or document issued by the court, agency, self-regulatory organization (as provided in 15 U.S.C. 78c(a)(26)), or other relevant authority involved.

(e) *Written statement.* The written statement required by paragraph (d) of this section shall address each of the following, to the extent applicable:

(1) The associated person's compliance with any order resulting in statutory disqualification, including whether the associated person has paid fines or penalties, disgorged monies, made restitution or paid any other monetary compensation required by any such order;

(2) The associated person's employment during the period subsequent to becoming subject to a statutory disqualification;

(3) The capacity or position in which the person subject to a statutory disqualification proposes to be associated with the security-based swap dealer or major security-based swap participant;

(4) The terms and conditions of employment and supervision to be exercised over such associated person and, where applicable, by such associated person;

(5) The qualifications, experience, and disciplinary history of the proposed supervisor(s) of the associated person;

(6) The compliance and disciplinary history, during the five years preceding the filing of the application, of the applicant;

(7) The names of any other associated persons at the applicant who have previously been subject to a statutory disqualification and whether they are to be supervised by the associated person;

(8) Any relevant courses, seminars, examinations or other actions completed by the associated person subsequent to becoming subject to a statutory disqualification to prepare for his or her participation in the security-based swap business;

(9) A detailed statement of why the associated person should be permitted to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant, notwithstanding the event resulting in statutory disqualification, including what steps the associated person or applicant has taken, or will take, to ensure that the statutory disqualification does not negatively affect the ability of the associated person to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant in compliance with the applicable statutory and regulatory framework;

(10) Whether the associated person has been involved in any litigation during the five years preceding the filing of the application concerning investment or investment-related activities or whether there are any unsatisfied judgments outstanding against the associated person concerning investment or investment-related activities, to the extent not otherwise covered by paragraph (e)(9) of this section. If so, the applicant should provide details regarding such litigation or unsatisfied judgments; and

(11) Any other information that the applicant believes to be material to the application.

(f) *Prior applications or processes.* In addition to the information specified above, any person making an application under this rule shall provide any order, notice or other applicable document reflecting the grant, denial or other disposition (including any dispositions on appeal) of any prior application or process concerning the associated person:

(1) Pursuant to this section;

(2) Pursuant to Rule of Practice 193 (17 CFR 201.193);

(3) Pursuant to Investment Company Act Section 9(c) (15 U.S.C. 80a–9(c));

(4) Pursuant to Section 19(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(d)), Rule 19h–1 under the Securities Exchange Act of 1934 (17 CFR 240.19h–1), or a proceeding by a self-regulatory organization (as provided in 15 U.S.C. 78c(a)(26)) for a person to become or remain a member, or an associated person of a member, notwithstanding the existence of a statutory disqualification; or

(5) By the Commodity Futures Trading Commission or a registered futures association (as provided in 7 U.S.C. 21) for registration, including as an associated person, or listing as a principal, notwithstanding the existence of a statutory disqualification, including:

(i) Any order or other document providing that the associated person may be listed as a principal or registered as an associated person of a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant, or any person registered as a floor broker or a floor trader, notwithstanding that the person is subject to a statutory disqualification from registration under Section 8a(2) or 8a(3) of the Commodity Exchange Act (7 U.S.C. 12a(2), (3)); or

(ii) Any determination by a registered futures association (as provided in 7 U.S.C. 21) that had the associated person applied for registration as an associated person of a swap dealer or a major swap participant, or had a swap dealer or major swap participant listed the associated person as a principal in the swap dealer's or major swap participant's application for registration, notwithstanding statutory disqualification, the application of the associated person or of the swap dealer or major swap participant, as the case may be, would have been granted or denied.

(g) *Notification to applicant and written statement.* In the event an adverse recommendation is proposed by Commission staff with respect to an application made pursuant to this section, the applicant shall be so advised and provided with a written statement of the reasons for such recommendation. The applicant shall then have 30 days thereafter to submit a written statement in response.

(h) *Notice in lieu of an application.* (1) A security-based swap dealer or major security-based swap participant may permit a person associated with it who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on its behalf, without making an application pursuant to this section, where the conditions in paragraph (h)(2) of this section are met, and where:

(i) The person has been admitted to or continued in membership, or participation or association with a member, of a self-regulatory organization (as provided in 15 U.S.C. 78c(a)(26)), notwithstanding that such person is subject to a statutory disqualification under Section 3(a)(39)(A) through (F) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39)(A) through (F));

(ii) The person has been granted consent to associate pursuant to the Rule of Practice 193 (17 CFR 201.193) or otherwise by the Commission;

(iii) The person has been permitted to effect or be involved in effecting security-based swaps on behalf of a security-based swap dealer or major security-based swap participant pursuant to this section; or

(iv) The person has been registered as, or listed as a principal of, a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant, registered as an associated

person of any of the foregoing, registered as or listed as a principal of a swap dealer or major swap participant, or registered as a floor broker or floor trader, notwithstanding that the person is subject to a statutory disqualification under Sections 8a(2) or 8a(3) of the Commodity Exchange Act (7 U.S.C. 12a(2), (3)), and the person is not subject to a Commission bar or suspension pursuant to Sections 15(b), 15B, 15E, 15F, or 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o–4, 78o–7, 78o–10, 78q–1), Section 9(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(b)), or Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(f)).

(2) A security-based swap dealer or major security-based swap participant may permit a person associated with it who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on its behalf, without making an application pursuant to this section, as provided in paragraph (h)(1), subject to the following conditions:

(i) All matters giving rise to a statutory disqualification under Section 3(a)(39)(A) through (F) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39)(A) through (F)) have been subject to a process where the membership, association, registration or listing as a principal has been granted or otherwise approved by the Commission, Commodity Futures Trading Commission, self-regulatory organization (as provided in 15 U.S.C. 78c(a)(26)), or a registered futures association (as provided in 7 U.S.C. 21);

(ii) The terms and conditions of the association with the security-based swap dealer or major security-based swap participant are the same in all material respects as those approved in connection with a previous order, notice or other applicable document granting the membership, association, registration or listing as a principal, as provided in paragraph (h)(1); and

(iii) The security-based swap dealer or major security-based swap participant has filed a notice with the Commission. The notice shall be filed pursuant to Rules of Practice 151, 152, and 153 (17 CFR 201.151, 201.152, and 201.153). The notice must set forth, as appropriate:

(A) The name of the security-based swap dealer or major security-based swap participant;

(B) The name of the associated person subject to a statutory disqualification;

(C) The name of the associated person's prospective supervisor(s) at the security-based swap dealer or major security-based swap participant;

(D) The place of employment for the associated person subject to a statutory disqualification; and

(E) Identification of any agency, self-regulatory organization (as provided in 15 U.S.C. 78c(a)(26)) or a registered futures association (as provided in 7 U.S.C. 21) that has indicated its agreement with the terms and conditions of the proposed association, registration or listing as a principal.

(i) *Note to § 201.194.* (1) Under Section 15F(b)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)(6)), except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant, if the security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

(2) Subject to the exclusion provided in paragraph (c) of this section, in accordance with the authority granted in Section 15F(b)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)(6)), this section governs applications to the Commission by a security-based swap dealer or major security-based swap participant for the Commission to issue an order to permit a natural person who is an associated person of a security-based swap dealer or major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security- based swap participant.

(3) Applications made pursuant to this section must show that it would be consistent with the public interest to permit the associated person of the security-based swap dealer or major security-based swap participant to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant. In addition to the information specifically required by the rule, applications should be supplemented, where appropriate, by written statements of individuals who are competent to attest to the associated person's character, employment performance, and other relevant information. In addition to the information required by the rule, the Commission staff may request supplementary information to assist in the Commission's review. Intentional misstatements or omissions of fact may constitute criminal violations of 18 U.S.C. 1001, *et seq.* and other provisions of law. The Commission will not consider any application that attempts to reargue or collaterally attack the findings that resulted in the statutory disqualification.

(4) The nature of the supervision that an associated person will receive or exercise as an associated person with a registered entity is an important matter bearing upon the public interest. In meeting the burden of showing that permitting the associated person to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant is consistent with the public interest, the application and supporting documentation must demonstrate that the terms or conditions of association, procedures or proposed supervision, are reasonably designed to ensure that the statutory disqualification does not negatively affect the ability of the associated person to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant in compliance with the applicable statutory and regulatory framework.

(5) Normally, the applicant's burden of demonstrating that permitting the associated person to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant is consistent with the public interest will be difficult to meet where the associated person is to be supervised by, or is to supervise, another statutorily disqualified individual. In addition, where there is an absence of supervision over the associated person who is subject to a statutory disqualification, the applicant's burden will be difficult to meet. The associated person may be limited to association in a specified capacity with a particular registered entity and may also be subject to specific terms and conditions.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f,

78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112–106, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

§ 240.15Fb6–1 [Removed and Reserved].

■ 4. Remove and reserve § 240.15Fb6–1.

By the Commission.

Dated: December 19, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2019–02347 Filed 2–15–19; 8:45 am]

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